




GRADUATED ENFORCEMENT STRATEGY HANDBOOK



Revision Number: 000
e-Doc Number: 5769371
Effective Date: November 2019

This document is not controlled once printed

DOCUMENT APPROVAL

Name and Title	Role	Approved	Date Signed
Hugh Robertson Director General, Directorate of Regulatory Improvement and Major Projects Management	Process Owner, Compliance and Enforcement		7/11/19

DOCUMENT HISTORY

The following table shows the revision history for this document:

Revision Number	Reason for Revision	Approved by	Date
000	Initial release. Note: This document supersedes the <i>Select and Apply Enforcement Tools</i> process (e-Doc 3320246).	Hugh Robertson	November 2019

This handbook is subject to continuous improvement. The published version of this document is available in the Navigator Portal on BORIS.

If you have any comments or suggestions as to how this process and/or its documentation can be improved, please email: cnsc.navigators-navigateur.ccsn@canada.ca.

Version française: e-Doc [6024567](#)

TABLE OF CONTENTS

1.0	Introduction	1
1.1	Principal users of this document	1
1.2	Purpose.....	1
1.3	Scope.....	1
1.4	Regulatory requirements	1
1.5	What are compliance and enforcement?	2
2.0	Fundamental Principles	3
3.0	Context	4
3.1	Regulatory philosophy	4
3.2	Risk management	4
3.3	Graded approach to regulation	4
3.4	Regulatory framework	5
3.5	Where compliance fits.....	5
3.6	Graduated enforcement strategy	5
4.0	Strategy.....	7
4.1	Response toolbox	7
4.2	Flexibility	7
4.3	Follow-up	8
5.0	Influencing compliance awareness.....	9
5.1	Outreach	9
5.2	Discussions, meetings and letters.....	10
5.3	Recommendations	11
6.0	Responding to Non-compliance.....	12
6.1	Notice of non-compliance	12
6.2	Warning letter	13
6.3	Increased regulatory scrutiny	14
6.4	Request under GNSCR 12(2).....	15
6.5	Order	16
6.6	Administrative monetary penalty	17
6.7	Licensing action	19
6.8	Decertification.....	20
6.9	Prosecution.....	22
7.0	References	23
7.1	Related information.....	23
7.2	Interfaces	23
	APPENDIX A . Roles and Responsibilities.....	25

This page has been intentionally left blank for two-sided printing.

1.0 INTRODUCTION

1.1 Principal users of this document

This document is intended for use by CNSC staff involved in influencing compliance awareness and responding to non-compliance with regulatory requirements.

1.2 Purpose

The purpose of this handbook is to explain the CNSC's graduated enforcement strategy, and to provide guidance on when, why and how to use the approved tools.

The information in this document applies across all applicable CNSC service areas. Service areas may provide additional guidance as needed to meet their unique needs; however, any such supplementary guidance must align with the guidance set out in this document.

1.3 Scope

This handbook describes the graduated approach that the CNSC uses when influencing compliance awareness and responding to non-compliance. General considerations for the selection and use of each response are provided, along with the level(s) of authority needed for their use and any special considerations that might apply.

This document does not provide guidance on planning or reporting on compliance, or on the specific activities associated with determining the extent of compliance. Procedures for following up on enforcement actions are also out of scope for this document.

1.4 Regulatory requirements

Regulatory requirements are the obligations that must be met in order to conduct authorized activities. In the case of nuclear regulation in Canada, regulated persons are obliged to comply with regulatory requirements set out in:

- the [*Nuclear Safety and Control Act*](#) (NSCA or Act)
- regulations made under the Act
- licences and certificates

1.4.1 Nuclear Safety and Control Act

In Canada, an Act is legislation passed by Parliament. An Act can be amended only by another Act of Parliament. The Act that sets out the legal and policy principles behind nuclear regulation in Canada is the [NSCA](#).

1.4.2 Regulations

Regulations, sometimes referred to as subordinate legislation, define how legislation is applied and enforced. Regulations are enacted by the body authorized to make regulations under the given legislation. As Canada's nuclear regulator, the CNSC has the authority under the [NSCA](#) to make regulations, with the approval of the Governor in Council, for matters related to its mandate.

The CNSC has established an extensive set of [regulations](#) under the NSCA, which are available on the external CSNC web site.

1.4.3 Licences and certificates

Through its licensing and certification activities, the CNSC ensures that applicants fully meet the requirements of the NSCA and associated regulations before they are authorized to engage in any nuclear-related activity. A licence or certificate will only be issued once the CNSC is certain that the regulated party is prepared to meet all regulatory requirements.

Each licence includes the conditions with which the licensee must comply while undertaking the respective licensed activities. In some cases the licensing basis and the criteria that CNSC staff use to verify compliance are captured and maintained in a separate licence conditions handbook (LCH). For more information, see the [Licensing and Certification](#) page on BORIS.

Licensing basis

The licensing basis sets the boundary conditions for a regulated activity and establishes the base compliance for that regulated activity. All licensees are required to conduct their activities in accordance with the licensing basis for the regulated activity, which includes:

- regulatory requirements set out in the applicable laws and regulations
- conditions described in the licence, and the documents directly referenced in that licence
- safety and control measures described in the licence application, and the documents needed to support that licence application

For more information on the licensing basis, see [REGDOC 3.5.3, Regulatory Fundamentals](#)

1.5 What are compliance and enforcement?

Compliance is conformity with the requirements of the [NSCA](#), the regulations made under the NSCA, and any licences, decisions, certificates and orders issued by the CNSC. It is the responsibility of regulated persons or organizations to maintain compliance.

Enforcement includes all activities to compel a licensee back into compliance and to deter further non-compliance with the NSCA, the regulations made under the NSCA, and any licences, decisions, certificates and orders issued by the CNSC. It is the responsibility of the CNSC to verify and enforce compliance.

2.0 FUNDAMENTAL PRINCIPLES

Fundamental principles are the foundational expectations of CNSC management upon which our systems, programs and processes are built. The CNSC's graduated enforcement strategy is built on the following fundamental principles.

Flexibility

The effectiveness of the CNSC's graduated enforcement strategy relies on response flexibility based on a risk-informed approach, and on the application of expert judgement in selecting the most appropriate response(s) in a given situation.

Timeliness

The CNSC manages compliance issues in a timely manner, taking regulatory significance into account.

Transparency

In the spirit of its commitment to transparency, the CNSC maintains open and engaged communication and makes information on its enforcement activities available to the public as appropriate.

3.0 CONTEXT

This section shows where the graduated enforcement strategy fits in the context of the CNSC's overall approach to regulation.

3.1 Regulatory philosophy

The CNSC's regulatory philosophy is based on two principles:

- persons and organizations subject to the NSCA are directly responsible for carrying out regulated activities in a manner that protects health, safety, security and the environment, while respecting Canada's international obligations on the peaceful use of nuclear energy
- the CNSC is accountable to Parliament and to Canadians for ensuring that these responsibilities are properly discharged

3.2 Risk management

The CNSC manages all regulatory oversight activities — from assessing applications to enforcing compliance — in a risk-informed manner.

Effective risk management involves careful consideration, analysis, and understanding of risk exposure. It is about being able to respond effectively to change and uncertainty through [risk-informed decision making](#). Systematic, disciplined, consistent consideration of risk is fundamental to making the safe and informed regulatory recommendations and decisions by which we ensure that risk levels remain within the accepted tolerance limits.

Risk management is important for solving compliance problems and contributing to the achievement of regulatory objectives:

- as a management tool, risk management improves compliance through planning, communicating, assessing/prioritizing risk, and focusing efforts on high risk activities
- as a practical tool, risk management helps CNSC staff to identify problems and use their discretion to select the right tool(s) to address compliance issues

3.3 Graded approach to regulation

The CNSC uses a systematic, risk-informed, graded approach when applying resources to oversee licensed activities and verify compliance with regulatory requirements. With the graded approach, elements such as the level of analysis, depth of documentation, and scope of actions necessary to verify compliance with requirements are commensurate with considerations such as:

- relative risks to health, safety, security, and the environment
- whether there is any implication for Canada's international obligations
- particular characteristics of the given nuclear facility or licensed activity

See [REGDOC 3.5.3, *Regulatory Fundamentals*](#) for more information on the CNSC's graded approach to regulation.

3.4 Regulatory framework

The [CNSC's regulatory framework](#) consists of the NSCA and other laws passed by Parliament that govern the regulation of Canada's nuclear industry, as well as the regulations, licences and certificates, and regulatory documents that the CNSC uses to regulate the industry.

The CNSC is committed to ensuring that these regulatory instruments make requirements and guidance clear and comprehensive. This calls for anticipating regulatory changes or actions, and ensuring that the regulatory framework continues to provide the information needed to clarify requirements.

3.5 Where compliance fits

Verifying compliance is one of the CNSC's core regulatory activity areas. It consists of processes and procedures established to confirm that all licensees and other individuals or corporations that are subject to the NSCA demonstrate acceptable safety and security performance and continuously comply with regulatory requirements.

There are four principal components to the CNSC's approach to verifying compliance:

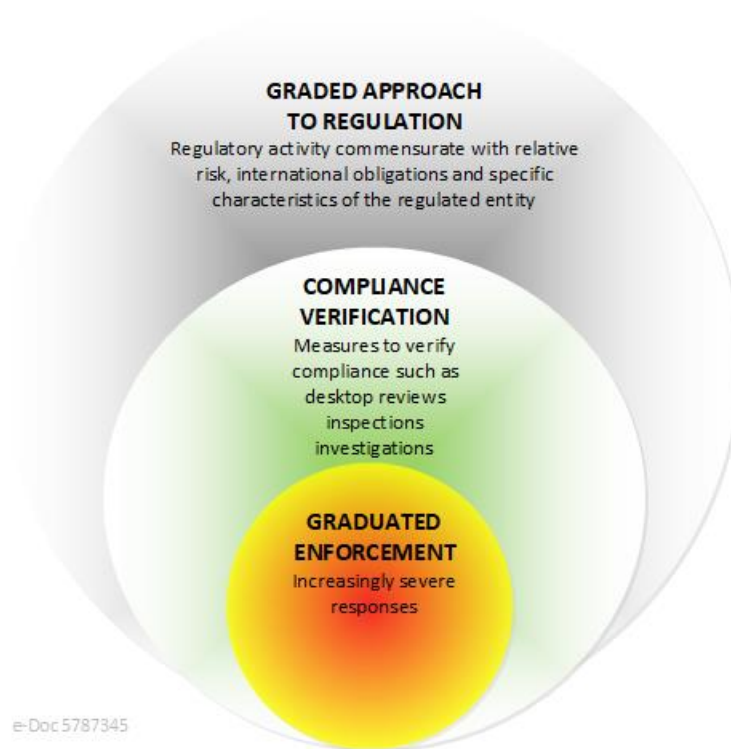
- planning compliance verification activities
- influencing compliance awareness and verifying the extent of compliance
- responding to non-compliance
- reporting on compliance

This document focuses on the tools the CNSC uses to influence compliance awareness and respond to non-compliance.

3.6 Graduated enforcement strategy

When non-compliance has been identified, the CNSC's graduated enforcement strategy provides staff with the flexibility and discretion to select from a broad spectrum of options to restore compliance as quickly as possible. Figure 1, below, illustrates how graduated enforcement fits within the CNSC's graded approach to regulation.

Figure 1: Graduated enforcement within the graded approach to regulation



4.0 STRATEGY

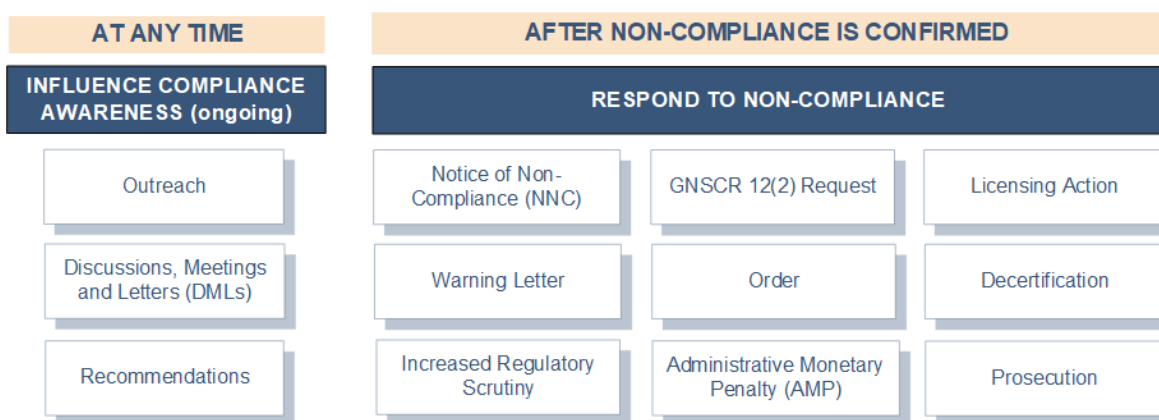
4.1 Response toolbox

The CNSC has established an integrated set of tools for influencing compliance awareness and responding to non-compliance. With this approach, CNSC staff are able to choose the appropriate instrument or combination of instruments to address the issues raised in any specific situation. Figure 2 below illustrates how the components of the CNSC's graduated enforcement strategy fit together.

Influencing compliance awareness is an ongoing endeavor that can start even before the licensing/certification process is triggered, and continues throughout the lifecycle of the licence or certificate

Responding to non-compliance includes a progression of responses the CNSC can use to restore compliance as quickly as possible.

Figure 2: Tools for applying the graduated enforcement strategy



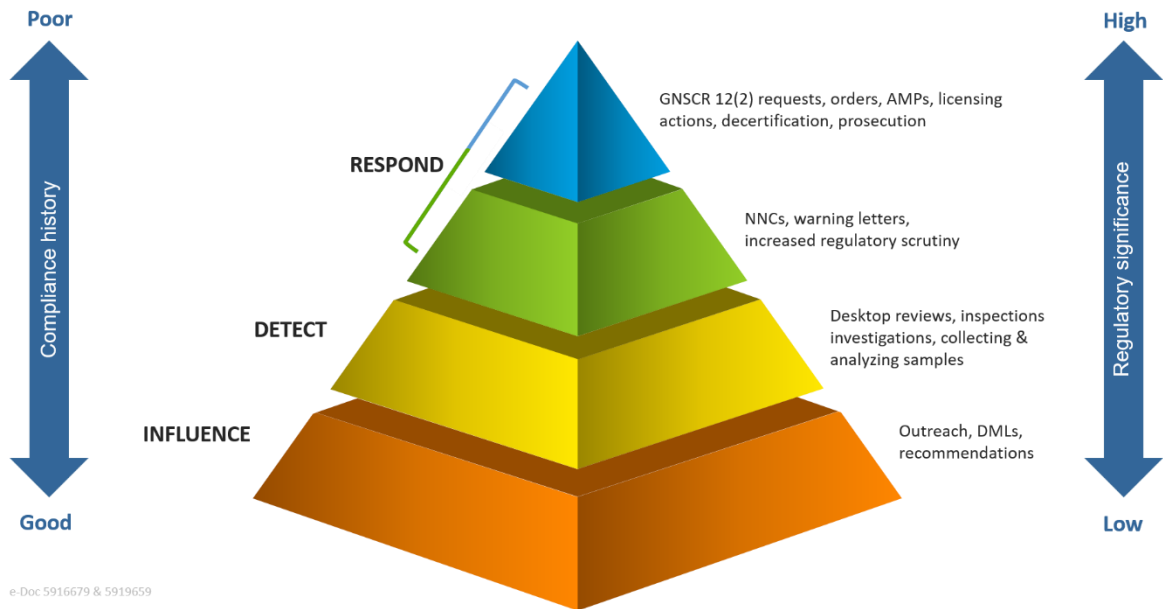
VISIO e-Doc 5772689

The roles and responsibilities associated with selecting and applying these tools are explained in Appendix A to this document.

4.2 Flexibility

CNSC staff can select or recommend any of the available tools listed in Figure 2 at any time, as appropriate to the situation. The response or combination of responses that would likely be most effective in restoring compliance is determined at the discretion of the person making the decision. Where appropriate, the CNSC's multi-key approach provides the opportunity to confer with other subject-matter experts to assess the options and garner support, if needed, to establish an official position.

Figure 3: Toolbox continuum



When determining which response is most appropriate, staff should consider any service line-specific strategies, as applicable. The goal is to determine the response(s) that would be most likely to result in restoring compliance as quickly and effectively as possible, taking the following considerations into account:

- the regulatory significance of the non-compliance
- the circumstances that led to the non-compliance
- the entire compliance history of the regulated party
- any operational and legal constraints
- any industry-specific factors

4.3 Follow-up

Follow-up is a necessary step to confirm that a response to non-compliance has been effective. The process for following up varies between service areas.

5.0 INFLUENCING COMPLIANCE AWARENESS

Note: Increasing licensee knowledge of both the law and the licensing basis, and fostering voluntary compliance, are complementary approaches that may help limit the need for contested proceedings.

Regulating requires consistent interaction with regulated parties. Even before a licence or certificate is issued, the CNSC uses several measures to foster open communication with the applicant or proponent to influence their awareness of the need to comply with all regulatory requirements. Regulated parties who engage in open communication with the CNSC from the outset typically have a clearer understanding of the regulatory requirements and a better compliance record.

This proactive interaction continues after the licence or certificate is issued, through:

- outreach
- regular interaction in the form of discussions, meetings and letters (DMLs)
- recommendations

5.1 Outreach

5.1.1 Description

In the context of activities associated with compliance and enforcement, outreach refers to sharing information and concerns, clarifying expectations, and engaging licensees with regard to compliance. Through outreach, licensees and certificate holders are kept up to date on any changes to regulatory requirements and expectations. This promotes voluntary compliance while also providing other stakeholders with up-to-date information about compliance within Canada's nuclear industry.

Effective outreach ultimately contributes to safety by creating clarity and awareness of regulatory requirements, which in turn reduces the likelihood of non-compliance. Also, the CNSC's investment in early and regular outreach activities generally results in reducing the time and effort associated with enforcing compliance. Outreach activities also provide opportunities to improve the CNSC's regulatory framework, which contributes to improving our approach to verifying and enforcing compliance.

5.1.2 Selection

Outreach activities related to compliance and enforcement may be selected at any time to communicate with a broad audience, including licensee groups and other interested parties, to:

- explain the roles and functions of the CNSC
- clarify regulatory requirements and expectations
- update communities on upcoming regulatory changes
- share current information and best practices
- communicate compliance trends, concerns, and lessons learned

5.1.3 Application

Outreach associated with compliance and enforcement may include:

- [regulatory documents](#), which clarify regulatory expectations
- industry-targeted meetings and newsletters
- working groups

5.1.4 Used by

Staff from many areas of the CNSC may be involved in outreach.

5.1.5 Special considerations regarding outreach

Where appropriate, the Communications Division should be consulted when planning new outreach activities.

5.2 Discussions, meetings and letters

5.2.1 Description

Regular DMLs are the primary means of communicating with respect to matters associated with compliance. The use of DMLs begins during the application process, and continues throughout the licence or certificate period. DMLs provide an effective means for sharing information, clarifying expectations and requirements, discussing potential concerns, and proactively addressing possible deficiencies that could lead to non-compliance. DMLs include:

- discussions (phone calls, emails, or other electronic communications)
- meetings (face-to-face, teleconferences, opening and closing inspection meetings)
- formal letters (electronic or hard copy)

5.2.2 Selection

As the principal means of communicating with regulated parties, DMLs are used at various points throughout the licensing/certification period, and may be used as appropriate in conjunction with any CNSC response to non-compliance.

With respect to influencing compliance awareness, DMLs provide an opportunity to address potential deficiencies or other issues before they become non-compliances. Whenever appropriate, DMLs are selected to:

- foster and maintain dialogue
- disseminate information and clarify regulatory requirements
- raise and address concerns
- address potential non-compliances
- maintain dialogue while responding to non-compliance

5.2.3 Application

The noteworthy points of any meetings and verbal discussions should be captured in writing, and recorded along with formal letters and meeting minutes.

5.2.4 Used by

DMLs can be used by any staff authorized to communicate with licensees or regulated parties.

5.2.5 Special considerations regarding DMLs

There are no special considerations regarding DMLs at the time of publication.

5.3 Recommendations

Note: Recommendations are not to be used to indicate non-compliance with regulatory requirements or to compel a licensee to take action.

5.3.1 Description

A recommendation is a written suggestion presented to the licensee when there are opportunities for improvement based on CNSC experience and industry best practices. There is no obligation for the licensee to act on a recommendation.

5.3.2 Selection

A recommendation is typically used to provide suggestions on potential improvements to current practices in the absence of confirmed non-compliance. A recommendation is also a useful tool for assisting licensees who want to exceed expectations.

5.3.3 Application

Recommendations are written in non-compelling language and do not include deadlines or timeframes. The recommendation should clearly state that it is intended for consideration only, and that it is not a requirement.

A recommendation may be included in an inspection report or communicated through regular correspondence, and should be documented in the licensee file and in e-Access as appropriate.

5.3.4 Used by

Any CNSC staff involved in licensing, certification, verifying compliance, or responding to non-compliance can make recommendations for improvement.

5.3.5 Special considerations regarding recommendations

The authority to communicate recommendations to the licensee or certificate holder varies between regulatory program areas. Consult the appropriate regulatory program authority to determine whether any communication protocols apply.

6.0 RESPONDING TO NON-COMPLIANCE

A regulatory response is required when non-compliance with regulatory requirements is confirmed through objective evidence obtained from reliable sources and based on verifiable facts.

The CNSC's [graduated approach to enforcement](#) provides a dynamic continuum of regulatory response options that begins with making the licensee aware of non-compliance and allowing them the opportunity to correct it.

CNSC staff applies regulatory judgement to determine the most appropriate response to a given situation. In all cases, the goals are to restore compliance, maintain continued safety, and deter future non-compliance.

All measures taken in response to non-compliance become part of the compliance history of the regulated party.

6.1 Notice of non-compliance

6.1.1 Description

A notice of non-compliance (NNC) is a written notice from the CNSC requesting that the licensee take the necessary action(s) to correct non-compliance. The NNC indicates that a non-compliance has been confirmed and requests that the licensee respond with one of the following:

- confirmation that compliance has been restored
- a timeframe for restoring compliance
- a timeframe within which a corrective action plan will be submitted

If compliance is restored within an acceptable timeframe and to the satisfaction of the CNSC, no further regulatory action is necessary.

6.1.2 Selection

An NNC is often the first level of response to bring one or more confirmed non-compliances to the attention of the licensee. Where non-compliance poses immediate risk to workers, the public, or the environment, other regulatory responses should be considered in conjunction with — or in some cases without — an NNC.

6.1.3 Application

An NNC is typically issued as part of an inspection report, but can also be issued on its own where applicable.

6.1.4 Used by

Authority to issue an NNC varies between regulatory program areas.

6.1.5 Special considerations regarding NNCs

CNSC review of the licensee's response to the NNC includes consideration of the regulatory significance associated with the non-compliance and the complexity of any corrective actions required.

6.2 Warning letter

6.2.1 Description

A warning letter notifies the licensee's senior management of unresolved non-compliance and informs them that CNSC management is aware of the situation. The warning letter differs from a letter issued as a DML interaction in that it specifically warns of the possibility of escalating enforcement if the non-compliance remains uncorrected.

6.2.2 Selection

A warning letter is selected when non-compliance is not being addressed within an acceptable timeline or to the satisfaction of the CNSC. Warning letters are generally used when it is determined that NNCs have been ineffective in restoring compliance.

A warning letter might also be selected in response to recurrent, long-standing, or broader non-compliance issues. In such cases, the warning letter can provide an effective strategy for conveying the seriousness of the CNSC's concerns before escalating to other response options

6.2.3 Application

Where appropriate, the warning letter should be sent by registered mail. The subject line of the warning letter must clearly state that the message is a warning, and identify the specific non-compliance(s) or associated concerns. The warning letter should also emphasize the seriousness of the issue(s) and the possibility of further action.

Warning letters become part of the licensee's compliance history and may be useful if it becomes necessary to justify subsequent regulatory action(s).

6.2.4 Used by

Managers or staff with management endorsement can issue warning letters.

6.2.5 Special considerations regarding warning letters

In some cases it may be appropriate to consult with Legal Services when drafting a warning letter.

6.3 Increased regulatory scrutiny

6.3.1 Description

Increasing regulatory scrutiny means increasing regulatory oversight of a particular facility or licensed activity beyond baseline compliance verification activities.

Increased regulatory scrutiny might include:

- increased reporting requirements
- increased scope and/or frequency of inspections
- modified inspection techniques or strategies
- introduction of meetings between CNSC staff and the licence holder to discuss potential concerns
- increased frequency of meetings between CNSC staff and the licence holder
- additional document reviews/technical assessments
- investigations to gather additional information to determine the next step

6.3.2 Selection

Increased regulatory scrutiny can be selected in situations that cause ongoing concern. The increased oversight and verification activities can be effective for gathering additional evidence to confirm licensee commitment to compliance, or to support future enforcement actions.

Increased regulatory scrutiny typically forms part of a broader customized response to concerns that may be systemic, and is typically triggered by a poor compliance history or an erosion of the CNSC's confidence in the licensee's commitment to compliance.

6.3.3 Application

CNSC staff recommends increased regulatory scrutiny to the appropriate manager, providing a case file of the licensee's relevant compliance history. The manager then reviews the recommendation and decides on next steps. In the interest of transparency, the licensee is informed if a decision is made to increase regulatory scrutiny.

6.3.4 Used by

Directors General (DGs) and Directors can authorize increased regulatory scrutiny based on staff recommendation.

6.3.5 Special considerations regarding increased regulatory scrutiny

The following considerations should be taken into account with respect to increasing regulatory scrutiny:

- management approval is required because increased regulatory scrutiny might involve increased CNSC time and resources
- in some cases it may be appropriate to consult with Legal Services when considering increased regulatory scrutiny as the selected response

6.4 Request under GNSCR 12(2)

6.4.1 Description

A request under subsection 12(2) of the [*General Nuclear Safety and Control Regulations \(GNSCR\)*](#), often referred to as a “12(2) request,” is a legal instrument to which the licensee must respond. A licensee who receives a 12(2) request is legally required to provide the requested information within the time specified.

6.4.2 Selection

The 12(2) request can be used at any time deemed necessary, and is not restricted to use in responding to non-compliance.

With respect to the graduated enforcement strategy, the 12(2) request is usually selected in the following circumstances:

- the regulatory significance of the non-compliance justifies requesting that the licensee conduct a test, analysis, inventory or inspection in respect of the licensed activity, or to review or modify a design, equipment or procedures, or to install a new system or new equipment
- there has been no acceptable reply to previous regulatory responses
- additional timely information is required to quickly determine whether additional enforcement response is needed

6.4.3 Application

A 12(2) request is generally issued to the licensee’s senior management and copied to the licensee contact. Licensees are legally required to respond to 12(2) requests. See the [Designated Officer Community](#) page on BORIS for previously issued 12(2) requests and a request template.

6.4.4 Used by

12(2) requests can be issued only by the Commission or by a person authorized by the Commission.

6.4.5 Special considerations regarding 12(2) requests

The following considerations need to be taken into account when considering a 12(2) request as a response to non-compliance:

- a person failing to respond to a 12(2) request may be subject to an [administrative monetary penalty](#) (AMP) or other regulatory response
- the 12(2) request should be drafted using the approved template, and then Legal Services should review it before it is issued
- where applicable and in the interest of transparency, arrangements need to be made with the Communications Division to post the 12(2) request on the CNSC’s web site

6.5 Order

Note: Orders are not used solely for “cease and desist” purposes. An inspector may order any measures in the interest of health, safety, security, the environment, or compliance with international obligations.

6.5.1 Description

An order is a powerful legal instrument used to compel a licensee to take any measure considered necessary to protect the health and safety of persons and the environment, and to maintain national security and compliance with Canada’s international obligations.

6.5.2 Selection

With respect to responding to non-compliance, orders are typically selected in response to issues identified during inspection or during events or emergencies. They may also be considered when previous CNSC responses have been ineffective in restoring compliance and concerns of regulatory significance have arisen as a result.

Orders can also be issued in the absence of non-compliance.

An order may be issued in conjunction with another enforcement action. For example:

- an order can be used to compel the licensee to take immediate action while a request for a [licensing action](#) is being processed
- when an order is being issued in response to a non-compliance, an AMP might also be issued to deter future non-compliance

6.5.3 Application

The terms of an order should be commensurate with the regulatory significance associated with the non-compliance, and might include:

- restricting the use of certain equipment
- restricting certain parts of a licensee’s operation
- conducting specific tests
- retraining employees

Paragraphs 35, 37–43, and 46–47 of the NSCA describe the circumstances under which orders can be issued and the associated steps for issuing them. Also, the provisions for making, receiving, reviewing, appealing and redetermining orders issued under the NSCA are set out in rules 31–36 of the [CNSC Rules of Procedure](#).

Conditions for closing an order must be clearly explained in the order itself, and any compliance verification activity the CNSC takes to confirm that the conditions of the order have been met must be recorded.

Information about making, receiving, reviewing, appealing and redetermining orders can be found in REGDOC 3.5.2, *Compliance and Enforcement: Making, Reviewing, and Receiving Orders under the NSCA*.

6.5.4 Used by

Inspectors are authorized to make orders under subsections 35(1) and 35(2) of the NSCA. An order issued by an inspector is referred to as an inspector order. Visit the [Inspection Community](#) page on BORIS for general information related to the inspection community.

Designated Officers (DOs) may be authorized under paragraph 37(2)(f) of the NSCA to make any order that an inspector may make. An order made by a DO is referred to as a “DO order.” Visit the CNSC [Designated Officers Community](#) page on BORIS for more information.

The Commission may make orders in exceptional circumstances, as described in subsections 46(3) and 47(1) of the NSCA.

6.5.5 Special considerations regarding orders

The following considerations need to be taken into account with respect to selecting an order as a response to non-compliance:

- (DOs) or Commission members who may be called upon to review, amend, revoke or replace an order must remain unbiased and objective in this capacity, and therefore should not be directly involved in issuing that order
- where applicable and in the interest of transparency, arrangements need to be made with the Communications Division to post the order on the CNSC’s web site
- if there is a possibility that an AMP might be issued in conjunction with the order, it is very important to advise the Communications Division to delay publication of the order so that the order and the AMP are posted on the CNSC’s external site at the same time
- in some cases it may be appropriate to consult Legal Services when considering whether to issue an order
- a person who fails to comply with an order may be subject to an AMP or other enforcement action
- guidance for any person named in or subject to an order can be found in REGDOC 3.5.2, *Compliance and Enforcement: Making, Reviewing, and Receiving Orders Under the NSCA*

6.6 Administrative monetary penalty

6.6.1 Description

AMPs are monetary penalties imposed by the CNSC in response to a violation of a regulatory requirement. The purpose of an AMP is stated directly in the NSCA, subsection 65.02(2), “... *is to promote compliance with this Act and not to punish.*” Issuing an AMP is intended to have an impact on both promoting compliance and deterring future non-compliance.

The specific provisions against which an AMP may be applied are listed in the [AMP Regulations](#) schedule of violations. An AMP can only be issued for a non-compliance listed in the schedule of violations.

The CNSC may issue an AMP pursuant to subsections 44(1) (u.1) and 44(13) and sections 65.01 to 65.21 of the NSCA, and in accordance with the [AMP Regulations](#).

6.6.2 Selection

Any violation listed in the [AMP Regulations](#) can be subject to an AMP; however, in keeping with the CNSC's graduated approach to enforcement, an AMP is not usually the first response to a violation.

Not all non-compliance will result in an AMP, nor will an AMP necessarily be the first enforcement option used in every situation. An AMP might be deemed the appropriate regulatory response in cases where:

- less severe enforcement actions have been ineffective in restoring compliance
- non-compliance is likely to recur
- there is a history of repeated non-compliance
- non-compliance was intentional or was the result of negligence
- non-compliance did result or could have resulted in harm
- non-compliance was motivated by competitive or economic factors
- non-compliance posed unreasonable risk to health, safety, the environment, security, or international obligations to which Canada has agreed (in which case the AMP is likely to be issued in conjunction with an [order](#))
- an AMP is considered a necessary measure to correct poor compliance behaviour

6.6.3 Application

Once selected as the most appropriate enforcement option, an AMP is issued in accordance with the [Issuing an AMP](#) process. For more information see the [Handbook for Using Administrative Monetary Penalties](#) or the [AMPs webpage](#) on BORIS.

Each AMP recommendation undergoes a thorough internal review for consistency and adherence to the [Issuing an AMP](#) process.

6.6.4 Used by

AMPs are issued by DOs based on staff recommendation. In more complex cases, multi-key discussion may be helpful in supporting the recommendation.

6.6.5 Special considerations regarding AMPs

The following considerations need to be taken into account with respect to selecting an AMP as a response to non-compliance:

- AMPs cannot be used in conjunction with prosecution
- in contrast to the process for issuing orders, DOs are directly involved in issuing AMPs and are therefore consulted when an AMP is being considered
- where applicable and in the interest of transparency, arrangements need to be made with the Communications Division to post the AMP on the CNSC's web site

- if the AMP is being issued in conjunction with an order, it is very important to advise the Communications Division to delay publication of the order so that the order and the AMP are posted on the CNSC's external site at the same time
- if planning to recommend an AMP, contact the Internal Quality Management Division for assistance at cns.amp-sap.ccsn@canada.ca
- where applicable, Legal Services should be consulted to review the notice of violation before it is issued

6.7 Licensing action

6.7.1 Description

Licensing action is considered an enforcement response only when it is taken by the Commission on its own motion to review, suspend in whole or in part, amend, revoke, or replace a licence. Licensing action on the Commission's own motion is authorized under section 25 of the NSCA and must be taken in accordance with Section 8 of the [GNSCR](#).

Examples of licensing actions that can be taken in response to non-compliance include, without being limited to:

- licence revocation
- suspension in whole or in part of specific licensed activities
- addition of licence conditions
- addition of hold points in the licence
- reduction to the length of the licence period

6.7.2 Selection

Licensing action is selected when CNSC staff determine that the risk posed by the non-compliance may become unreasonable without correction or adjustment to the licence. Staff might make this determination in cases such as the following:

- the licensee is no longer qualified to carry on the licensed activity
- the licensed activity poses an unreasonable risk to the environment, the health and safety of persons, the maintenance of national security, or international obligations
- the licensee has failed to comply with regulatory requirements
- the record referred to in the licence has been modified in a manner not permitted by the licence
- the licensee no longer carries on the licensed activity
- the licensee has not paid the licence fee prescribed by the [Cost Recovery Fees Regulations](#)

6.7.3 Application

If a licensing action is recommended in a situation that requires urgent remedy, an interim measure such as an [order](#) may be necessary to compel the licensee to implement immediate corrective measures while the request for licensing action is being processed.

6.7.4 Used by

Only the Commission can move to amend, suspend, revoke or replace a licence in response to non-compliance.

6.7.5 Special considerations regarding licensing actions

The following considerations need to be taken into account when selecting licensing action as a response to non-compliance:

- where applicable and in the interest of transparency, arrangements need to be made with the Communications Division to post the action on the CNSC's web site
- a DO has licensing powers only upon receipt of an application from a licensee. More information about the powers of DOs can be found on the [Designated Officers Community page](#) on BORIS
- in some cases, consultation with Legal Services may be appropriate when a licensing action is being considered

6.8 Decertification

To meet its mandate, the Commission certifies:

- persons referred to in paragraph 44(1)(k) of the NSCA as qualified to carry out their duties or the duties of their employment, as the case may be, including:
 - nuclear power plant operators
 - non-power reactor operators
 - health physicists
 - exposure device operators
 - radiation safety officers
- prescribed equipment, and
- packaging and transport of nuclear substances

6.8.1 Description

Decertification is the revocation of certification of:

- persons carrying out prescribed duties
- prescribed equipment
- packaging and transport of nuclear substances

The legal basis for decertification is provided in sections 27–29 of the [*Nuclear Substances and Radiation Devices Regulations*](#), sections 12–13 of the [*Class I Nuclear Facilities Regulations*](#), sections 15.08 and 15.09 of the [*Class II Nuclear Facilities and Prescribed Equipment Regulations*](#), and subsection 16(1) of the [*Packaging and Transport of Nuclear Substances Regulations, 2015*](#).

6.8.2 Selection

Decertification is selected when there are reasonable grounds to believe that the certified person, prescribed equipment, or packaging and transport activities are no longer capable of meeting the requirements associated with the certification.

6.8.3 Application

A recommendation to decertify must be made to the appropriate DO for the given decertification. DOs authorized to perform this function are listed in the [*Record of Decision*](#) issued by the Commission on February 29, 2019.

The Designated Officer must notify the regulated party of the CNSC’s intent to decertify, and must give the person an opportunity to be heard.

The decertification process is explained in the [*Decertifying a Person Pursuant to the Nuclear Safety and Control Act*](#) process, and in relevant regulations. For more information see the [*Designated Officers Community*](#) page on BORIS.

The CNSC notifies the regulated party when the decertification is complete, and publishes the decertification on its external website.

6.8.4 Used by

Decertification may be done by the Commission or, pursuant to paragraph 37(2) (b) of the NSCA, by a Designated Officer authorized by the Commission. For more information, see the [*Personnel Certification Division*](#) page on BORIS.

6.8.5 Special considerations regarding decertification

The following considerations need to be taken into account when selecting decertification as a response to non-compliance:

- if applicable, consideration should be given to other measures, such as warning letters, orders, etc., before decertification is selected as an enforcement tool
- where applicable and in the interest of transparency, arrangements need to be made with the Communications Division to post information about the decertification on the CNSC’s web site
- in some cases, consultation with Legal Services may be appropriate when decertification is being considered

6.9 Prosecution

6.9.1 Description

Prosecution is the laying of charges against a person for an offence under an act. Prosecution does not necessarily lead to correction of the non-compliance, so other enforcement measures would also likely be required. Prosecution may be recommended when there are reasonable grounds to believe that an offence under sections 48–50 of the NSCA may have been or is in the process of being committed.

6.9.2 Selection

Prosecution may be recommended when there are reasonable grounds to believe that an offence under sections 48-50 of the NSCA may have been or is in the process of being committed. Licensee behaviour may lead to investigations that result in a staff recommendation of prosecution.

6.9.3 Application

An investigation is conducted to gather information for use in determining whether prosecution is warranted. Anyone considering whether to launch an investigation for this purpose should discuss the situation with the appropriate manager (Director or DG). If the decision is made to proceed with an investigation, the manager will engage Legal Services. If the matter proceeds to prosecution, Legal Services will work closely with the Public Prosecution Service of Canada.

6.9.4 Used by

Only CNSC authorized staff may conduct an investigation. A recommendation to prosecute is then made first to the appropriate manager.

If charges are laid, the inspector who conducted the investigation and the Director and DG may have roles to play in any resulting court proceedings.

6.9.5 Special considerations regarding recommendation to prosecute

The following consideration needs to be taken into account when selecting prosecution as a response to non-compliance:

- legal advice should be sought early when considering a recommendation to prosecute
- if a decision has been made to identify a non-compliance as a violation and issue an AMP, the same instance of non-compliance cannot subsequently be identified as an offence subject to prosecution (see section 65.08 of the NSCA)

7.0 REFERENCES

Additional or related information is available in the following reference material:

7.1 Related information

Document Title	Reference
NSCA and Regulations	external website
REGDOC 3.5.3, Regulatory Fundamentals	external website
Policy on the Use of a Risk-Informed Approach for Regulatory Oversight of Nuclear Activities and Facilities	5285215
CMD 01-M7, Requests pursuant to the General Nuclear Safety and Control Regulations	3007333
CMD 08-M10 Designated Officers	3209725
REGDOC-3.5.2, Volume II: CNSC Processes and Practices Orders under the Nuclear Safety and Control Act	5386186
Overview of Issuing an Administrative Monetary Penalty (AMP)	3905793
Designated Officers Community page	BORIS
Administrative Monetary Penalties page	BORIS
Personnel Certification Division page	BORIS

7.2 Interfaces

The potential impact on the following interfacing documents and web pages must be considered when making any changes to this document.

Document Title	e-Docs Number
Navigator Manual	3050716
Inspection Community page	BORIS
Inspection Fundamentals Learner Manual	4263801
Overview of Conducting an Inspection	3817913
REGDOC 3.6, Glossary of Terms	3233640
How to Train and Qualify Inspectors	4113862
Any other corporate or service-line documents that reference this handbook	Navigator Portal

This page has been intentionally left blank for two-sided printing.

APPENDIX A . Roles and Responsibilities

A.1 Regulated persons and organizations

Regulated persons and organizations are responsible for complying with the requirements of the [NSCA](#), the regulations made under the NSCA, and any licences, decisions, certificates and orders issued by the CNSC.

A.2 CNSC

The CNSC is responsible for verifying and enforcing compliance with the requirements of the [NSCA](#), the regulations made under the NSCA, and any licences, decisions, certificates and orders issued by the CNSC.

A.3 Staff

For the purposes of this document, staff includes any roles directly involved in verifying and enforcing compliance. With respect to compliance awareness and responding to non-compliance, staff might:

- engage in related [outreach](#) activities
- conduct or participate in [discussions or meetings](#) with the licensee or the person subject to enforcement action
- issue informational [letters](#) to the licensee or the person subject to enforcement action
- make [recommendation](#) for improvement as a compliance awareness tool (applies only to staff who are directly engaged in licensing or certification)
- select or recommend enforcement tool(s) as appropriate
- issue or draft [NNCs](#) as appropriate
- make recommendations regarding [warning letters](#), or issue warning letters with management endorsement
- make recommendations regarding [increased regulatory scrutiny](#), or increase regulatory scrutiny with management endorsement
- make recommendation to proceed with a [GNSCR 12\(2\) request](#), and participate as required in drafting the request
- make recommendations regarding [AMPs](#)
- make recommendations regarding [licensing actions](#), and draft the related Commission member document (CMD) as required
- make recommendations regarding [decertification](#)
- initiate and conduct investigations with management endorsement
- make recommendation to [prosecute](#)
- follow-up on responses to non-compliance as appropriate

A.4 Inspectors

In addition to the responsibilities listed above for CNSC staff, Inspectors also exercise their powers and responsibilities under the NSCA with respect to verifying compliance and responding to non-compliance.

A.5 Directors

With respect to influencing compliance awareness and responding to non-compliance, Directors:

- engage in related outreach activities as required
- conduct or participate in [discussions or meetings](#) if required
- approve [compliance awareness or informational letters](#) if required
- participate in internal discussions to determine appropriate response(s) to non-compliance, if required
- endorse or issue [warning letters](#)
- authorize [increased regulatory scrutiny](#) based on staff recommendation
- participate as required in planning activities associated with [increased regulatory scrutiny](#)
- participate as required in documenting [GNSCR 12\(2\) requests](#)
- endorse [AMPs](#)
- participate in deciding whether to recommend [licensing action](#) as a response to non-compliance
- participate in deciding whether to recommend [decertification](#)
- decide whether escalation to an investigation is warranted, and assign or request assignment of a lead investigator
- review investigation report and endorse further regulatory response based on staff recommendation
- participate in deciding whether to recommend prosecution as a response to non-compliance
- liaise with Legal Services as appropriate
- follow-up on responses to non-compliance as appropriate

A.6 Directors General

With respect to influencing compliance awareness and responding to non-compliance, the DG's role applies only when necessary to carry out the given task. Where required, the DG is expected to:

- engage in related outreach activities
- participate in [discussions or meetings](#)
- approve [compliance awareness or informational letters](#)
- participate in internal discussions to determine appropriate response(s) to non-compliance

- endorse or issue [warning letters](#)
- authorize [increased regulatory scrutiny](#) based on staff recommendation
- participate as required in activities associated with [increased regulatory scrutiny](#)
- participate as required in preparing and issuing [GNSCR 12\(2\) requests](#)
- recommend orders to DOs
- participate in multi-key discussions regarding [AMPs](#)
- participate in deciding whether to recommend [licensing action](#) as a response to non-compliance
- liaise with Legal Services as appropriate
- sign memo of intent to the Commission Secretary recommending that the Commission consider taking [licensing action](#) as a response to non-compliance
- participate in deciding whether to recommend [decertification](#) as a response to non-compliance
- review investigation report and endorse further regulatory response
- follow-up on responses to non-compliance as appropriate

A.7 Designated Officers

DOs involved in influencing compliance awareness and responding to non-compliance are expected, where authorized, to:

- exercise their powers and responsibilities under the NSCA with respect to compliance verification and enforcement
- confirm inspector [orders](#)
- issue DO [orders](#)
- issue [AMPs](#)
- carry out [licensing action](#)
- carry out [decertification](#) decisions
- endorse recommendation to [prosecute](#)
- report to the Commission as appropriate
- follow-up on responses to non-compliance as appropriate
- liaise with Legal Services as appropriate

A.8 CNSC's Legal Services

The role of Legal Services with respect to responding to non-compliance is to:

- provide legal advice upon request regarding the proposed response(s) to non-compliance
- review associated CMDs, DO documents, investigation reports, and legal instruments drafted by CNSC staff, as required
- provide legal advice related to a recommendation to prosecute
- oversee any legal and procedural aspects associated with the prosecution process

A.9 Communications Advisors

With respect to influencing compliance awareness and responding to non-compliance, the role of the Communications Advisor might include:

- helping to draft content for an internet posting
- publish regulatory actions on the internal and external CNSC websites
- draft media lines for issues-management as needed

A.10 Senior Executives

The Executive Vice President and Chief Regulatory Operations Officer of the Regulatory Operations Branch and the Vice President and Chief Science Officer of the Technical Services Branch become involved as appropriate in making final decisions about the CNSC's response to non-compliance.

If the decision involves both branches, a joint decision between the two senior branch representatives is required using the multi-key approach.

A.11 Commission

With respect to responding to non-compliance, the Commission might:

- exercise its powers and responsibilities under the NSCA with respect to compliance verification and enforcement
- issue [GNSCR 12\(2\) requests](#)
- issue Commission [orders](#)
- review an inspector order or a DO order to confirm, amend, revoke or replace the [order](#)
- make determinations on request to review AMP notices of violation
- determine whether [licensing action](#) is appropriate and move to take licensing action if deemed appropriate
- determine whether [decertification](#) is appropriate, and carry out decertification if deemed appropriate
- hear appeals and reviews
- make redeterminations
- follow-up on responses to non-compliance as appropriate