NRC INSPECTION MANUAL

NRR

INSPECTION MANUAL CHAPTER 2571

DISPOSITIONING ADVANCED POWER REACTOR CONSTRUCTION NONCOMPLIANCES

Effective Date: TBD

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2571-01 PURPOSE

This Inspection Manual Chapter (IMC) provides instructions and guidance for dispositioning advanced power reactor (AR) construction noncompliances, the responsibilities and authorities of applicable NRC staff, requirements for use of the ARCOP significance determination process (SDP), requirements to convene a Significance and Enforcement Review Panel (SERP) to determine the preliminary and final significance of greater-than-green and risk-significant findings, and the process to appeal the significance of findings.

2571-02 OBJECTIVES

02.01 Provide instructions and guidance for dispositioning advanced power reactor construction noncompliances.

02.02 Specify applicable NRC staff responsibilities and authorities to ensure ARCOP noncompliances are objectively supported and properly dispositioned.

02.03 Provide details specific to the ARCOP for implementing the NRC Enforcement Policy and Enforcement Manual.

02.04 Provide ARCOP noncompliance initial screening criteria.

02.05 Provide ARCOP finding full screening criteria to assign appropriate safety or security significance characterization through the ARCOP SDP, and to determine the appropriate enforcement or administrative action for the findings (e.g., notice of violation (NOV), noncited violation (NCV), notice of nonconformance (NON), Notice of Deviation (NOD), etc.).

02.06 Establish guidance for conducting a SERP for determining the preliminary and final significance of greater-than-green or risk-significant findings.

2571-03 APPLICABILITY

The NRC developed the advanced reactor construction oversight program (ARCOP) to be implemented at all ARs under construction, including commercial SMRs and microreactors incorporating both LWR and non-LWR technologies. Given the Commission expectation that ARs will provide enhanced margins of safety and/or use simplified, inherent, passive, or other innovative means to accomplish their safety and security functions, ARCOP oversight also applies to construction of large LWRs with enhanced safety features, such as the AP1000.

This IMC applies to noncompliances identified during ARCOP inspections conducted per IMC 2573, “Inspection of the Advanced Power Reactor Quality of Construction Strategic Performance Area,” IMC 2574, “Inspection of the “Operational Readiness” Strategic Performance Area of the Advanced Reactor Construction Oversight Program (ARCOP),” IMC 2203 - “Security Inspection Program for Advanced Power Reactor Construction,” and IMC 2501, “Inspection Activities Following Acceptance of a Docketed Application for a Permit, License, or NRC Authorization.” This IMC shall also apply to supplemental inspections as directed by IMC 2572, “Assessment of Advanced Reactor Construction Projects.” This IMC shall be implemented when the NRC accepts and dockets an application for a combined license (COL),

construction permit (CP), manufacturing license (ML), or a limited work authorization (LWA) that is associated with an advanced power reactor. This IMC is no longer applicable when an advanced power reactor transitions to the startup or operations phase, as indicated by a 10 CFR 52.103(g) finding that all ITAAC are complete (for COL holders) or when the NRC issues the facility an operating license (OL).

2571-04 DEFINITIONS

Applicable ARCOP definitions are in Inspection Manual Chapter 2570, “Advanced Reactor Construction Oversight Program General Guidance and Basis Document.” For readers’ convenience, some relevant definitions are also listed below.

a. Administrative Actions. Actions such as confirmatory action letters, notices of deviation, and notices of nonconformance that are issued to supplement the NRC enforcement program. These administrative actions are explained in the Enforcement Manual. The NRC expects licensees and other persons subject to the Commission’s jurisdiction to adhere to any obligations and commitments resulting from administrative actions and will consider issuing additional Orders, as needed, to ensure compliance.

b. Apparent Violations (AVs). Issues that do not appear to meet NRC requirements and for which the NRC staff has not made a final enforcement determination.

c. ARCOP Significance Determination Process (SDP). The process described in this IMC that is applied to an ARCOP inspection finding to determine its safety or security significance as either green (very low), white (low-to-moderate), or yellow (substantial).

d. Escalated Enforcement Actions. SL I, II, and III NOVs; NOVs associated with an inspection finding that the SDP evaluates as having low to moderate (white) or greater safety significance; civil penalties; NOVs to individuals; Orders to modify, suspend, or revoke NRC licenses or the authority to engage in NRC-licensed activities; and Orders issued to impose civil penalties.

e. Finding. (1) A performance deficiency that is of more-than-minor significance where the performance deficiency is reasonably foreseeable and preventable. In this general context of the word, “finding” is usually spelt with a small “f,” and (2) the final disposition of certain findings that are not associated with violations. In this specific context, “Finding” is spelt with a capital “F” and is abbreviated as “FIN.”

f. Fundamental Safety Functions (FSFs). A set of high-level functions that serve to limit the release of radioactive materials to within established limits over the entire range of licensing basis events. FSFs are discussed in various references, such as in Nuclear Energy Institute (NEI) 18-04, Revision 1, "Risk-Informed Performance-Based Technology Inclusive Guidance for Non-Light Water Reactor Licensing Basis Development,” (endorsed by Regulatory Guide 1.233). The FSFs are:

   - Control of Heat Generation (Reactivity and Power Control),
   - Control of Heat Removal (including reactor and spent fuel decay heat and heat generated from waste stores), and
   - Radionuclide Retention.

g. Minor Noncompliance. A noncompliance that has little or no safety or security significance than green or severity level (SL)-IV, and generally does not warrant enforcement action or documentation in inspection reports. Minor noncompliances must be corrected, but the NRC does not formally track their completion or closure. Minor noncompliances may be documented in certain circumstances (see IMC 0618, "Advanced Power Reactor Construction Inspection Reports," for guidance on documentation of minor noncompliances).

h. Non-Cited Violation (NCV). A method for dispositioning a SL IV violation or a violation associated with a green ARCOP finding that meets the criteria in Section 2.3.2 of the Enforcement Policy.

i. Noncompliance. The failure to adhere to a legally binding requirement or a non-legally binding commitments and standards. Legally binding requirements include regulations, technical specifications, license conditions, and NRC Orders. Non-legally binding commitments and standards include commitments made to the NRC, self-imposed requirements to establish and maintain quality, and requirements specified in procurement contracts.

j. Non-Escalated Enforcement Action. NOVs that are dispositioned by the NRC as SL IV or minor violations.

k. Notice of Deviation (NOD). A written notice describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. An NOD requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

l. Notice of Nonconformance (NON). A written notice describing the failure of a licensee's contractor to meet contract requirements that have not been made legally binding requirements by the NRC (e.g., a procurement contract with a licensee or applicant as required by 10 CFR Part 50, Appendix B). NONs request that non-licensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

m. NRC-Identified Noncompliance. A noncompliance that is found by NRC inspectors, of which the licensee was not previously aware, or had not been previously documented in the organization's QAP. NRC-identified noncompliances also include previously documented licensee or non-licensed manufacturer noncompliances to which the inspector has significantly added value. Added value means that the inspector has identified a previously unknown significant weakness in the classification, evaluation, or corrective actions associated with the noncompliance.

n. Performance Deficiency. A noncompliance that was reasonably within the licensee's/applicant's/project vendor's ability to foresee and correct and should have been prevented.

o. Project Vendor. A non-licensed entity that produces or assembles nearly complete reactor plants or significant portions of safety-significant system modules under contract to an NRC licensee, NRC permit holder, or an applicant for an NRC license or permit. Project vendors are identified during inspection scoping and inspected under the ARCOP.

p. Quality Assurance Program (QAP) Backstop. A planned QAP activity meant to detect SSC deficiencies or noncompliances that are associated with a finding, such as preservice inspections and tests, post-construction tests, and Initial Test Program activities.

q. Self-identified Construction Noncompliance (SCN). A fabrication, manufacturing, or construction noncompliance that is self-identified and corrected (or adequate corrective actions are planned) through the QAP by a licensee or non-licensee and is neither NRC-identified nor self-revealing. SCNs include but are not limited to noncompliances identified and corrected by the licensee or non-licensee during routine fabrication, manufacturing, or construction activities; quality assurance activities including self-assessments, independent assessments, audits, and surveillances; preoperational testing, hydrostatic testing and nondestructive testing; and emergency preparedness (EP) drills and critiques conducted by or for the licensee.

r. Self-Revealing Noncompliance. A noncompliance that becomes self-evident and requires no active and deliberate observation by licensees, non-licensees, or NRC inspectors to determine whether a change in process or equipment capability or function has occurred. Self-revealing noncompliances become apparent through a readily detectable degradation in the material condition, capability, or functionality of equipment and require minimal analysis to detect. An example of a self-revealing noncompliance is a noncompliance with radiography exclusion area requirements that is subsequently identified through an electronic dosimeter alarm.

s. Technical Assistance Request (TAR). The TAR process provides a means for NRC inspection staff to request assistance from other NRC organizations when dispositioning inspection issues. See COM-106, Technical Assistance Request Process, for guidance on initiating and completing TARs.

t. Very Low Safety Significance Issue Resolution (VLSSIR). A process used to discontinue inspection of an issue involving an open question that has ambiguity in the licensing basis, design basis, or applicability of regulatory requirements in which: (1) the resolution of the issue would require considerable staff effort; and (2) the agency has chosen to not expend further effort to resolve the question because the issue would be no greater than Green under the ARCOP or SL IV under the traditional enforcement process, if resolved.

2571-05 RESPONSIBILITIES AND AUTHORITIES

The final organizational structure for ARCOP implementation has not been determined. Current ARCOP IMC drafts are modeled after the organization implemented for the cROP. Changes will be made to roles and responsibilities if/when future NRC organizational changes are made.

05.01 General Responsibilities.

Each ARCOP noncompliance must be objectively supported and properly dispositioned in accordance with the guidance provided in this IMC.

05.02 Inspectors, Inspection Branch Chiefs and Division Directors.

a. Ensure that noncompliances are dispositioned consistently with this IMC, the Enforcement Policy, and the Enforcement Manual.

b. Ensure that noncompliances material to ITAAC are properly screened in the ITAAC maintenance period against the established ITAAC maintenance thresholds.

05.03 Director, Office of Nuclear Reactor Regulation (NRR)

a. Provide overall program direction for the ARCOP.

05.04 Director, Office of Nuclear Security and Incident Response (NSIR)

a. Provide overall program direction for the security aspects of the ARCOP.

05.05 ARCOP Program Organization (APO)

a. Provide interpretations and support for information contained in this IMC.

b. Provide resolution for identified gaps in IMC directions and guidance.

c. Provide guidance for issues involving ITAAC maintenance.

d. Coordinate ARCOP noncompliance enforcement so that consistency is maintained between advanced reactor construction projects across ARCOP cornerstones, inspection areas, NRC regional offices, and inspection organizations.

2571-06 REQUIREMENTS

06.01 ARCOP noncompliances shall be dispositioned in a predictable, repeatable, and scrutable process.

06.02 Results of the disposition of ARCOP noncompliances shall be communicated to licensees, manufacturers, project vendors, the public, and other stakeholders.

2571-07 GUIDANCE

07.01 Application of the NRC Enforcement Policy and Enforcement Manual to ARCOP Noncompliances

The primary guidance for all matters related to dispositioning noncompliances is contained in the NRC Enforcement Policy and Enforcement Manual. The following discussion provides additional details for application of that guidance to ARCOP noncompliances.

The NRC Enforcement Policy lists several entities that are subject to NRC enforcement actions. These include NRC licensees, license applicants, contractors and subcontractors to NRC licensees, suppliers of safety-related components to NRC licensees, and holders of, and applicants for, various NRC approvals, including quality assurance program (QAP) approvals.

A licensee may utilize contractors acting as agents of the licensee to construct a facility. In Volume 72 of the Federal Register, page 49351 (72 FR 49351), the agency defined the difference between suppliers and contractors performing construction, or the functional equivalent of construction. A supplier provides basic components and does not perform construction as defined in 10 CFR Part 50.10. Most supplier oversight is performed via the vendor inspection program. Suppliers who manufacture reactors or significant portions reactor plants in off-site facilities (i.e., facilities at a site which is not the permanent designated site for reactor plant operations) are referred to as “manufacturers” in ARCOP IMCs if they hold a manufacturing license (ML), or as “project vendors” if they perform this work under a contract with an NRC licensee and do not hold an ML. Manufacturers and project vendors are inspected as part of the ARCOP baseline inspection program. Enforcement actions for noncompliances identified at manufacturers or project vendor facilities are typically assigned to the manufacturer or project vendor.

Contractors performing construction, or the functional equivalent of construction, at the permanent site where reactor operation is planned (i.e., “on-site”), do so as agents of a licensee. Inspections of licensee agents are conducted as part of the ARCOP baseline inspection program and related enforcement actions are typically assigned to the licensee, who retains ultimate responsibility for the quality assurance program (QAP).

The NRC expects and encourages licensees and project vendors to identify and correct noncompliances. The NRC expects noncompliances to be corrected within a reasonable amount of time after they are identified. Consideration of reasonable timeliness should be based on the noncompliance’s significance and whether the cause of the noncompliance can adversely impact the fabrication, manufacture or construction of other SSCs. This may include implementation of temporary compensatory measures prior to completing permanent corrective actions.

07.02 Self-identified Construction Noncompliances (SCNs)

Since self-identified and corrected construction noncompliances pose no radiological risk to public health and safety, they are classified as minor noncompliances, which are not typically documented or subject to formal NRC enforcement. These noncompliances are referred to as "self-identified construction noncompliances," or SCNs, provided the following conditions are satisfied:

a. The noncompliance is self-identified.

b. The noncompliance has been dispositioned in accordance with the licensee's or project vendor's QAP procedures. In some cases, noncompliances may be self-identified and corrected immediately without entering the issue into a corrective action tracking process. This may be appropriate depending on the activity affected and the safety-significance of the noncompliance. In general, if workers follow the appropriate QAP procedures for dispositioning noncompliances, and those QAP procedures meet approved QAP description requirements, then this criterion is met.

c. The licensee or project vendor has adequately corrected the noncompliance, has developed or is developing appropriate corrective actions, and these corrective actions are appropriately planned and tracked in accordance with site QAP procedures.

d. The noncompliance is not associated with traditional enforcement (TE) in that it does not include any of the following:

    1. an actual safety or security consequence, or

    2. an issue that impacted the NRC's ability to perform its regulatory oversight function, or

    3. a noncompliance that is a violation and is not associated with an ARCOP finding, or

    4. an issue that involves potential willfulness.

07.03 Findings Material to the Acceptance Criteria of ITAAC

Findings that are material to ITAAC acceptance criteria are noncompliances that are of more-than-minor significance and prevent the ITAAC acceptance criteria from being met, or that invalidate the inspections, tests, or analyses upon which the ITAAC completion determination is based. Findings that are material to ITAAC acceptance criteria are identified in inspection reports and tracked to aid NRC staff in ensuring that they have been corrected prior to the "All ITAAC Complete Notification" pursuant to 10 CFR 52.99(c)(4) and the issuance of the 52.103(g) finding. NOVs or NCVs associated with findings material to an ITAAC are no longer material to the ITAAC when the acceptance criteria of the ITAAC are met.

07.04 Very Low Safety Significance Issue Resolution (VLSSIR)

The VLSSIR process is used to determine if NRC review of an advanced power reactor construction issue should be discontinued. This includes inspection, screening, and evaluation of the issue. Consideration of VLSSIR should occur any time an issue involving ambiguity on the licensing basis, design basis, or applicability of regulatory requirements is not efficiently resolved and would not be greater than green or more than SL-IV if resolved. Staff should also

consider VLSSIR when it becomes apparent that timeliness goals for resolving very low safety or security significance issues may not be met. Consideration need not be reserved for after an inspection is completed as issues that meet the criteria for VLSSIR consideration may arise during an inspection, and extensive effort may be expended during the inspection absent resource considerations. A predetermined level of effort need not be expended prior to consideration of VLSSIR. Inspectors shall ensure their branch chief is aware of the status of questions and issues during an inspection involving ambiguity that may not be easily resolved and consider VLSSIR when appropriate.

The consideration of whether to use VLSSIR should include, though is not limited to, whether the issue of concern is close to being resolved, whether there is some Agency interest in continuing to pursue the issue of concern, and how Agency resources have been used to date in attempting to resolve the issue. VLSSIR is not intended to be used to disposition an issue of concern in which the NRC and licensee simply do not agree, absent some level of ambiguity in NRC's view of the issue. When determining whether to use VLSSIR, drop the issue, or continue dispositioning, it may be helpful to consider not only the total agency resources expended but also how much effort has been focused on attempting to resolve ambiguity versus other aspects of the issue, such as evaluating and responding to licensee perspectives.

Note that the VLSSIR determination is made prior to determination of a noncompliance. Issue review shall be discontinued and a VLSSIR will be documented in an inspection report per IMC 0618 when either Criterion 1 or 2 is met:

a. Criterion 1: All the following are met:

    1. The inspection staff has not been able to conclude that the issue of concern is a noncompliance after considering any licensee-provided supporting information on why the issue of concern is not in its licensing or design basis or does not represent a violation of regulatory requirements and any relevant information developed during the inspection process.

    2. The condition surrounding the issue of concern cannot potentially be greater than green (i.e., not greater than very low significance if the issue was determined to be a finding evaluated using the SDP) nor greater than Severity Level IV if the issue was determined to be a violation subject to traditional enforcement.

    3. The resources required to resolve the current licensing question would not effectively and efficiently serve the Agency's mission or dispositioning of the issue within applicable timeliness goals or metrics is in jeopardy.

b. Criterion 2: The issue of concern was evaluated using Office Instruction COM-106, "Technical Assistance Request (TAR) Process" and recommended for no further action because the licensing basis standing is indeterminate, and the TAR Safety Significance Determination has determined the issue to be of very low significance and the issue would not be subject to escalated enforcement if determined to be a violation.

Cases may arise where clarification of a requirement through generic processes, interim staff guidance, or other appropriate means may be necessary, outside of inspection and assessment, to address broader safety and regulatory concerns.

Open URIs may be assessed using the above criteria to determine whether they should be closed using the VLSSIR process.

07.05 Technical Assistance Requests (TARs)

A construction TAR is the mechanism that NRC personnel (usually construction inspectors) use to formally clarify construction-related technical or inspection requirements for facilities licensed and built under the purview of the Office of Nuclear Reactor Regulation (NRR). The construction TAR process is used to facilitate the assignment of appropriate resources to respond to an identified issue in a timely manner, and to provide a method to document the resolution of the issue for future reference. See COM-106 for detailed guidance about TARs.

07.06 Initial Screening of ARCOP Noncompliances

Initial screening of an ARCOP noncompliance is performed to determine if the noncompliance is potentially willful and should be entered into the allegation process, if the TE screening process if applicable, if there is a performance deficiency, or if the noncompliance is minor (and requires no further screening). Initial screening then directs the NRC staff to continue with full screening for either licensee or non-licensee findings. Note: an issue is referred to as a “noncompliance” until it is screened as greater than minor. Greater than minor noncompliances may result in findings, TE actions, or both.

NRC staff shall perform initial screening of ARCOP noncompliances using Figure 1 and the guidance below:

a. Issue of Concern: A well-defined observation or collection of observations that may have a bearing on safety or security and warrants further inspection, screening, evaluation, or regulatory action.

b. Potential Willfulness: Willful noncompliances are of particular concern, regardless of who identifies the issue, because the NRC’s regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. If willfulness is suspected, proceed to Section 07-10.

c. Identifying a Noncompliance: The failure to adhere to a legally binding requirement or a non-legally binding commitment.

d. The TAR and the VLSSIR Processes: See Sections 07.05 and 07.06 for discussions of the VLSSIR and TAR processes.

e. Determine if a violation exists: A failure to comply with a requirement of the NRC's regulations, orders, or license conditions.

f. Determine if TE Applies: TE is the use of the Enforcement Policy to disposition certain noncompliances rather than using the ARCOP noncompliance dispositioning guidance. The Enforcement Policy discusses when TE applies. At this point in the screening process, the noncompliance has been determined to not be willful. Therefore, TE applies if:

    1. the noncompliance contributed to an actual consequence, or

    2. the noncompliance impacted the regulatory process, or

    3. the noncompliance is a violation that is not associated with an ARCOP finding.

The severity level of the TE violation could depend, in part, on the ARCOP significance of the technical noncompliance. If possible, screen the technical noncompliance issue for the ARCOP significance using the SDP process guidance.

If the ARCOP technical noncompliance significance is greater than green, then then enter the SERP process in Attachment 4 of this IMC. If the technical noncompliance significance is green, minor, or not applicable, then go to Section 07-11 for dispositioning guidance.

Note that TE applies to project vendors and other non-licensees if NRC requirements are directly imposed upon them. (e.g., 10 CFR Part 21).

g. Enforcement Discretion: Determine if enforcement discretion is warranted pursuant to Section 3.0 of the NRC's Enforcement Policy and the NRC Enforcement Manual.

   The NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority. Exercising discretion allows the NRC to determine what actions should be taken in a particular case, notwithstanding the guidance contained in the enforcement policy. After considering the general tenets of the Enforcement Policy, the guidance in the Enforcement Manual, and the safety and security significance of a finding or violation and its surrounding circumstances, judgment and discretion may be exercised in determining the color of a finding or the severity levels of a violation and the appropriate enforcement sanctions to be taken.

   Enforcement discretion is granted on a case-by-case basis in consultation with OE (for green findings or SL-IV violations) or via a Significance and Enforcement Review Panel (SERP) for greater than green or greater findings or greater than SL-IV violations. Additionally, enforcement discretion may be granted in accordance with an Enforcement Guidance Memorandum (EGM) when specified criteria are met. For findings and violations involving enforcement discretion, inspectors shall coordinate their actions with the NRR and applicable regional enforcement coordinators.

h. Performance Deficiency: The noncompliance was reasonably within the licensee's/applicant's/project vendor's ability to foresee and correct and should have been prevented.

i. Minor Safety or Security Significance: Use Attachment 2 of this IMC to screen for minor/more-than-minor significance.

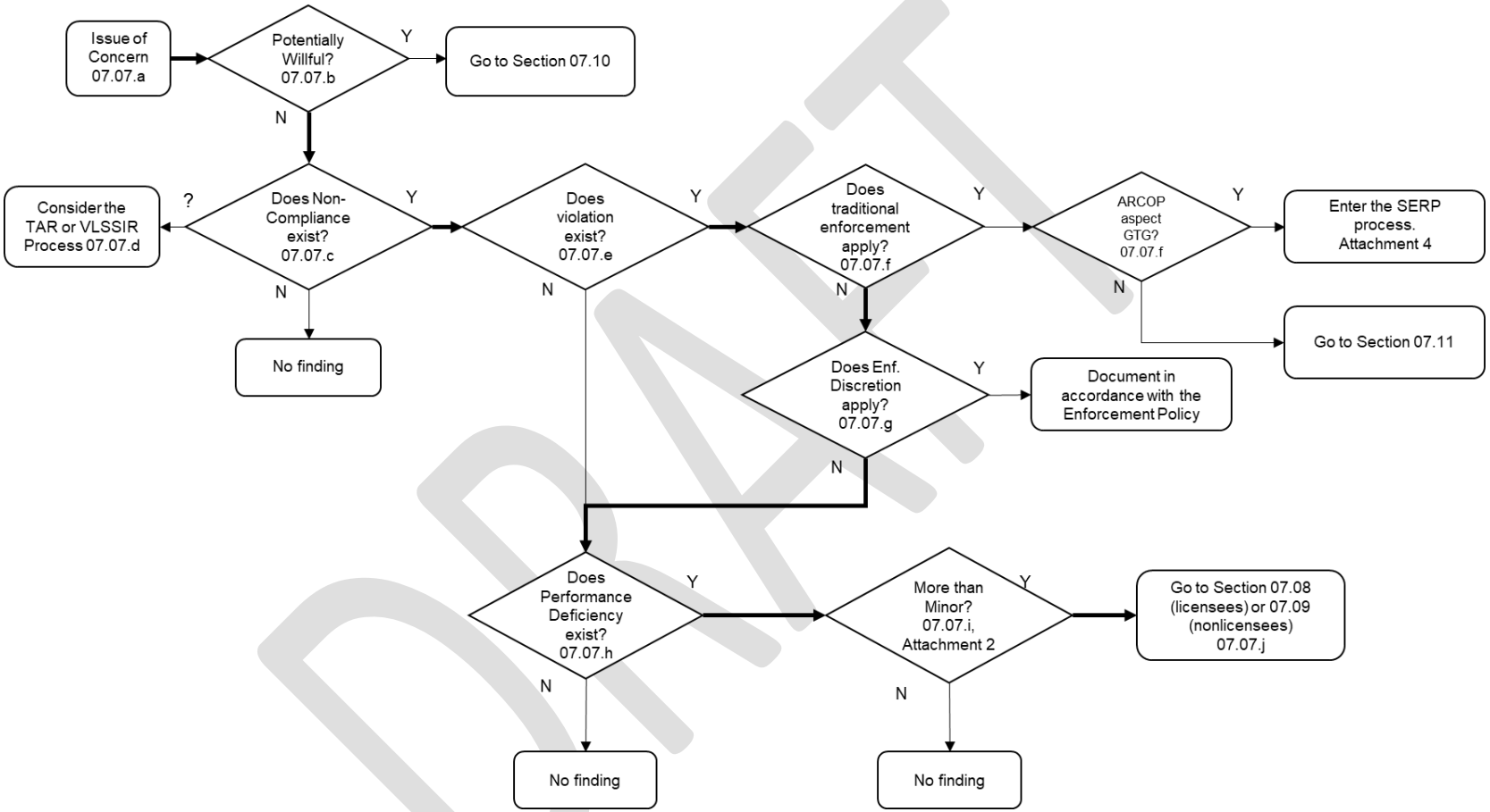
j. Determine the Recipient of the Enforcement or Administrative Action: Because licensee and non-licensee findings are dispositioned differently, the last step in the initial screening process is to determine what organization is the recipient of the enforcement or administrative action using the following guidance:

   1. If the noncompliance occurs at a reactor plant construction site (i.e., the permanent site at which the reactor is meant to operate), then the recipient of the action is the applicant or the holder of the COL, CP, or LWA. Proceed to Section 07-08.

   2. If the noncompliance occurs at a licensed manufacturing facility, then the action recipient is the ML applicant or holder. Proceed to Section 07-08.

3. If the noncompliance occurs at a project vendor's facility, then the enforcement action recipient is the project vendor. In some cases, it may also be appropriate to issue a separate enforcement action such as an NOV or NCV to the applicant or license holder (LWA, CP, COL, or ML) if they did not adequately oversee their supplier's quality program, and this lack of oversight contributed to the noncompliance. Proceed to Section 07-09.

Figure 1. Initial Screening of Noncompliances



07.07 Dispositioning Licensee Findings

Disposition licensee findings using Figures 2 and 2a, and the guidance below:

a. NRC-identified or Self-revealed Finding: At this point in the screening process, the finding is either NRC-Identified or self-revealing since it has been screened to determine if it is an SCN in Section 07-07. Non-willful, non-TE, self-identified noncompliances must either be an SCN or NRC-identified due to a corrective action deficiency.

b. Determine if the finding is associated with a legally binding requirement or a non-legally binding requirement.

    1. Findings associated with legally binding requirements (see definition of "Noncompliance" in Section 2571-04) are normally documented with an associated violation.

    2. Findings associated with a licensee's failure to satisfy a non-legally binding requirement (e.g., self-imposed standards, or codes and standards used by the licensee but not legally required as part of their licensing basis) are not documented with a violation.

c. Determine the safety or security significance of the finding. NRC staff shall use Attachment 3 to determine the significance of ARCOP findings.

d. Dispositioning Greater than Green Findings: If the significance of the finding is potentially greater than green, enter the SERP process in accordance with Attachment 4. The SERP is responsible for determining the preliminary and final significance of the finding.

e. If the finding is screened as green, then determine if the requirements for issuing an NCV are met. If the requirements for issuing an NCV for the associated violation are not met, then disposition the associated violation as an NOV.

    If a licensee has implemented a CAP that is determined to be effective by the NRC, then the NRC will normally disposition SL IV violations (including those associated with green ARCOP findings) as NCVs if all the criteria in paragraph 2.3.2.a of the Enforcement Policy are met. At this point in the screening process, the violation cannot be willful or a TE violation. Therefore, the following two additional conditions from the Enforcement Policy Section 2.3.2.a remain to be evaluated:

    1. The licensee must place the violation into a corrective action program to restore compliance and address recurrence.

    2. The licensee must restore compliance (or demonstrate objective evidence of plans to restore compliance) within a reasonable period (i.e., in a timeframe commensurate with the significance of the violation) after a violation is identified.

f. If the finding is not associated with a legally binding requirement, then determine the safety or security significance of the finding. NRC staff shall use Attachment 3 to determine the significance of the finding.

g. For green findings without violations, determine if the NRC has reviewed the licensee's CAP and determined it to be effective. See IMC 2574 for details of NRC CAP reviews for construction licensees.

   If the licensee's CAP has been reviewed and is effective, then disposition the finding as a green Finding (FIN). If not, then disposition the finding with an associated notice of deviation (NOD). Confidence in the licensee's CAP facilitates closing green FINs without a formal review by the NRC staff. The NRC staff will review NOD responses and may reinspect issues prior to NOD closure.

Figure 2. Dispositioning Licensee Findings

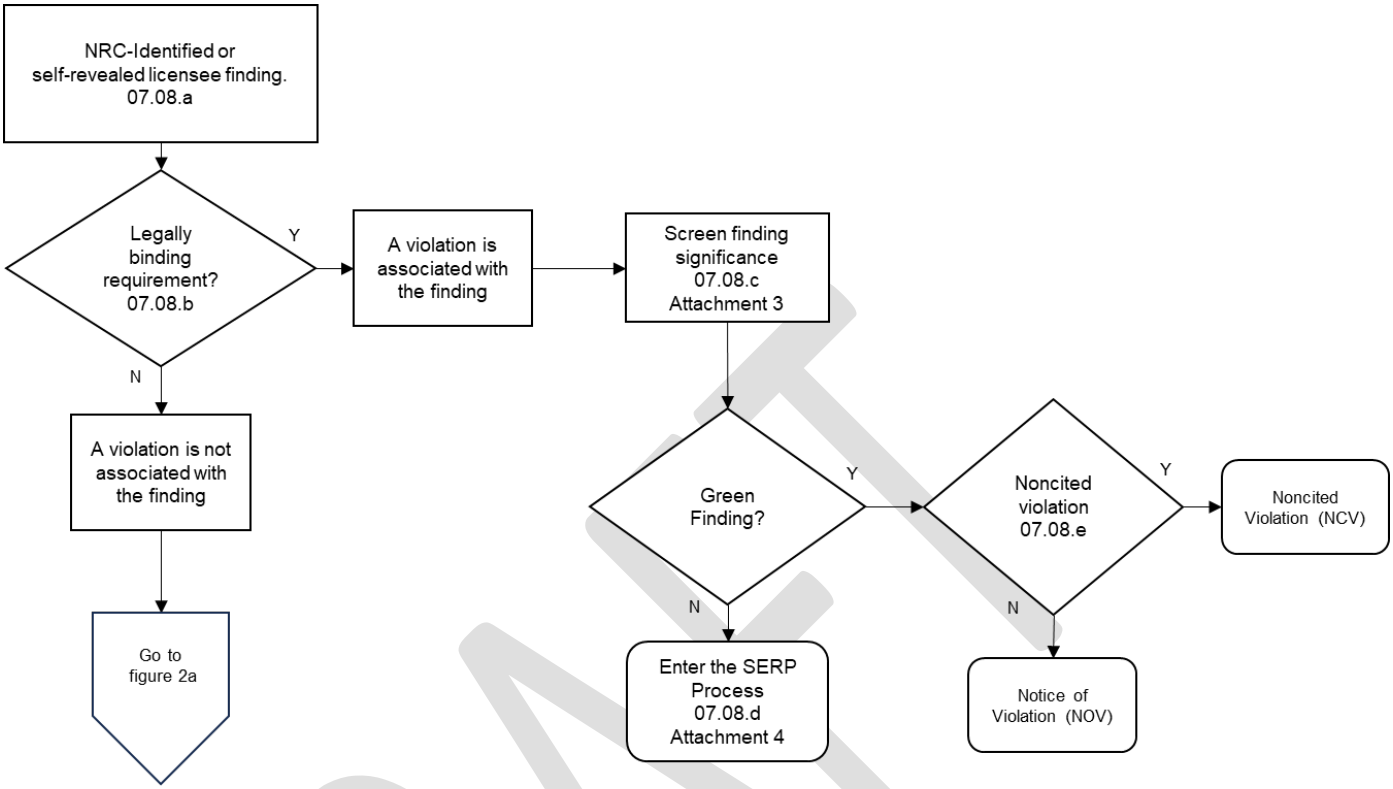
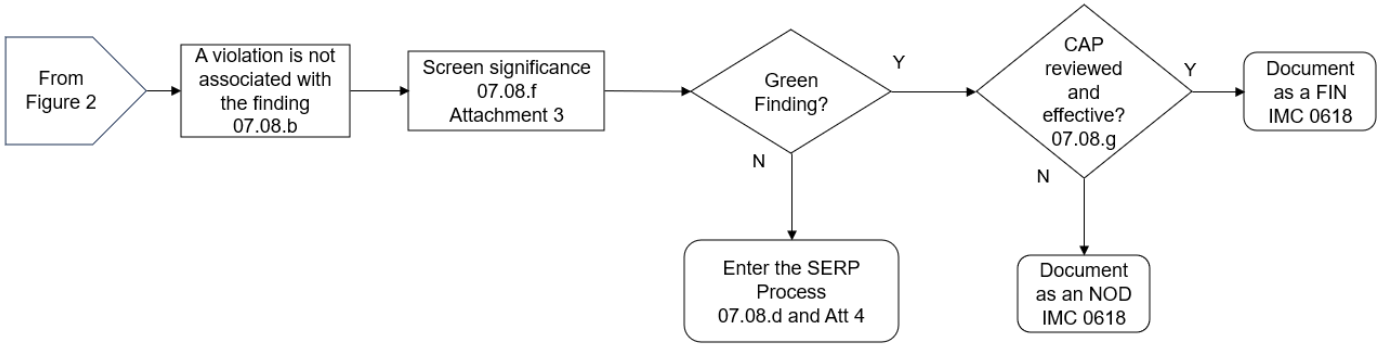


Figure 2a. Dispositioning Licensee Findings (continued)



07.08 Dispositioning Non-Licensee Findings

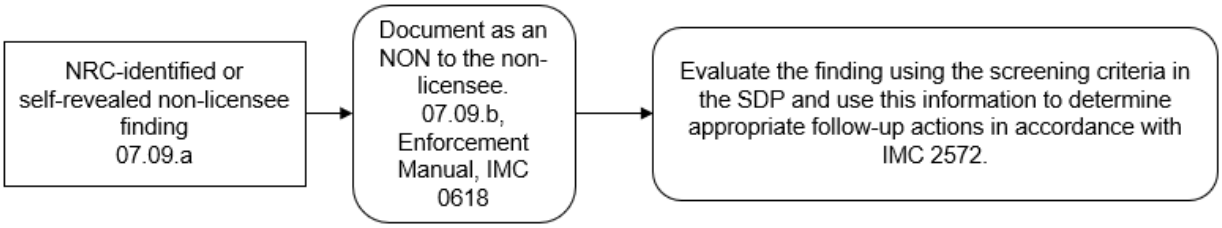
Disposition non-licensee findings using Figure 3, and the guidance below. Note that non-licensee noncompliances that are violations of directly imposed NRC requirements (e.g., 10 CFR Part 21) are dispositioned using TE following the directions of Section 07.07 and Figure 1, "Initial Screening of Noncompliances.

a. At this point in the screening process, the finding is either NRC-Identified or self-revealing since it has been screened to determine if it is an SCN in Section 07-07. Non-willful, non-TE, self-identified noncompliances must either be an SCN, or an NRC-identified finding due to a corrective action deficiency.

b. Document the finding as an NON to the project vendor. Use the guidance in the Enforcement Manual and IMC 0618 to document the NON.

c. Evaluate the finding using the screening criteria in the ARCOP SDP and use this information to determine appropriate follow-up actions in accordance with IMC 2572.

Figure 3. Dispositioning Non-Licensee Findings



07.09 Dispositioning Noncompliances Involving Potential Willfulness

The term "willfulness" as used in the Enforcement Policy refers to conduct involving either a careless disregard for requirements, a deliberate noncompliance with requirements, or falsification of information.

Willful violations are of particular concern because the NRC's regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. If willfulness is suspected, inspectors shall inform the inspection team lead and their supervisor, then enter the issue into the allegation process in accordance with Management Directive (MD) 8.8, "Management of Allegations."

Further actions, such as screening the issue for safety or security significance and determining the final disposition of the issue will be directed by the Allegation Review Board (ARB) and the Office of Enforcement - including the NRC Regional OE representative if applicable.

07.10 Dispositioning Non-Willful TE Noncompliances

a. Non-willful noncompliances dispositioned using traditional enforcement. In addition to willful noncompliances, as discussed in Section 07-10, TE is used to disposition noncompliances in other situations, such as those listed below.

1. Noncompliances that resulted in actual safety or security consequences: Actual safety or security consequences should be rare during construction of reactor plants; however, examples may include an actual onsite or offsite release of radionuclides exceeding regulatory limits, onsite or offsite radiation exposures exceeding regulatory limits, accidental criticalities, loss of control of special nuclear material, or loss of control of radiological material exceeding regulatory limits for public dose.

2. Noncompliances that may impact the ability of the NRC to perform its regulatory oversight function: Examples of failure to provide complete and accurate information:

   (a) failure to receive prior NRC approval for changes in licensed activities,

   (b) failure to notify the NRC of changes in licensed activities,

   (c) failure to perform 10 CFR 50.59 or 10 CFR 52.98 analyses,

   (d) submittal and NRC acceptance of an ITAAC Closure Notification (ICN) that states that an ITAAC acceptance criterion is met when it is not met,

   (e) failure to make required reports to the NRC.

3. Noncompliances not associated with an ARCOP technical issue: ARCOP noncompliances are those that are associated with ARCOP safety or security cornerstones.

4. Violations with no performance deficiency: TE is used to disposition violations with no performance deficiency (i.e., the noncompliance was not within the licensee's or non-licensee's ability to foresee and correct). This is not common for construction noncompliances, and a "no performance deficiency" determination should be coordinated with the Office of Enforcement and the ARCOP Project Organization.

b. TE is used to disposition findings with associated violations that cannot be addressed solely through the ARCOP significance determination process since they include TE aspects. In these cases, the ARCOP safety or security significance of the finding is used to inform the final severity level of the violation. Use Figure 4 and the guidance below to disposition these violations:

   1. Determine if the TE violation is more than minor. If the answer to any of the following questions is "yes," then the TE violation is more than minor.

      (a) Did the TE violation result in an actual consequence?

      The NRC Enforcement Policy, Section 2.2.1.a, list several examples of actual consequences. Some of the examples in the NRC Enforcement Policy do not apply to reactors under construction since there is no reactor core, no fission product source, no barriers required to contain fission products, and no required emergency response plan. However, construction of advanced reactors may involve possession of radioactive or special nuclear material. The list of examples below is a subset of the examples in the NRC Enforcement Policy to take these considerations into account. The TE violation resulted in an actual consequence if:

(1) There was an on-site or off-site release of radionuclides or a radiation exposure which exceeded 10 CFR Part 20, "Standards for Protection Against Radiation," regulatory limits, or

(2) There was an on-site or off-site chemical hazard exposure resulting from a licensed or certified activity, or

(3) There was a loss of control of radioactive or special nuclear material, or

(4) A security system malfunctioned and, because of the failure, a significant event or an event that resulted in an act of radiological sabotage occurred.

(b) Does the TE violation represent a more than minor impact on the NRC's ability to perform its regulatory oversight function?

The NRC considers the safety and security implications of noncompliances that may affect the NRC's ability to carry out its regulatory oversight function. The NRC Enforcement Policy, Section 2.2.1.c lists several examples of noncompliances that represent a more than minor impact on the NRC's ability to perform its regulatory function. Further, Section 6.9 of the Enforcement Policy lists criteria for SL-IV, SL-III, SL-II, and SL-I construction violations. The questions below are derived from this guidance.

If the answer to any the questions below is "yes," then the violation may be greater than minor. However, recognizing that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment for determining significance of these types of violations, judgment and discretion must be exercised in determining the SLs of the violations and the appropriate enforcement sanctions. The APO and the OE should be consulted prior to finalizing a determination that a noncompliance is greater than minor due to it affecting the NRC's ability to carry out its regulatory oversight function.

(1) Did the TE violation include a failure to provide complete and accurate information, such as a failure to perform 10 CFR 50.59, "Changes, Tests and Experiments," or similar analyses; failures to maintain an up-to-date and accurate FSAR; or a failure to comply with reporting requirements, and did this failure to provide information result in the NRC taking a regulatory action, or failing to take a regulatory action, that was different than the NRC would have taken had this information been available to them?

(2) Did the TE violation include a failure to receive prior NRC approval for changes in licensed activities, when required; or a failure to notify the NRC of required changes in licensed activities, when required?

(3) Did the TE violation result in an NRC-accepted ITAAC closure notification (ICN) that is not valid either because the licensee did not meet the acceptance criteria or the performance of an inspections, tests, or analyses upon which the acceptance criteria are based is not valid?

Note: this scenario is different from situations where the ITAAC requirements were met at the time the ICN was submitted but subsequent testing or analyses demonstrated the ITAAC acceptance criteria no longer continue to

be met. This second scenario is covered under ITAAC maintenance and may require the licensee to submit an ITAAC Post Closure Notification (IPCN).

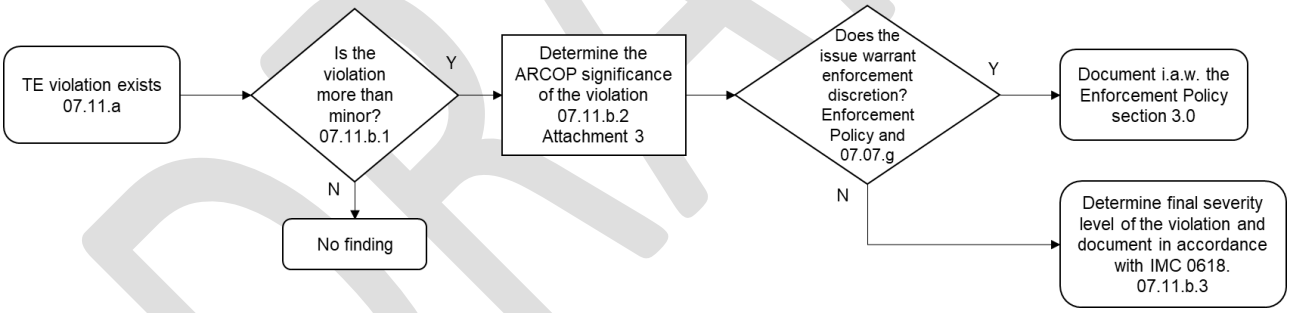
(4) Did the TE violation meet any other criteria in Section 6.9 of the NRC Enforcement Policy for being SL-IV or higher?

(c) If no performance deficiency is associated with a violation, does the violation screen as more than minor using Attachment 2 of this IMC?

2. ARCOP safety or significance of the noncompliance: Use Attachment 3 of this IMC to determine the ARCOP safety or security significance of the finding, if possible. This information will inform the final severity level determination of the violation. Some TE violations may have no ARCOP technical aspect. For these violations, the ARCOP significance is not applicable.

3. Final severity level of the violation: The final severity level of the violation is determined using the NRC Enforcement Policy guidelines, considering the ARCOP safety or security significance of the finding. If the Enforcement Policy severity level and the ARCOP safety or security significance are not aligned, then consult with OE and APO prior to assigning the final severity level of the violation.

Figure 4. Dispositioning Non-Willful TE Violations



07.11 SDP and Enforcement Review Panel Procedures

The Significance and Enforcement Review Panel (SERP) provides a management review of inspection findings, a preliminary decision regarding the significance characterization, and enforcement recommendations for all inspection findings in which the proposed significance characterization is White, Yellow, or GTG. An official agency preliminary significance determination of White, Yellow, or GTG can only be made by a SERP. When necessary, based on the results of a Regulatory Conference or written response provided by the licensee, the SERP provides the management review and a final decision regarding the finding's significance determination and enforcement action, as applicable. The SERP process is described in detail in Attachment 4 of this Manual Chapter.

07.12 SDP and Enforcement Review Panel Procedures

If the recipient of an NRC enforcement or administrative action disagrees with the staff's final determination of significance or severity level, they may appeal the determination to the Director of APO as described in Attachment 5 of this Manual Chapter. Any such review must meet the requirements stated in the Prerequisites and Limitations Sections of Attachment 5 to merit further staff consideration. Specifically, the recipient must have opted for an opportunity to present additional information to the staff either by meeting with NRC management at a Regulatory Conference or by submitting a written response on the docket.

END

List of Attachments:

Attachment 1:	Acronyms
Attachment 2:	Determining if an ARCOP Noncompliance is Minor
Attachment 3:	ARCOP Finding Significance Determination
Attachment 4:	Significance and Enforcement Review Panel Process
Attachment 5:	Process for Appealing an NRC SDP Determination
Attachment 6:	Alternate Significance Determination
Attachment 7:	Revision History for IMC 2571

Attachment 1: Acronyms

APO	ARCOP Project Organization
ARB	Allegation Review Board
ARCOP	Advanced Reactor Construction Oversight Program
AV	Apparent Violation
CAP	Corrective Action Program
CFR	Code of Federal Regulations
COL	Combined License
CP	Construction Permit
FIN	Finding
FSF	Fundamental Safety Function
GTG	Greater Than Green
ICN	ITAAC Closure Notification
IMC	Inspection Manual Chapter
ITAAC	Inspections, Tests, Analyses, and Acceptance Criteria
LWA	Limited Work Authorization
ML	Manufacturing License
NCV	Non-Cited Violation
NOD	Notice of Deviation
NON	Notice of Nonconformance
NOV	Notice of Violation
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
OE	Office of Enforcement
OGC	Office of the General Counsel
OI	Office of Investigations
OL	Operating License
QA	Quality Assurance
QAP	Quality Assurance Program
SCN	Self-identified Construction Noncompliance
SDP	Significance Determination Process
SERP	Significance and Enforcement Review Panel
SL	Severity Level
SSC	Structure, System or Component
TAR	Technical Assistance Request
TBD	To Be Determined
TE	Traditional Enforcement
URI	Unresolved Item
VLSSIR	Very Low Safety Significance Issue Resolution

Attachment 2: Determining if an ARCOP Noncompliance is Minor

Minor noncompliances include noncompliances below the significance associated with green findings, SL-IV violations, or non-licensee noncompliances warranting issuance of a Notice of Nonconformance (NON). Minor noncompliances cannot be potentially willful and are not the subject of formal enforcement or administrative actions. The NRC usually does not document minor noncompliances. Refer to IMC 0618, "Advanced Power Reactor Construction Inspection Reports," for guidance on when it may be appropriate to document minor noncompliances. This attachment addresses ARCOP noncompliances and does not address traditional enforcement (TE) violations. Guidance for determining if a TE violation is minor is in Section 07-11.

NRC staff uses Attachment 2, Figure 1, and the guidance below to determine if an ARCOP noncompliance is minor. Examples of minor and more than minor noncompliances are given at the end of this attachment. These examples are intended to be an aid to NRC staff and should not be solely relied upon to determine if a noncompliance is minor or more than minor. Note that at this point in the screening process, the noncompliance has already been screened for a Self-identified Construction Noncompliance (SCN). Therefore, noncompliances entering the screening process of this attachment must be either NRC-identified or self-revealing.

The minor/more than minor (MTM) criteria below are focused on the noncompliance's impact on the functionality of safety-related or safety-significant SSCs. While noncompliances that do not significantly impact SSC functionality are minor, license and permit holders must correct minor noncompliances. Corrective actions may consist of replacing the SSC, repairing the SSC, analyzing and justifying an as-built configuration with the noncompliance present, or redesigning the SSC so that the condition is no longer a noncompliance. Some corrective actions may require NRC approval via a licensing action.

Functionality, as used in this IMC, is the ability of an SSC to fulfill its safety-related and safety-significant functions. SSCs are often built in accordance with codes and standards rather than having detailed design-specific construction requirements. For example, a combined license (COL) or construction permit (CP) may reference the American Concrete Institute (ACI) codes and standards when specifying requirements for the placement of concrete. A noncompliance with a referenced code or standard calls into question the functionality of the affected SSCs. However, some code or standard noncompliances may not impact SSC functionality and are minor.

When determining if a noncompliance prevents an SSC from meeting functionality requirements, inspectors should not perform, or request that license or permit holders perform a detailed functionality determination. Inspectors should use engineering judgement to determine if the noncompliance would reasonably impact SSC functionality. If the inspector cannot determine a noncompliance's impact on SSC functionality without a detailed analysis, then SSC functionality should be considered indeterminate, and the issue is more than minor. Inspectors are expected to be able to make the minor/MTM designation by the end of the inspection. License and permit holders are expected to pursue corrective actions for the noncompliance in either case.

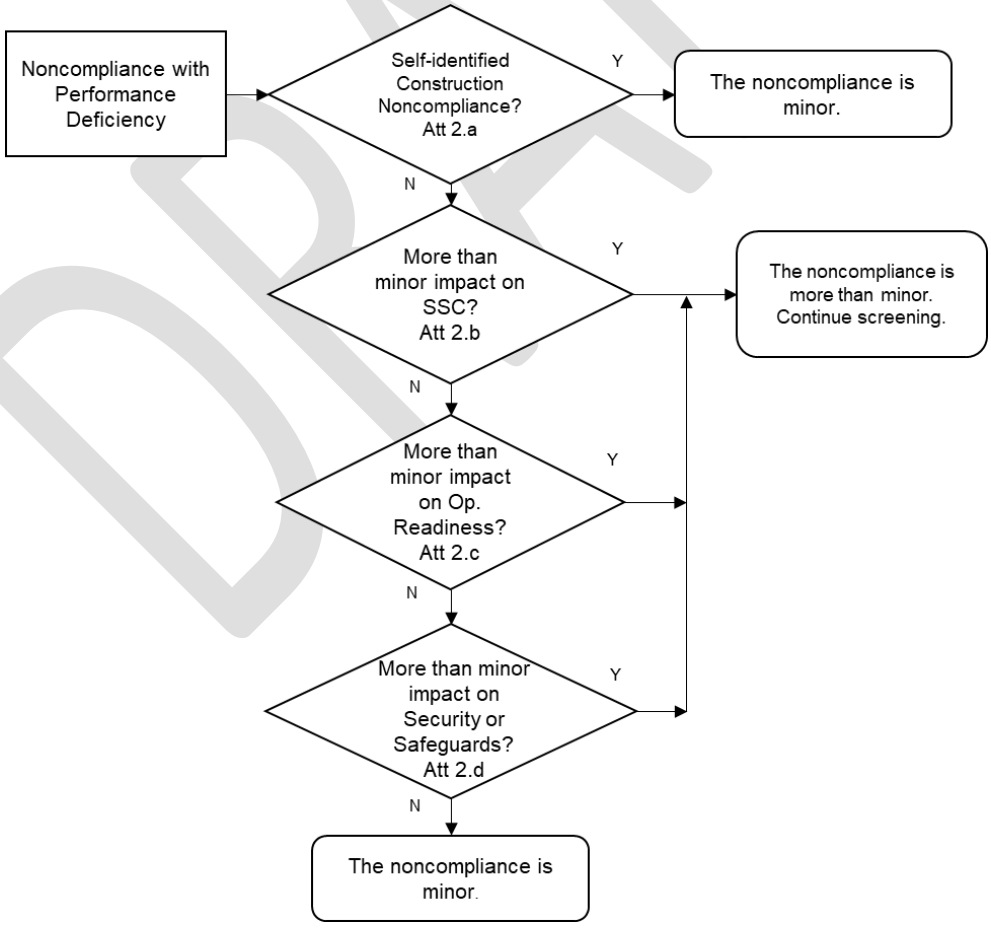
For noncompliances that impact ITAAC, inspectors should use the same approach for minor/MTM determinations as non-ITAAC noncompliances except that they should also determine the impact on the validity of the inspection, test, or analysis (ITA) upon which the ITAAC acceptance criteria are based. If the ITAAC ITA results are invalidated by the

noncompliance, then the noncompliance is MTM because the functionality of the associated SSC is indeterminate.

If the noncompliance prevents the ITAAC AC from being met, but affected SSCs remain functional, then the noncompliance is minor. This scenario may occur when the ITAAC AC references a code or standard. For example, an ITAAC AC that says “A report exists and concludes that the SSC meets the specifications of code or standard” would not be met if a noncompliance with the code or standard exists, but if the noncompliance does not prevent the SSC from meeting functionality requirements, then the noncompliance is minor. Inspectors should not confuse minor ITAAC noncompliances with the ITAAC AC being met. A noncompliance may be minor, but if the corresponding ITAAC AC is not met, then the ITAAC cannot be closed until the noncompliance is corrected.

Licensees must correct minor noncompliances. If a licensee does not disposition a minor noncompliance in accordance with its corrective action program, then NRC staff should screen this as a new noncompliance.

Attachment 2 Figure 1. Determining if an ARCOP Noncompliance is Minor



a. Is the noncompliance a self-identified construction noncompliance (SCN)? See Section 07.02 of this IMC for criteria in determining if a noncompliance is an SCN.

b. Does the noncompliance have a more than minor impact on a safety-significant (SR or a non-safety related, safety-significant (NSRSS)) SSC? Answer this question yes if the answer to any of the following questions is answered yes.

   1. Does the noncompliance prevent a safety-significant SSC from performing its safety-significant function or make its functionality indeterminate?[1, 2]

   2. Does the noncompliance prevent meeting an ITAAC acceptance criterion, and does the noncompliance prevent a safety-significant SSC from performing its safety-significant function, or make its functionality indeterminate?[1, 2]

   3. Does the noncompliance invalidate the results of an Inspection, Test, or Analysis described in an ITAAC?[3]

      Note 1: It is not the intent of these criteria that an extensive functionality determination be completed. If substantive analysis is required to determine functionality, then the issue is MTM.

      Note 2: An SSC is functional if it can meet its safety-significant function during all applicable licensing basis events for which it is credited. LBEs include internal and external hazards.

      Note 3: This only applies to ITA results that were first considered acceptable and later determined to be invalid based on the noncompliance being screened. If the ITA results were originally determined to be unacceptable, then the noncompliance is minor.

c. Does the noncompliance represent a more than minor impact on the ARCOP Strategic Performance Area of "Operational Readiness?" Answer this question yes if either of the following questions are answered yes:

   1. Does the noncompliance impact the functionality of a safety-significant SSC, and is the answer to any of the questions b.1 through b.3 above answered "yes?"

   2. Does the noncompliance represent a substantive failure[1] to implement[2] an adequate operational program, process, procedure, or quality oversight function?

      Note 1: "substantive failure" in this context means that the impact on the operational program is such that the program's effectiveness is reduced in fulfilling one of the program's objectives. The program's objectives may be found in program documents, regulations, technical specifications, site technical requirements documents, construction permits (CPs), Operating License (OL) applications, and/or combined licenses (COLs).

      Note 2: an operational program is implemented when it is required to be activated by a license or permit condition, or by NRC regulations. NRC audits of operational or security programs prior to program implementation are not subject to enforcement.

d. Does the noncompliance represent a more than minor impact on the ARCOP Strategic Performance Area of Safeguards and Security? Answer this question yes if the following question is answered yes:

Does the noncompliance represent a substantive failure[1] to establish or implement[2] an adequate security program[3], process, procedure, or quality oversight function?

Note 1: "substantive failure" in this context means that the impact on the security program is such that the program's effectiveness is reduced in fulfilling one of the program's objectives.

Note 2: a security program is implemented when it is required to be activated by a license or permit condition or by NRC regulations. NRC reviews of operational or security programs prior to program implementation are not subject to enforcement.

Note 3: Security programs include access authorization, access control (including fitness for duty), physical protection, contingency response, material control & accountability, cyber security, and protection of safeguards information.

Minor ARCOP Noncompliance Examples

The minor examples described in this attachment are meant to represent examples of noncompliances that should normally be considered minor significance. While the examples provide a “not minor if” statement, this does not mean that all issues like the “not minor if” statement should automatically be classified as more than minor. The overall purpose of these questions is to help inspectors know what kinds of issues should be minor. Issues that don’t immediately screen as minor with these examples need to be further evaluated. NRC staff should consult with the ARCOP project organization (APO) if the minor/more-than-minor significance cannot be readily determined.

Type of Noncompliance	Examples
As-built SSCs (non-ITAAC)	1a
As-built SSCs (ITAAC)	1b
Design Requirements	2
QA Records	3
Quality Control Inspection	4
Procedure Use	5
Procedure Content	6
Supplier Oversight	7
Testing Acceptance Criteria	8
Material Control	9
Corrective Actions	10
Computer Software	11
Code Requirement (non-ITAAC)	12a
Code Requirement (ITAAC)	12b
Measuring and Test Equipment	13
Operational Programs	14, 15
Security Programs	16

Example 1a: As-Built SSCs (non-ITAAC related)

Noncompliance:

The inspectors identified that an as-built SSC did not meet an applicable design or construction specification.

Minor because:

The as-built SSC was functional even though it did not conform to the specification, and this was evident without a significant engineering evaluation; or

The as-built SSC was more conservative than the as-designed SSC.

Not minor if:

The functionality of the as-built SSC was impaired or indeterminate without a substantive engineering evaluation.

Example 1b: As-Built SSCs (ITAAC related)

Noncompliance:

The inspectors identified that an as-built SSC did not meet the applicable design or construction specification, which prevented the ITAAC AC from being met.

Minor because:

The as-built SSC was functional without the support of detailed engineering justification,

Not minor if:

The functionality of the as-built SSC was impaired or indeterminate without a substantive engineering justification.

Example 2: Design Requirements

Noncompliance:

The inspectors identified that the license or permit holder's design specification did not conform to the design basis (i.e., the license or permit holder failed to adequately translate the approved design to appropriate drawings, instruction, procedures, etc.).

Minor because:

The design error resulted in a more conservative analysis than what was required by the governing technical requirements; or

The design error was insignificant, in that the ability of the SSC to perform its intended safety-related or safety-significant function was not impaired.

Not minor if:

The design error resulted in a less conservative analysis that made the SSC's ability to perform its safety-related or safety-significant function indeterminate without a detailed engineering evaluation.

Example 3: QA Records

Noncompliance:

The inspectors identified that the license or permit holder failed to maintain quality assurance records in accordance with QA program requirements.

Minor because:

No records were irretrievably lost; or

The lost records were not relied upon to demonstrate functionality of the SSC.

Not minor if:

Records were lost or damaged to an extent that prevents the license or permit holder from demonstrating that a safety-related or safety-significant SSC was functional and therefore renders the SSC's functionality indeterminate.

Example 4: QC Inspection

Noncompliance:

The inspectors identified that a license or permit holder's quality control (QC) inspector was not qualified in accordance with the QA program requirements.

Minor because:

The QC inspector's unqualified status was a result of an administrative issue; or

The QC inspector did not perform an inspection of an SSC in the area of qualification in question; or

When reinspected by a qualified inspector, all SSCs were acceptable.

Not minor if:

A reinspection resulted in the identification of a nonconforming condition that made the SSC nonfunctional; or

The SSC was not able to be reinspected and required a detailed engineering evaluation to justify its acceptability.

EXAMPLE 5: Procedure Use

Noncompliance:

The inspectors identified that welding was performed with a parameter (e.g., electrode size) outside that allowed by the welding procedure specification (WPS).

Minor because

The parameter in question was not an essential variable as defined by the code and the as-installed weld was acceptable.

Not minor if:

The parameter in question was an essential variable and the weld required significant repair (i.e., grinding out and reperforming the weld).

EXAMPLE 6: Procedure Content

Noncompliance:

The inspectors identified that a manufacturing or construction procedure was not adequate.

Minor because:

The issue was insignificant, in that the procedure was inadequate because of an administrative error or other deficiency that did not affect an SSC's functionality; or

Not minor if:

The procedure didn't adequately implement a technical or quality requirement that makes an SSC's functionality unacceptable or indeterminate.

EXAMPLE 7: Supplier Oversight

Noncompliance:

The inspectors identified that the license or permit holder failed to conduct a required surveillance of their supplier.

Minor because:

The license or permit holder had established adequate measures to control purchased items and services (i.e., no SSC was of indeterminate functionality).

Not minor if:

The license or permit holder received and accepted nonconforming material that made an SSC nonfunctional or made the SSC's functionality indeterminate, and the surveillance could have identified the deficiency in the vendor's program.

EXAMPLE 8: Testing Acceptance Criteria

Noncompliance:

The inspectors identified that the license or permit holder failed to recognize that a test acceptance criterion was not met.

Minor because:

The acceptance criterion was more conservative than the governing regulatory requirement, which was met; or

The test criterion was not consequential because it was not necessary to demonstrate SSC functionality.

Not minor if:

Failing to meet the acceptance criterion made the SSC's functionality unacceptable or indeterminate without a detailed engineering evaluation.

EXAMPLE 9: Material Control

Noncompliance:

License or permit holder procedures require that all safety-related and safety-significant structural steel be stored off the ground to prevent corrosion. The inspectors identified structural steel that was lying directly on the ground.

Minor because:

The steel was no damage (e.g., there was no active corrosion) that would require a detailed engineering evaluation to determine the adequacy of the structural steel to perform its intended safety-related or safety-significant function.

Not minor if:

The structural steel was damaged such that a detailed engineering evaluation, re-design, or repair was necessary to establish the adequacy of the structural steel to perform its function.

EXAMPLE 10: Corrective Actions

Noncompliance:

The inspectors identified that the license or permit holder failed to initiate a noncompliance report for a self-identified noncompliance discovered during an inspection of an SSC.

Minor because:

The issue meets the criteria for a Self-identified Construction Noncompliance (SCN) since workers met the QAP requirements for documentation and/or resolution of the noncompliance through other means; or

The noncompliance does not make functionality of an SSC unacceptable or indeterminate.

Not minor if:

The issue does not meet the criteria for a Self-identified Construction Noncompliance (SCN) because the workers failed to meet the QAP requirements for documentation and resolution of the noncompliance, and the noncompliance makes an SSC's functionality unacceptable or indeterminate.

EXAMPLE 11: Computer Software

Noncompliance:

The inspectors identified an anomaly in the Software Requirement Specification which was inconsistent with system requirements.

Minor because:

The anomaly does not make a safety-related or safety-significant system nonfunctional or of indeterminate functionality; or

The anomaly was more conservative than the system requirements.

Not minor if:

The anomaly makes a safety-related or safety-significant SSC's functionality unacceptable or indeterminate.

EXAMPLE 12a: Code Requirement (not ITAAC related)

Noncompliance:

The inspectors identified that the license or permit holder failed to meet a code requirement specified in the licensing basis.

Minor because:

The code noncompliance did not make the functionality of the SSC unacceptable or indeterminate, or

The as-built SSC was more conservative than the design requirements.

Not minor if:

Functionality of the SSC could only be demonstrated by performing a detailed engineering evaluation.

EXAMPLE 12b: Code Requirement (ITAAC related)

Noncompliance:

The inspectors identified that the license or permit holder failed to meet a code requirement specified in the acceptance criteria of an ITAAC.

Minor because:

The code noncompliance did not make the functionality of the SSC unacceptable or indeterminate; or

The as-built SSC was more conservative than the design requirements.

Not minor if:

The SSC was not functional or functionality could only be demonstrated with a detailed engineering evaluation, or

EXAMPLE 13: Measuring and Test Equipment (M&TE)

Noncompliance:

Equipment used during testing was found to not meet procedure requirements (e.g., the M&TE was not calibrated within the required periodicity).

Minor because:

Subsequent testing with correctly calibrated MT&E showed that the original test results were more conservative or did not substantially alter the test results.

Not minor if:

Subsequent testing with the correct MT&E results in a nonconservative substantial change in the test results (e.g., a test that passed previously now fails to meet the acceptance criteria); or

The use of incorrect test equipment resulted in substantial damage to an SSC.

EXAMPLE 14: Operational Program Nonconformance

Noncompliance:

Fire protection equipment is not installed according to design drawings.

Minor because:

The fire protection program has not been implemented, or

The fire protection program has been implemented, but the fire protection equipment is installed in a manner that supports all fire protection program objectives. In other words, the functionality of the fire protection equipment is unaffected by the installation noncompliance and adequate equipment protection from fires is maintained.

Not minor if:

The fire protection program has been implemented, and the functionality of the fire protection equipment is affected such that the level of protection of equipment from fires is reduced.

EXAMPLE 15: Operational Program Nonconformance

Noncompliance:

A plant procedure for conducting radiological releases from the plant as part of the radiological effluent monitoring program (REMP) references incorrect radiation monitoring instrumentation.

Minor because:

The REMP has not been implemented, or

The REMP has been implemented, and the procedure reference is a typographical error, and the correct instrumentation would be readily apparent and available when conducting releases, or

The REMP has been implemented, and the instrumentation is not relied on to accurately characterize the radiological release.

Not minor if:

The REMP has been implemented, and accurate instrumentation is not be available to characterize a radiological release.

EXAMPLE 16: Security Program Noncompliance

Noncompliance:

A document containing Safeguards Information was mailed incorrectly.

Minor because:

A document containing Safeguards Information was mailed and the cover letter transmitting the Safeguards document failed to contain the appropriate Safeguards Information headers/footers and decontrol markings; however, the safeguards document was appropriately controlled.

Not minor if:

A document containing Safeguards Information was mailed and the package was not properly tracked through a commercial delivery company, and it took the licensee several days to realize the document was delivered to the incorrect mailing address.

EXAMPLE 17: Fitness for Duty (FFD) Program Noncompliance

Noncompliance:

A group of workers at the site were not placed in the random testing program for construciton.

Minor because:

A subsequent review of the work performed by the individuals identified that they did not perform work on safety-significant or security-related SSCs.

Not minor if:

A subsequent review of the work performed by the individuals identified that they worked on safety-significant or security-related SSCs, and inspection of their work activities identified conditions which adversely affected functionality or qualification of the SSCs; or

A drug/alcohol test confirmed that an individual was in violation of the FFD policy while working on safety-significant or security-related SSCs.

Attachment 3: ARCOP Finding Significance Determination

The guidance in this attachment shall not be used without first performing the initial screening steps specified by Section 07-07.

For findings that impact safety-significant SSCs, use table 1, SSC Significance Determination, and the guidance below. For findings that do not impact SSCs (i.e., the finding only affects non-hardware elements of implemented programs), use the appropriate Reactor Oversight Process (ROP) SDP. If the finding affects more than one strategic performance area, then screen the finding using both methods and use the highest significance for the significance of the finding.

Identify the appropriate criterion in table 1 for the finding and use the corresponding significance color. If the finding initially screens as green, then green is its final significance. If the finding initially screens as white or yellow, then enter the SERP process. Only a SERP can designate the final significance of a finding to be white, yellow, or GTG.

Table 1: SSC Significance Determination

Significance of Finding	Finding's Impact on SSCs
Yellow	The finding, if left uncorrected, would result in the inability to fulfill multiple FSFs[1]. Or The finding's significance cannot be adequately screened using other criteria in this table and has screened as Yellow using Attachment 6[2].
White	The finding, if left uncorrected, would result in the inability to fulfill one FSF[1] Or The finding's significance cannot be adequately screened using other criteria in this table and has screened as White using Attachment 6[2].
Green	a. The finding, if left uncorrected, would result in the loss of safety-significant functions of one or more SSCs, but all FSFs are fulfilled; or b. the finding is associated with an issue where no manufacture, fabrication, placement, erection, installation, or modification of hardware associated with the SSC has begun; or c. There is a quality assurance program (QAP) backstop[3] for the deficiency associated with the finding; or d. the finding is associated with a hazard protection feature[4] only; or e. The finding's significance cannot be adequately screened using other criteria in this table and has screened as Green using Attachment 6[2].

Note 1: Fundamental safety functions (FSFs). FSFs are defined by NEI 18-04, revision 1, “Risk-Informed Performance-Based Technology Inclusive Guidance for Non-Light Water Reactor Licensing Basis Development (endorsed by RG 1.233) to be:

- Control of Heat Generation (Reactivity and Power Control),
- Control of Heat Removal (including reactor and spent fuel decay heat), and
- Radionuclide Retention.

While NEI 18-04 was written specifically for non-LWRs, FSFs are also applicable to LWRs. A complete loss of an FSF occurs if SSCs impacted by the finding are required to fulfill the FSF and the SSCs are not merely redundant to an inherent design feature. In general, if the finding affects only one SSC, then the finding will not cause the loss of an FSF due to defense-in-depth (DID) requirements. A finding that affects multiple SSCs may or may not cause the loss of an FSF. If the FSF can be fulfilled by DID (i.e., other SSCs or design features), then the finding does not cause a loss of an FSF. If inspectors are unsure of the impact on FSFs, they should inform their supervisor and seek guidance from the ARCOP Program Organization (APO).

For the radionuclide retention FSF, a complete loss of the FSF only occurs if the finding causes the loss of the ability to retain fission products from irradiated reactor fuel. This does not include fission products in systems, such as cover gas systems or coolant purification systems, that may normally contain trace amounts of fission products during normal operations.

Note 2: Findings not adequately addressed by safety significance criteria. When the ARCOP construction significance determination process guidance is not adequate to provide a reasonable estimate of the significance of an inspection finding, the safety significance should ultimately be determined by using engineering judgement and regulatory oversight experience, which is acceptable in a risk-informed process. Attachment 6 provides guidance to the NRC to apply a consistent process for risk-informed decision making.

Note 3: Quality assurance program (QAP) backstop. A QAP backstop is a scheduled QAP activity designed to detect SSC deficiencies or noncompliances that are associated with the finding. To give credit for a QAP backstop, the QAP activity must be reasonably defined or contained in a procedure, scheduled prior to the receipt of an operating license (Part 50) or before the 103(g) finding (Part 52), and able to detect the deficiency or noncompliance associated with the finding with a reasonable degree of certainty.

Note 4: Hazard protection features are those SSCs and design features that mitigate the effects of internal (e.g., fire, flooding, chemical release) or external (e.g., seismic events, fire, flooding, severe weather events) hazards. Findings associated with hazard protection features may also be screened using Attachment 6 if the severity and breadth of the issue warrants additional considerations.

Attachment 4: Significance and Enforcement Review Panel Process

04.01 General Information

This attachment describes the procedures for finalizing the disposition (i.e., the significance and enforcement action) of Advanced Reactor Construction Oversight Process (ARCOP) licensee inspection findings and project vendor violations initially determined by the ARCOP Significance Determination Process (SDP) to have greater than Green (GTG) or greater than severity level (SL) IV significance.

This attachment applies to ARCOP construction, manufacturing, and project vendor findings and includes enforcement-related information for clarity and convenience. The Commission's Enforcement Policy, Enforcement Manual, and Enforcement Guidance Memoranda remain the governing documents for enforcement-related activities.

An ARCOP SERP consists of NRC managers in accordance with Table 1 of this attachment. The SERP reviews the initial significance and enforcement actions associated with ARCOP inspection findings that are initially screened using the ARCOP SDP as GTG or greater than SL-IV. Only a SERP can make an official agency preliminary significance determination of White, Yellow, SL-III, SL-II, or SL-I. If the finding recipient requests a Regulatory Conference or provides a written response to the finding, the SERP makes the final disposition decision after consideration of this additional information.

During the SERP, panel members will review the inspection finding and reach consensus on:

a. The final color of the finding or severity level of the violation, and

b. The appropriate enforcement action for the finding.

SERP decisions do not need to be unanimous. A consensus decision is reached when SERP voting members generally accept the position, agreement, or decision, such that the outcome is representative of the entire panel.

04.02 Preparation for the ARCOP SERP

If the final significance determination of an ARCOP finding is not complete or the significance determination is complete, but a SERP was not able to convene and review the finding prior to the deadline to issue the inspection report, then the significance of the finding shall be characterized in the inspection report as "to be determined" (TBD). Table 3, Documenting Enforcement Actions During the SERP Process, provides a guide to documentation during the different phases of the SERP process.

Using the SERP worksheet (Table 2), the responsible inspector(s) shall prepare a written description of the finding, performance deficiency, the more-than-minor criteria that was met, the basis for not screening the finding to Green, the proposed color, and an enforcement action recommendation. Additional staff should provide technical and programmatic support to the inspector(s), as appropriate. This worksheet should be provided to the NRR Enforcement Coordinator at least 5 days before the SERP.

04.03 NRR Enforcement Coordinator Preparation for the SERP

The NRR Enforcement Coordinator arranges support and participation by the appropriate NRC staff per Table 1 and schedules the SERP. The NRR Enforcement Coordinator also distributes the SERP worksheet and any other relevant information to SERP members as soon as practical before the SERP.

04.04 Participation in the SERP

The principal objective of the SERP is to discuss, review, and arrive at a consensus decision regarding:

a. the final color of the inspection finding and,

b. the appropriate enforcement actions to be taken.

Each SERP member votes on both the significance determination and the enforcement action. The Director of APO, or designee, will determine if there is consensus. If consensus is not reached during a SERP, then the panel members should hold a second SERP within a reasonable timeframe (typically within 2 weeks) focusing on the area(s) of disagreement. If consensus is still not reached after the second SERP, then the SERP members should raise the remaining area(s) of disagreement to the applicable deputy office directors and/or deputy regional administrators and a third SERP will be held with the applicable deputy office directors and deputy regional administrators as the SERP members.

Before the third SERP, the voting members should review the results of the previous SERPs and the various views of the previous SERP panelists. Should the deputy office directors and deputy regional administrators fail to reach consensus at the third SERP, the issue should be raised to the appropriate Deputy Executive Director for resolution by the applicable Office Directors and Regional Administrators in accordance with the Enforcement Manual, Section 1.2.13.4, “Panel Outcome,” step G.

To improve timeliness, the issue sponsor should first consider using a modified SERP. A modified SERP is conducted via email. The sponsor initiates the modified SERP by emailing the completed SERP worksheet to the SERP members. A modified SERP may be used when both of the criteria below are satisfied.

a. All SERP members agree to use the modified SERP process.

b. The SERP members agree with the preliminary color and enforcement action documented in the SERP worksheet.

If either of the above criteria are not met, then a formal SERP should be conducted.

Table 1. SERP Voting Members and Responsibilities

Role	Responsible Organization/Participant
ARCOP Program Spokesperson Ensures implementation of SERP and outcome are consistent with ARCOP policy, resolves ARCOP program issues, and determines whether consensus has been achieved at a SERP.	NRR APO Director or Deputy Division Director.
Sponsor Presents the finding and has overall responsibility for resolution of the finding.	Applicable Inspection Organization Division Director or Deputy Division Director.
Enforcement Spokesperson Responsible for determining the adequacy of proposed enforcement or administrative actions related to White and Yellow findings; and ensures the agreements reached at the SERP are documented on the Strategy Form in accordance with OE policies.	Headquarters OE Director or Deputy Director

04.04 SERP Determinations

No official agency GTG or greater than SL-IV significance can be made without a SERP review and decision. The SERP should be completed within 30 days after the inspection report is issued, though it should be completed prior to issuing the inspection report if possible.

a. Green: If the SERP concludes that the significance determination of the finding is Green or SL-IV, then the SERP's decision will represent a final determination and will be characterized as such in the inspection report.

b. White, Yellow, SL-III, SL-II, or SL-I:

   1. If the SERP reaches a consensus that the significance determination of a finding is White, Yellow, SL-III, SL-II, or SL-I, then the SERP's conclusion will be articulated in a preliminary determination letter sent to the entity receiving the enforcement action. This allows the NRC to gather additional information through a Regulatory Conference or response letter.

   2. After the SERP has reached a significance decision, the responsible organization will issue a preliminary significance determination letter to the licensee or project vendor in the inspection report cover letter or by a separate letter.

3. The inspection report cover letter, or the preliminary significance determination letter offers the licensee or project vendor an opportunity to submit a written response or to request a Regulatory Conference (see Attachment 4 for more details about Regulatory Conferences). The preliminary significance determination letter must provide sufficient detail for the licensee or project vendor to understand the basis of the staff's preliminary significance determination. This will enable the licensee or manufacturer to determine if (and what) additional information is needed to better inform the final significance determination. If appropriate, the letter should contain specific questions or request specific information the staff needs to make its final significance determination. In all cases, the correspondence to the licensee or project vendor should include a date for the licensee or project vendor to provide the information requested to support SDP timeliness. The licensee should submit materials on the docket at least seven calendar days prior to the Regulatory Conference. The preliminary determination letter shall not include any SDP worksheets or portions of the SERP package. All security-related details shall be provided in a non-public attachment to the letter.

4. If the SERP's preliminary significance is determined to be White, Yellow, SL-III, SL-II, or SL-I and the licensee or project vendor declines to submit a written response or to arrange a Regulatory Conference, then the preliminary assessment of significance becomes final, and the responsible organization will issue the final significance determination letter (as described in Attachment 4). The cover letter should include the appropriate paragraph referencing the licensee's letter declining to provide a written response or attend a Regulatory Conference. By declining the opportunity to submit a written response or to request a Regulatory Conference, the licensee relinquishes its right to appeal the final significance determination consistent with the appeal process outlined in Attachment 5.

04.05 Licensee or Manufacturer Response – Regulatory Conferences and Letters

Attending a Regulatory Conference or providing a written response are the options available to a licensee or project vendor if they want to provide the staff with additional information related to a finding. Both options provide an opportunity for the staff to receive information that was not considered in the preliminary assessment and that may affect the outcome of the final significance determination.

The licensee or project vendor should notify the NRC if they opt to decline the opportunity to participate in a Regulatory Conference or provide a written response in writing (e.g., formal letter, email). The licensee's or project vendor's response, either written or via participation in a Regulatory Conference, should be completed within 30 calendar days of the licensee's or project vendor's receipt of the preliminary significance determination letter.

04.06 Scheduling and Announcing Regulatory Conferences.

The responsible organization should inform the licensee or project vendor whether the Regulatory Conference will be open or closed to public observation and that any handouts at the conference will subsequently be made available to the public unless the conference meets the provisions of 10 CFR 2.390 (a)(4) or (6).

If the licensee or project vendor opts to attend a Regulatory Conference, it should provide any information considered applicable to the finding(s) at least seven days prior to the conference. This information must be provided on the docket. All electronic correspondence received from the licensee or project vendor communicating its official response will be docketed. Any non-sensitive information provided by the licensee or project vendor during the Regulatory Conference will also be made public.

The licensee or project vendor should also inform the NRC of any additional information that is under development and not included in the written response or presented at the Regulatory Conference. To allow the staff adequate time to review information provided by the licensee or project vendor, the NRC must receive all additional information that is to be considered when determining the final significance of the finding within a reasonable period of time agreed upon between the licensee or manufacturer and the staff.

The responsible organization should promptly notify OE, the NRR Enforcement Coordinator, the appropriate Regional State Liaison Officer, and the EDO Regional Coordinator of the conference date.

The responsible organization should issue a meeting notice in accordance with office procedures and report all conferences to the Public Meeting Notice System as described in NRC Management Directive 3.5, "Attendance at NRC Staff Sponsored Meetings." A copy of the conference meeting notices should be sent to the NRR Enforcement Coordinator. If the finding involves an AV, the meeting notice should also be posted on the OE web site. The region should include OEMAIL and OEWEB as addressees.

The meeting notice and meeting information should clearly indicate the predecisional nature of issues and state that the purpose of the conference is to discuss the preliminary safety significance of a particular finding. The discussion of the finding should be brief but detailed enough to inform the public of what will be discussed at the conference. If appropriate, the notice should then include a statement that the conference will also address any AV(s) associated with the finding. For security-related findings, the notice should not include any descriptions of the findings.

Conferences in which security findings will be discussed are closed in part or in total to public observation. For security reasons, NRC staff should not participate by telephone or video in conferences when Safeguards Information will be discussed. If such participation becomes necessary, it should be in accordance with Management Directives 12.4, "NRC Telecommunications System Security Program," and 12.6, "NRC Sensitive and Unclassified Information Security Program."

The responsible organization should consult with the Office of Public Affairs to determine if a press release announcing the conference will be issued.

04.07 Attendance at Regulatory Conferences

This attachment provides specific guidance concerning attendance at conferences, including NRC personnel, licensee or project vendor personnel, media representatives and members of the public, and State government personnel.

a. NRC personnel. NRC personnel should attend conferences according to the following guidelines:

1. The responsible Division Director will designate the appropriate staff that should be in attendance. At the Division Director's discretion and in accordance with security guidelines, NRC staff may participate in conferences by telephone or video.

2. OE staff should participate in all conferences.

3. OGC may be requested to attend conferences where legal issues may be raised.

b. Licensee or project vendor personnel. The licensee or project vendor should ensure that they are represented by the appropriate level of management and staff. Legal Counsel may attend the conferences where legal issues may be raised.

c. Media and Members of the Public. The public attending an open conference may observe but not participate in the conference. Members of the public may record (including videotape) a conference if that activity is not disruptive. The purpose of conducting open conferences is to provide the public with opportunities to be informed of NRC activities while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. Following the conference, the staff will be available to respond to questions and comments from the media and members of the public concerning matters discussed at the conference.

d. State and Local Officials. When conferences are open to the public, interested State and local officials should also be invited to attend. When other circumstances warrant, the Director, OE, may authorize the applicable Regional Administrator to permit State personnel to attend a closed Regulatory Conference in accordance with the guidance in the Enforcement Manual, Section 4.1.2.4 - State Government Attendance at PECs and Regulatory Conferences.

04.08 Conduct of Regulatory Conferences

Conferences are normally conducted in the regional NRC office where the construction project is located. For project vendors, the conferences are normally conducted in NRC headquarters. There may be special circumstances where the agency determines that it would be beneficial to the process to conduct the conference elsewhere. In these cases, the host region, NRR, NSIR if needed, and OE should determine the alternate location before scheduling the conference.

The NRR Office Director responsible for the inspection activity should determine the appropriate member of management to serve as the presiding official at the conference. This may be a member of management from the host region, the R2 construction inspection organization, or the ARCOP project organization.

The presiding NRC official should (1) announce the conference as an open or closed meeting, (2) discuss the purpose of the conference, (3) inform the licensee or project vendor and public attendees that the decision to hold the conference does not mean that the agency has determined the significance of the issues, that violations have occurred, or that enforcement action will be taken, (4) inform the public attendees that the conference is a meeting between the NRC and the licensee or manufacturer and that the meeting is open for public observation, but not participation, and (5) briefly explain the SDP/enforcement process.

The responsible organization should briefly discuss the findings being considered and explain

the basis of the agency's concern (i.e., safety significance and AV or NON). The level of detail to be discussed should be commensurate with the complexity and significance of the issues. Most of the detailed information should be included in the inspection report. The discussion should include the assumptions and methods used by the NRC to arrive at the preliminary determination of safety or security significance.

The licensee or project vendor should discuss its understanding of the facts and circumstances surrounding the significance of the findings and where it agrees and disagrees with the NRC's assumptions and analysis. Any issues of disagreement should be discussed in enough detail for the NRC to fully understand the licensee's or project vendor's basis and any new information introduced. The licensee or project vendor should notify the responsible NRC organization of the nature of any additional information under development that was not presented at the conference and the date the region can expect to receive it. Once the pertinent facts have been established and understood by all parties, the presiding official must recognize and briefly summarize differences of opinion and keep the conference productive.

After completing discussions related to the safety significance of the findings, addressing any AV(s) and/or discussing applicable corrective actions is appropriate. The licensee or project vendor should indicate its agreement or explain why it does not agree with the AV. The discussion of corrective actions should be limited to the immediate actions taken to mitigate actual or potential safety consequences of the finding. Detailed discussions of long-term corrective actions should be reserved for the Regulatory Performance meeting and for the follow up inspection activities.

Prior to the conclusion of the conference, the participating NRC staff should confer independent from the licensee or project vendor and other participants, to determine the need for additional information.

The presiding official should provide closing remarks and remind the licensee or project vendor and public attendees that the preliminary significance determination and the AV(s) discussed are subject to further review and are subject to change prior to any resulting action. The presiding official should also make it clear that the statements of views or expressions of opinion made by NRC employees at the conference, or the lack thereof, are not final conclusions.

04.09 Post-Conference Review

After a Regulatory Conference, the NRC staff sponsor who participated in the Regulatory Conference should review the information provided by the licensee or project vendor to determine whether the finding merits further evaluation or if the staff should proceed with issuing a final significance determination. This review does not have to be a formal meeting, can be completed by video conference, teleconference, or email, but should occur as close to the completion of the Regulatory Conference as possible. The same guidance applies to post-conference review of a licensee's or project vendor's written response.

If the post-conference review concludes that the information presented by the licensee or project vendor does not change the preliminary significance of the finding, a final SERP is not necessary. The responsible organization should prepare a final significance determination letter that will affirm the significance determination of the original SERP.

The post-conference review will consider:

a. The reasonableness of the information provided by the licensee or project vendor and whether new information or perspectives were obtained which warrant reconsideration of the preliminary safety significance of the finding or of the performance deficiency.

b. The enforcement strategy, to determine whether it remains valid or should be changed.

c. Whether additional review of information provided by the licensee or project vendor is necessary before a decision on a course of action can be made.

d. Whether additional information is necessary.

04.10 Final SERP

If participants in the post-conference review conclude that the licensee or project vendor presented sufficient information that changes, or appears to change, the significance of the finding or its basis, a final SERP is required. If necessary, the responsible organization should coordinate completing the assessment of the new licensee or project vendor material. The responsible organization will update the appropriate Section(s) of the original SERP Worksheet (Table 2) affected by the new information and conduct the final SERP, following completion of any additional final significance analysis. The responsible organization should provide a new recommendation of significance to the final SERP and discuss those issues that affected the preliminary significance determination, whether it changed the outcome or not. The final SERP can be conducted during the post conference review meeting if all SERP members are present and agree that this would be the most efficient method to make a final significance determination. In this case, the original SERP Worksheet can be updated after the final SERP.

If the SERP, after considering the licensee's or project vendor's additional information, determines that a preliminary White, Yellow, or GTG finding is a Green finding, this is the final determination and will be communicated as such in a letter or in the cover letter of the next inspection report. The sponsor of the finding should verbally communicate the final results to the licensee or project vendor if there is a significant delay in issuing the next inspection report.

If the SERP cannot reach consensus on the final significance of the finding, the SERP must either (1) direct specific actions to reconcile the different views; or (2) identify the appropriate NRC manager(s) to make a final decision; or (3) immediately escalate the issue to the manager having the overall cognizance for the organizations having differing views. If resolution is not achieved within 14 calendar days, the Inspection Program Spokesperson, through the appropriate management, will notify the NRR Office Director and the applicable Regional Administrator of the issues and the actions being taken to resolve them.

If, because of the SERP discussion, a substantive change is made from the preliminary significance determination, another exit meeting should be held with the licensee or project vendor if deemed necessary by the sponsor of the issue.

04.11 Final Significance Determination Letter and NOV

The responsible organization prepares the cover letter transmitting the final assessment results using the standard format in Form 3-III or 3-III(S) for security-related matters, located in the Enforcement Manual, Appendix B – Standard Formats for Enforcement Packages. The letter includes additional language if an NOV is included.

04.12 Final Significance Determination and NOV, Coordination and Review

All final significance determination letters for Yellow findings shall be sent to NRC headquarters for concurrence.

OE will coordinate the collection of comments and concurrence from all headquarters reviewers. The SERP will determine if letters transmitting White issues need headquarters' review on a case-by-case basis.

a. The NRR Enforcement Coordinator will ensure appropriate review of the proposed action by appropriate program and technical branches with a focus on the proper characterization of the safety significance of the issues and on the technical accuracy of the violations.

b. OE will review all final significance determinations that include an NOV and will forward comments to the responsible organization indicating where the action was revised and explain any significant changes. (Refer to the Enforcement Manual for specific guidance on coordination and review of escalated NOVs without civil penalties.)

04.13 Final Significance Determination and NOV Signature Authority

Final significance determination cover letters associated with White or Yellow issues should be signed and issued according to the following guidelines:

a. The host Regional Administrator or the host Deputy Regional Administrator or responsible NRC Office Director or Deputy Office Director normally signs and issues final significance determination cover letters associated with Yellow findings.

b. Host Division Directors or Host Deputy Division Directors normally sign and issue final significance determination cover letters associated with White findings.

04.14 Licensee or Project Vendor Notification, Mailing, and Distribution of Final Significance Determination Letters

Final significance determination letters are normally mailed to licensees or project vendor and States by regular mail. Distribution is made according to the NOV distribution guidance in the Enforcement Manual and applicable office procedures. The Commission must be provided with an Enforcement Notification (EN) three workdays before a final letter containing an NOV is sent to a licensee or manufacturer. EN's are prepared by OE and issuance must be coordinated through the host region or NRR/NSIR Enforcement Coordinator. ENs should also be considered for any final determination without an NOV that has become a matter of public or Commission interest.

04.15 SDP Timelineness

The Agency's goal for SDP timeliness is that all final significance determinations be completed within 90 days from the issue date of the first official correspondence that described the finding or documented the need for further review to determine significance (TBD). All attempts should be made to meet this goal. It is recognized that certain issues, due to their complexity, may result in occasions where the goal is exceeded. However, given the rapid pace of activities at a construction site, all efforts should be made to complete the final significance determination as soon as practical and well within the 90-day goal.

04.16 Exceptions to the Timeliness Goal

Findings of a final Green significance will not negatively impact the timeliness of the NRC's regulatory response. As such, these findings are not subject to the timeliness goal and associated SDP timeliness metrics and may be communicated outside the 90-day timeliness period in a letter or in the cover letter of the next inspection report. The sponsor of the finding should verbally communicate the final results to the licensee or project vendor if there is a significant delay in issuing the next report. Examples of circumstances where inspection findings that may take longer than the 90-day goal to assess for significance are:

a. Findings are of such technical complexity that existing SDP evaluation tools are not readily adaptable to the issue.

b. The responsible organization does not have the expertise or resources to determine the impact on a fundamental safety function.

c. Findings have potentially substantial safety or security significance (i.e., Yellow) that should be carefully examined for potential impact on plant construction and subsequent NRC action.

   In these cases, additional time may be necessary to complete a preliminary and/or a final determination of safety significance. However, findings for which the 90-day goal is not met, including findings where the limit was extended, will continue to negatively impact the timeliness goal and associated SDP timeliness metrics.

Some findings may involve a formal Office of Investigation (OI) or Department of Justice (DOJ) investigation. When an inspection finding involves a formal OI/DOJ investigation and it is known that the results of the investigation will not impact further evaluation of the finding's significance and/or follow-up inspection, then the finding should be resolved per the normal SDP process.

04.17 Enforcement Process Timeliness Goal

The Agency also has an enforcement process goal that all final significance determinations be completed within 120 days from the exit meeting that describes the finding or documented the need for further review to determine significance.

Table 2 - ARCOP SERP WORKSHEET	
Date of SERP:	Licensee or Project Vendor:
Impacted Units and Projects:	Facility/Location:
Docket Number(s):	License Number(s):
Inspection Report Number:	Date of Exit Meeting:
EA Number:	
Proposed Preliminary Significance/SL:	Proposed Preliminary Enforcement Action:
Issue Sponsor (Name):	Sponsoring NRC Office:
SERP Members:	
Issue Summary:	
Performance Deficiency:	
Description of Degraded Condition(s):	
Supporting Information (licensee perspective, documentation and references):	
STRATEGIC PERFORMANCE AREA AFFECTED BY FINDING (✓) Check the appropriate boxes ❒ Quality of Construction ❒ Operational Readiness ❒ Safeguards and Security	
ARCOP SDP INFORMATION (✓) Check the appropriate criteria identified in the ARCOP SDP screening. ❒ The finding, if left uncorrected, would result in the inability to fulfill one FSF ❒ The finding, if left uncorrected, would result in the inability to fulfill multiple FSFs. ❒ The ROP SDP was used for an implemented operational program. Attach an explanation of the appropriate ROP SDP logic used to find the initial significance of the finding. ❒ The ROP SDP was used for an implemented security or safeguards program. Attach an explanation of the appropriate ROP SDP logic used to find the initial significance of the finding. ❒ The finding screens as Yellow using IMC 2571 Attachment 6. ❒ The finding screens as White using IMC 2571 Attachment 6.	
SUPPORTING SDP INFORMATION:	

Table 3 – Documenting Enforcement Actions During the SERP Process

Violation of NRC Requirements	
SERP Determination	Documentation
SERP not yet conducted, or the Preliminary SERP significance determination is inconclusive	Document an apparent violation (AV) and characterize significance as "TBD" in the body of the IR.
SERP has reached a preliminary significance determination in accordance with IMC 2571, Attachment 3	If the preliminary determination is green, then document the finding as an NCV or NOV in an inspection report. If the preliminary determination is >green, document an AV if not previously documented and issue a preliminary significance determination letter in the inspection report cover letter or by a separate letter using Enforcement Manual, Appendix B – Standard Formats for Enforcement Packages -Form 3-II, or 3-II(S). Characterize the significance of the AV as "preliminary greater than green safety or security significance," "preliminary white safety or security significance," or "preliminary yellow safety or security significance" in the IR/preliminary significance determination letter.
SERP reached a final significance determination in accordance with IMC 2571, Attachment 3	If the final determination is green, then document the finding as an NCV or NOV in an inspection report. If the final determination is >green, issue a final significance determination letter and NOV in an inspection report cover letter or by a separate letter using Enforcement Manual, Appendix B – Standard Formats for Enforcement Packages - Form 3-III or 3-III(S). Characterize the significance of the applicable violation as "white safety or security significance," or "yellow safety or security significance" in the IR/final significance determination letter,

Attachment 5: Process for Appealing an NRC SDP Determination

A licensee or project vendor may appeal the staff's final significance determination of an ARCOP inspection finding documented in an NRC inspection report or final significance determination letter as White or Yellow. Consistent with the intent of the significance determination process (SDP) to assess significance in a timely manner using the best available information, the staff should be cautious to ensure that the appeal process does not become a protracted review requiring extensive staff resources. This appeal process may be used by ARCOP licensees, permit holders, or project vendors.

It is assumed that prior to issuing the final significance determination and documenting this in an inspection report, including the SDP basis for significance, the staff has completed the following:

a. The responsible inspector, applying the best available information, has established the licensee's or project vendor's noncompliance and characterized the finding as potentially greater than Green. Using the ARCOP SDP, the inspector has determined the proposed preliminary color for the finding (White, Yellow, or Greater Than Green).

b. Each finding that the staff's significance determination has preliminarily characterized "White, Yellow, or Greater Than Green" has been presented to and reviewed by the NRC Significance and Enforcement Review Panel (SERP). Subsequently, the staff has informed the licensee or project vendor of the preliminary characterization of the issue in a preliminary significance determination letter which included an invitation for the licensee or project vendor to present additional information.

c. If the licensee or project vendor opted to present additional information to the staff either by meeting with NRC management at a Regulatory Conference or by submitting additional information in writing on the docket, this information has been reviewed and dispositioned by the staff. Additional information that the licensee or project vendor indicated was not available to present at the Regulatory Conference, should be received by the staff within a reasonable period (agreed upon between the licensee or project vendor and the staff, and documented), to allow the staff adequate time to review the information.

d. The staff has sent the licensee or project vendor a letter which states the staff's final significance determination and broadly responds to the information provided by the licensee.

Once the above prerequisites have been met, licensee or project vendor appeals to reduce the significance of an inspection finding will be considered as having sufficient merit for review by this appeal process only if the licensee's or project vendor's contention falls into one of the following categories:

a. The staff's significance determination process was inconsistent with ARCOP SDP guidance or lacked justification.

b. A licensee or project vendor submits new information which was not available at the time of the Regulatory Conference. New information will be considered only if the licensee or project vendor informed the staff that additional information was under development prior to or during the Regulatory Conference, or in their written response to the preliminary significance determination. The information under development should have been

received within a reasonable period (agreed upon between the licensee or manufacturer and the staff) for the staff to review it.

The following statement will be added to each inspection report cover letter or other official correspondence that transmits an inspection finding of White or Yellow significance: “You have 30 calendar days from the date of this letter to appeal the staff’s determination of significance for the identified [white/yellow] finding[s]. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 2571, Attachment 5.”

The licensee or project vendor must submit its letter of appeal to the applicable Regional Administrator (RA) or to the NRC Office Director responsible for the inspection within 30 calendar days of the date of the transmittal letter. The applicable RA is the Region II RA if the finding was identified during an inspection led by Region II construction inspectors. Otherwise, the applicable RA is the RA of the host region.

The applicable RA or responsible NRC Office Director should determine within 30 calendar days of the receipt of the licensee’s or project vendor’s appeal request whether the appeal meets the above limitations. Following the determination, but still within the 30 calendar days, the RA or responsible NRC Office Director should inform the licensee or manufacturer in writing of the decision and its basis.

If the appeal is accepted, the associated review and written notification to the licensee or project vendor stating the results of the appeal review should be limited to 30 calendar days following the acceptance of the appeal. The applicable RA or responsible NRC Office Director will appoint an appeal panel consisting of, at a minimum, two technical experts in the cornerstone being discussed and an enforcement specialist. The applicable RA or responsible NRC Office Director may also request representation by the Office of General Counsel. At least one panel member will not have had prior involvement with the significance determination under appeal. The principal purpose of the panel is to arrive at a consensus regarding the validity of the licensee’s or project vendor’s appeal.

The appeal panel will review the inspection finding, its significance characterization and basis, any new information that was being developed at the time of the Regulatory Conference, and the licensee’s or project vendor’s points of contention. The panel may recommend one of the following:

a. No further action and the significance determination is unchanged, or

b. More detailed justification of the basis for the significance determination is required, or

c. Change the significance determination (either increase or decrease), as appropriate.

The appeal panel will provide its conclusions to the SERP in writing. Within 10 working days of the date of the appeal panel’s conclusions, the SERP will consider the results of the appeal panel. The SERP will provide the results of their review to the RA and to the Director of NRR, or the Director of NSIR (for security or emergency planning), within 5 working days.

Within five working days of receiving the final recommendation memorandum, the Regional Administrator and the Director of NRR, or the Director of NSIR (for security or emergency planning) will confer and jointly agree on the final decision. Subsequently the RA or responsible NRC Office Director will notify the licensee in writing of the final agency position.

The results of the appeal process are final with no further avenues for appeal within the significance determination process.

Attachment 6: Alternate Significance Determination

This attachment provides guidance to NRC management and inspection staff for assessing significance of advanced power reactor construction and project vendor inspection findings when the advanced reactor construction oversight program (ARCOP) significance determination process (SDP) guidance is not adequate to provide reasonable estimates of the significance of inspection findings within the established SDP timeliness goal of 90 days or less.

A relatively small number of inspection findings may challenge the staff in making timely safety or security significance determinations. In these cases, the safety or security significance of such findings should ultimately be determined using engineering judgement and regulatory oversight experience, which is acceptable in a risk-informed process. This attachment provides guidance to allow the NRC to apply a consistent process using risk-informed decision making.

This attachment is considered only after initial finding screening has been completed per this IMC, including Attachments 2 and 3. If, based on reasonable assumptions and engineering judgement, a significance conclusion cannot be obtained using the screening criteria in Attachment 3, then this attachment aids in determining the significance of the finding. “Reasonable assumptions and engineering judgement” in this context means that the staff may not be absolutely sure of the assumptions and conclusions, and it is not the intent of this IMC that lengthy calculations or analyses be performed. The guidance in this attachment should be applied when the SDP methods and tools in Attachment 3 are not adequate to determine the significance of the finding within the established SDP timeliness goal of 90 days.

Evaluate the decision attributes in table 1 to determine the significance of the finding. Consider only attributes which relate directly to the significance of the finding and document the basis for these considerations.

a. For Green findings, document the finding in accordance with IMC 0618.

b. For findings that are screened as white or yellow, include the completed table 1 in the Significance and Enforcement Review Panel (SERP) package described in Attachment 4.

TABLE 1
Decision-Making Attributes for NRC Management Review

Decision Attribute	Applicable to Decision?	Basis for Input to Decision - Provide relevant information for management review and decision making.
Partial effectiveness of any safety-significant SSCs or design features providing defense in depth for a fundamental safety function (FSF).		
The extent to which the finding affects other equipment (e.g., common cause results in widespread construction of degraded or unknown quality for SSCs that support FSFs).		
Period the condition existed and failed opportunities to identify the condition during this period (e.g., construction experience, licensee's quality control program, etc.).		
Potential QA backstops not credited in the Attachment 3 analysis, including reason for not crediting them.		
Other plant design features that mitigate the significance of the finding.		
Any other relevant information impacting significance.		

Result of management review (COLOR): _____

Attachment 7: Revision History for IMC 2571

Commitment Tracking Number	Accession Number Issue Date Change Notice	Description of Change	Description of Training Required and Completion Date	Comment Resolution and Closed Feedback Form Accession Number (Pre-Decisional Non-Public Information)
N/A	ML 25210A571 XX/XX/202X CN XX-XXX	This is a draft version of this IMC. It is part of a set of IMCs that will implement the future Advanced Reactor Construction Oversight Program (ARCOP). This draft IMC will be the topic of discussion at a public workshop on August 26, 2025.	TBD	ML XXXXXXXX