

July 31, 2009

EGM-09-007

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I  
Luis A. Reyes, Regional Administrator, Region II  
Mark Satorius, Regional Administrator, Region III  
Elmo E. Collins, Regional Administrator, Region IV  
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation  
Michael R. Johnson, Director, Office of New Reactors  
Charles L. Miller, Director, Office of Federal and State Materials and  
Environmental Management Programs  
Michael F. Weber, Director, Office of Nuclear Material Safety and  
Safeguards  
Roy P. Zimmerman, Director, Office of Nuclear Security  
and Incident Response

FROM: Cynthia A. Carpenter, Director /RA/  
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - INTERIM GUIDANCE  
FOR DISPOSITIONING VIOLATIONS OF NATIONAL SOURCE  
TRACKING SYSTEM (NSTS) REQUIREMENTS

**Purpose:**

The purpose of this memorandum is to provide guidance for dispositioning inspection findings related to a licensee's implementation of national source tracking system (NSTS) requirements.

**Background:**

The NRC has amended its regulations to implement the NSTS for certain sealed sources. Licensees are required to report certain transactions involving these sources to the NSTS and identify their initial inventories of nationally tracked sources. The licensees must annually reconcile their records with what is in their actual inventories and what is listed in the NSTS. The final rule became effective on February 6, 2007, and compliance with reporting requirements was due by November 15, 2007 for Category 1 sources and November 30, 2007 for Category 2 sources as defined in Appendix E of 10 CFR Part 20. These dates were also compliance dates for licensees to start reporting source transactions for entry into the system.

Because development and testing of the NSTS took longer than anticipated, the NRC amended its regulations, effective October 17, 2007, to revise the compliance dates for NSTS reporting (72 FR 59162). The compliance date for licensees to report initial source inventories and begin to report source transactions for both Category 1 and Category 2 sources was extended to January 1, 2009.

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**Disposition of Violations of NSTS Requirements :**

If an inspector identifies a potential noncompliance with the NSTS requirements, the inspector shall notify the applicable branch chief before the exit meeting with the licensee. All of the potential noncompliances shall be brought back to the Regional Office for disposition.

The Regional Office shall evaluate each potential noncompliance and make one of two conclusions as discussed below.

**1. Use of ENFORCEMENT DISCRETION for NSTS requirement violations**

The Regional Office may consider using enforcement discretion and issue a non-cited violation (NCV) if all the following conditions are met:

- a. This is the first inspection after the effective date of the NSTS reporting requirements;
- b. The licensee's failure was not willful;
- c. The licensee committed to implementing corrective actions that include both promptly correcting any violations and instituting a process to avoid future violations.

These cases will be assigned an Enforcement Action (EA) number.

**Sample text for the inspection record or report:**

The text of the inspection record or report will describe the noncompliance(s), the licensee's corrective actions, and the schedule for taking corrective actions. The following language is to be included in the text of the record or report discussing the inspection finding when exercising enforcement discretion in accordance with this EGM.

"A violation of NSTS reporting requirement (cite specific violation) was identified during the initial inspection. Because this was the first inspection after the effective date of NSTS reporting requirements, and the licensee committed to take prompt corrective actions such as: 1) correcting all reporting violations, and 2) implementing a process for ensuring future reporting complies with NRC requirements, the NRC is using discretion to disposition this violation as a non-cited violation (NCV). However, any future violations of NSTS reporting requirements will be categorized as cited violations and evaluated as such.

**Sample text for the cover letter transmitting the results of the inspection:**

"A violation of NSTS reporting requirement (cite specific violation) was identified during the initial inspection and the issue was discussed during the exit meeting. Because this was the first inspection after the effective date of NSTS reporting requirements, and you committed to take prompt corrective actions such as: 1) updating the missed reporting, and 2) implementing a process for ensuring future reporting, the NRC is using discretion to disposition this violation as a non-cited violation (NCV). However, any future violations of NSTS reporting requirements will be categorized as cited violations and evaluated as such.

2. Use of NORMAL ENFORCEMENT process for NSTS requirement violations

The Regional Office will use the normal enforcement process to evaluate the non-compliance, if the above conditions do not apply. Typically citing a violation at severity level IV will be appropriate for isolated failures, and consideration of escalated enforcement will be appropriate for violations that have direct regulatory and potential security impact which require NRC's action; programmatic failures (such as those that are repeat violations, those resulting from the licensee not having an established tracking system, or those caused by the licensee's failure to have a credentialed point of contact); and violations involving willfulness. At this time, there will be no distinction in the enforcement of an apparent violation for a late report to the NSTS and an apparent violation for a failure to report to the NSTS.

This EGM will be in effect until further notice.

cc: R. W. Borchardt, EDO  
M. Virgilio, DEDMRT  
B. Mallett, DEDR  
SECY

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