



OFFICE OF THE  
SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

RELEASED TO THE PDR

September 27, 1996

10/3/96

date

initials

REVISED

MEMORANDUM TO: James M. Taylor  
Executive Director for Operations

FROM: John C. Hoyle, Secretary

SUBJECT: STAFF REQUIREMENTS - 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)

The Commission has approved the proposed revisions subject to the comment below and the changes in the attachment.

On page 7 of the SECY paper and page 12 of the Policy Statement revision, the reference supporting the treatment of minor violations as non-cited should be "pursuant to Section IV" instead of "pursuant to Section VI."

Attachment:  
As stated

cc: Chairman Jackson  
Commissioner Rogers  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

SECY NOTE: THIS SRM, SECY-96-154, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

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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 (\$80,000) or III (\$50,000) violation is identified, the Commission intends to use its discretion to increase the fine 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 civil penalty of \$100,000 (\$50,000 X 2 days) could be assessed for the example cited above 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.

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 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.

#### 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