

NOTATION VOTE

RELEASED TO THE PDR

RESPONSE SHEET

10/3/96

date

initials

TO: John C. Hoyle, Secretary

FROM: CHAIRMAN JACKSON

SUBJECT: SECY-96-154 - PROPOSED REVISION TO NRC
ENFORCEMENT POLICY, NUREG-1600, ENFORCEMENT
GUIDANCE FOR DEPARTURES FROM THE FSAR IN
VIOLATION OF 10 CFR 50.59 AND FOR FAILURES
TO UPDATE FSAR IN VIOLATION OF 10 CFR
50.71(e)

Approved ☒ Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

John C. Hoyle
SIGNATURE

Release Vote ☒ / ☐ /

August 14, 1996

DATE

Withhold Vote ☐ / ☐ /

Entered on "AS" Yes ☒ No _____

010039

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NOTATION VOTE
.....

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RESPONSE SHEET

10/3/96

date

initials

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER ROGERS

SUBJECT: SECY-96-154 - PROPOSED REVISION TO NRC
ENFORCEMENT POLICY, NUREG-1600, ENFORCEMENT
GUIDANCE FOR DEPARTURES FROM THE FSAR IN
VIOLATION OF 10 CFR 50.59 AND FOR FAILURES
TO UPDATE FSAR IN VIOLATION OF 10 CFR
50.71(e)

Subject To
Approved* COMMENTS * Disapproved _____ Abstain _____
KCR
Not Participating _____ Request Discussion _____

COMMENTS: SEE ATTACHMENT.
KCR

Kenneth C. Rogers
SIGNATURE

Release Vote / x /

August 26, 1996
DATE

Withhold Vote / /

Entered on "AS" Yes x No

Commissioner Rogers' Comments on Secy-96-154

The Statement of Consideration for the proposed policy revision should highlight the two year discretion period by inserting at page 18 of the Policy Statement revision, just before the "Paperwork Statement":

In summary, to encourage licensees promptly to undertake voluntary initiatives to identify and correct FSAR noncompliances, the NRC is modifying Section VII.B.3 of the Enforcement Policy to provide for:

(1) the exercise of discretion to refrain from issuing civil penalties and, in some instances, citations for a two year period where a licensee undertakes a voluntary initiative to identify and correct FSAR noncompliances that will be completed within that two year period, and

(2) the exercise of discretion to escalate the amount of the civil penalties for FSAR/50.59 noncompliances identified by the NRC subsequent to the two year voluntary initiative period.

In addition, on page 7 of the Commission paper and page 12 of the Policy Statement revision, the reference supporting the treatment of minor violations as non-cited is stated as "pursuant to Section VI" of the policy. It should be "pursuant to Section IV".

KCR
8/26/96

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR

10/3/96

date

isg
Initials

TO: John C. Hoyle
Secretary of the Commission

FROM: COMMISSIONER DICUS

SUBJECT: (SECY-96-154) PROPOSED REVISION TO NRC
ENFORCEMENT POLICY, NUREG-1600,
ENFORCEMENT GUIDANCE FOR DEPARTURES FROM
THE FSAR IN VIOLATION OF 10 CFR 50.59 AND
FOR FAILURES TO UPDATE FSAR IN VIOLATION
OF 10 CFR 50.71

Approved X Disapproved Abstain

Not Participating Request Discussion

COMMENTS: I concur with Cmr. Rogers' comments.

Greta Joy Dicus
SIGNATURE

Release Vote / X /

September 13, 1996
DATE

Withhold Vote / /

Entered on "AS" Yes X No

NOTATION VOTE

RELEASED TO THE PDR

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10/3/96

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initials

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER DIAZ

SUBJECT: SECY-96-154 - PROPOSED REVISION TO NRC
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TO UPDATE FSAR IN VIOLATION OF 10 CFR
50.71(E)

Approved ☒ Disapproved ☐ Abstain ☐

Not Participating ☐ Request Discussion ☐

COMMENTS: See attached comments

Bill Diaz

SIGNATURE

Release Vote ☒

9/11/96

DATE

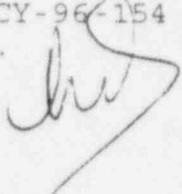
Withhold Vote ☐

Entered on "AS" Yes ☐ No ☐

Commissioner Diaz' Comments on SECY-96-154

I agree with the staff's objectives to revise the Enforcement Policy to make it clear to licensees that the Commission believes that violations of 10 CFR 50.59 and 50.71(e) can be significant and can justify substantial regulatory action. To this end, staff is proposing that we adopt a higher base penalty (\$100,000) for Severity Level II or III violations associated with departures from the FSAR. Although I agree with the emphasis in this area, I also believe we should try to maintain a consistent approach to our enforcement policy and not establish a higher base penalty for violations in one area than for other Severity Level II or III violations, which also may have similar safety or regulatory significance. The current enforcement policy clearly states that the Commission may exercise discretion and escalate civil penalties "to ensure that the proposed civil penalty conveys the appropriate regulatory message to the licensee". I would rather exercise this discretion to escalate current civil penalties to convey the appropriate regulatory message to licensees two years from now, if still needed, than to mitigate a higher base civil penalty to provide equivalency to other Severity Level II and III violations if the regulatory message has been received.

Accordingly, I approve the Proposed Revision to NRC Enforcement Policy contained in SECY-96-154 subject to the attached revisions on pages 17, 18 and 20.



programs with goals to have these discrepancies identified in the near term. Therefore, it is not appropriate to continue indefinitely the granting of enforcement discretion in cases where the NRC identifies the violations. As provided above in item a, for NRC identified violations use of Section VII.B.3 enforcement discretion for FSAR discrepancies will consider the schedule for the licensee's voluntary initiative and when NRC identified the violation. The two year period will provide a reasonable time period and incentive for licensees to plan and conduct appropriate reviews to ensure that their facilities meet the descriptions in the FSAR and take necessary corrective action. The staff will continue to document in inspection reports the results of its inspections against the FSAR and other than the exception noted in item a, above, will continue enforcement for NRC-identified violations.

Following this two year period, if a Severity Level II or III violation is identified, the Commission intends to use its discretion and ^{could} assess civil penalties for each violation or problem ~~using a base penalty~~ of \$100,000 which may be ^{further} escalated after considering the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted), rather than the normal assessment factors, ~~and base civil penalties~~. This approach is intended to increase the incentive for licensees to take timely action to ensure that their facilities match the FSAR. For example, if a single Severity Level III violation is identified by the NRC and it lasted for more than one day, a civil penalty of \$200,000 could be assessed. If the licensee identified the same violation and application of enforcement

discretion under Section VII.B.3 was not warranted, a ^{base} civil penalty ~~of~~
~~\$100,000~~ could be assessed which will provide some recognition of the
licensee's efforts. Section VII.A.1 of the Enforcement Policy is being
amended consistent with this approach.

Paperwork Statement

This policy statement does not contain a new or amended information
collection requirement subject to the Paperwork Reduction Act of 1995 (44
U.S.C. 3501 et seq.). Existing requirements were approved by the Office of
Management and Budget, approval number 3150-0011. The approved information
collection requirements contained in this policy statement appear in Section
VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to
respond to, a collection of information unless it displays a currently valid
OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness
Act of 1996, the NRC has determined that this action is not a major rule and
has verified this determination with the Office of Information and Regulatory
Affairs of OMB.

2. In Section VII., add the following language as paragraph h. at the end of paragraph A.1.g.:

VII Exercise of Discretion

A. Escalation of Enforcement Sanctions. * * *

h. Severity Level II or III violations associated with departures from the Final Safety Analysis Report identified after two years from [date of this Federal Register Notice]. Such a violation or problem would ~~be assessed using a base civil penalty of \$100,000 and~~ consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

* * * * *

3. In Section VII. add at the end of paragraph B.3:

B. Mitigation of Enforcement Sanctions. * * *

3. Violations Involving Old Design Issues. * * *

* * * * *

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

a) The NRC identifies the violation unless it was likely in the

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TO: John C. Hoyle, Secretary

FROM: COMMISSIONER MCGAFFIGAN

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50.71(E)

Approved ☒ Disapproved ☐ Abstain ☐

Not Participating ☐ Request Discussion ☐

COMMENTS: I agree with Commissioner Rogers' comments.

Edward M. McGaffigan Jr.

SIGNATURE

9/12/96

DATE

Release Vote ☒

Withhold Vote ☐

Entered on "AS" Yes ☒ No ☐