



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

June 12, 2006

EGM 06-001

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
William Travers, Regional Administrator, Region II
James L. Caldwell, Regional Administrator, Region III
Bruce Mallet, Regional Administrator, Region IV
James Dyer, Director, Office of Nuclear Reactor Regulation
Jack R. Strosnider, Director, Office of Nuclear Material Safety
and Safeguards
Roy Zimmerman, Director, Office of Nuclear Security and
Incident Response
Janet R. Schlueter, Director, Office of State and Tribal Programs

FROM: Michael R. Johnson, Director /RA/
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - ENFORCEMENT OF
SECURITY REQUIREMENTS FOR PORTABLE GAUGES

On July 11, 2005, a new NRC requirement, 10 CFR § 30.34(i) "Security requirements for portable gauges," became effective. The final rule requires a portable gauge licensee to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee. The purpose of this memorandum is to provide enforcement guidance that the NRC will follow to disposition violations involving the failure to maintain the required minimum of two independent physical controls including a provision for enforcement discretion for certain first-time violations.

The current version of the Enforcement Policy, "Supplement VI - Fuel Cycle and Materials Operations," does not include examples of severity levels for violations associated with the new requirement for security of portable gauges. This memorandum provides the following enforcement guidance regarding this new requirement:

- Since 10 CFR 30.34(i) is the specific regulation applying to portable gauges, only 10 CFR 30.34(i) should be cited for security violations involving gauge users, and the general security requirement in 10 CFR 20.1801 and 20.1802 should normally not be cited for failures to secure portable gauges.
- If a portable gauge is stolen, but the licensee was in full compliance with all regulatory requirements related to physical security, including the requirement to secure the gauge with two independent physical controls that form tangible barriers to secure the gauge from unauthorized removal, no violation would be cited.

- If a portable gauge is not lost or stolen, and the licensee did not provide adequate security, in that only one or no independent physical control was present, the violation would normally be dispositioned at Severity Level III, and the staff would follow the Civil Penalty Assessment process set forth in Section VI.C. of the Enforcement Policy to disposition the violation.
- If a portable gauge is lost or stolen, and the licensee failed to provide adequate security in that one or no independent physical control was present, the violation would be classified at Severity Level III and would result in a civil penalty based on the NRC Policy Statement published on December 18, 2000, titled: "Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources," known as the "Lost Source Policy."

However, NRC regional inspection staff has noted frequent occurrences in the past year where gauge licensees have not met the requirement of the new regulation to implement two independent physical controls, because either they were unaware of the new regulation or they did not understand how to meet the requirement. The Office of Nuclear Material Safety and Safeguards will issue a Regulatory Issue Summary (RIS) to this group of licensees addressing the requirement to increase licensees' awareness and understanding of the requirements of 10 CFR § 30.34(i).

In the interim, and for 120 days after the RIS is issued, for first time non-willful violations of this requirement, when the gauge is not lost or stolen and one suitable independent control was present, the NRC will exercise discretion to disposition the violation as SL IV.

In preparing Notices of Violation, in those cases where the violation is to be classified as SL IV, the subject line in the letter to the licensee should either read or include, "EXERCISE OF ENFORCEMENT DISCRETION," as described in Section VII.B.6 of the Enforcement Policy. OE should be consulted by telephone for these cases, and an Enforcement Action number will be issued.

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

A violation of 10 CFR 30.34(i) was identified during this inspection and is described in the attached Notice of Violation. Although such violations are normally categorized at Severity Level III and considered for escalated enforcement action, because (1) one physical control existed to prevent loss or theft of the portable gauge, (2) you retained possession of the gauge, (3) you took appropriate action to correct the violation and prevent recurrence of similar violations in the future, and (4) the violation was not willful, we are exercising enforcement discretion to categorize this violation at Severity Level IV. However, any future violations of 10 CFR 30.34(i) will be categorized at Severity Level III and evaluated for a civil penalty in accordance with Section VI.C. of the Enforcement Policy.

This EGM will be in effect until further notice.

If you have any questions, contact Sally L. Merchant at 301-415-2747 or e-mail (slm2).

cc: L. Reyes, EDO
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Multiple Addressees

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