



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

March 4, 2004

EGM 04-001

MEMORANDUM TO: Hubert J. Miller, Regional Administrator, Region I
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Glenn M. Tracy, Director, Division of Nuclear Security, NSIR

FROM: Frank J. Congel, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - USE OF
ENFORCEMENT DISCRETION DURING TRANSITIONAL
FORCE-ON-FORCE (FOF) EXERCISES

This enforcement guidance memorandum (EGM) replaces EGM-03-001, "Use of Enforcement Discretion During Force-on-Force Pilot Program Exercises Conducted to Analyze Power-Reactor Licensees' Protective Strategies," dated March 28, 2003. EGM-03-001 was issued in accordance with the Staff Requirements Memoranda (SRM) dated July 11, 2002, and January 23, 2003, SECY 02-0101, "Staff Plans to Conduct Analyses of Power-Reactor Licensees Protective Strategy Capabilities Through Expanded Table-Top Drills and Force-on-Force Exercises," and SECY 02-0223, "Expanded Table-Top Drill Lessons Learned and Proposed Force-on-Force Testing Program Pilot," dated December 23, 2002. The purpose of the exercises was to provide the staff with a better understanding of the effects of changes that are being made to the overall security at the plants and to apply the lessons learned to the inspection program. To facilitate this effort, the Commission directed in the SRM that the staff is to refrain from using enforcement action for non-willful violations identified through implementation of the FOF exercises conducted to perform the analyses at the pilot plants. EGM-03-001 provided enforcement guidance to meet this Commission direction.

Subsequently, in SECY-03-0187, "Staff Plans to Conduct a Transitional Force-on-Force Exercise Program at Commercial Nuclear Power Plants," dated October 30, 2003, the staff informed the Commission of plans to move from phase 2 (the pilot) of the phased approach to resumption of the FOF exercises into phase 3, the transitional FOF program. Through this phase, the staff intends to continue to provide information and recommendations to the

Commission to assist in development of the FOF program, expand incorporations of operations and emergency planning elements into FOF exercises, and pilot the significance determination methodology currently under development.

The existing enforcement guidance in EGM 01-001, "Interim Guidance for Enforcement of 10 CFR 73.55(a)," remains in effect. The staff shall continue to apply current enforcement guidance and the Significance Determination Process (SDP) for self-revealing, non-compliance issues not related to the transitional FOF exercises. Findings that are determined to have more than minor significance will be documented in a separate inspection report and corrected by the licensee. The staff will follow the guidance in Section 6.3.6 of the Enforcement Manual for exercising enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy (e.g., obtaining an EA number, appropriate coordination, etc.) The staff is also reminded of the need to follow the guidance in the December 17, 2003, memorandum "Interim Guidance for Handling Inspection Reports and Findings in the Safeguards Strategic Performance Arena" related to publicly available documentation of inspection findings.

The following language is to be included in the text of the report discussing the inspection finding when exercising enforcement discretion in accordance with this EGM:

"A violation of [insert the applicable regulation or section of the Security Plan] was identified. Because the violation was identified during a force-on-force exercise conducted as part of a transitional force-on-force exercise program to analyze power-reactor licensees' protective strategy capabilities, we are exercising enforcement discretion in accordance with Section VII.B.6 of the NRC Enforcement Policy and not issuing any enforcement action for this violation."

This EGM will remain in effect for FOF exercises conducted through October 2004 and until documentation of any violations and the overall lessons learned report for the referenced analyses are complete. With issuance of this EGM, EGM 03-001 is withdrawn. EGM 01-001 will remain in effect until it is withdrawn.

If you have any questions, contact Jennifer Dixon-Herrity at 301-415-1980 or e-mail (JLD).

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