



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

EGM-23-001

December 5, 2023

MEMORANDUM TO: Raymond K. Lorson, Regional Administrator, Region I
Laura A. Dudes, Regional Administrator, Region II
Jack B. Giessner, Regional Administrator, Region III
John D. Monninger, Regional Administrator, Region IV
Andrea Veil, Director, Office of Nuclear Reactor Regulation
John W. Lubinski, Director, Office of Nuclear Material Safety
and Safeguards
Mirela Gavrilas, Director, Office of Nuclear Security
and Incident Response

FROM: David L. Pelton, Director **David L. Pelton**
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM – INTERIM
GUIDANCE FOR DISPOSITIONING VIOLATIONS ASSOCIATED
WITH THE ENHANCED WEAPONS, FIREARMS BACKGROUND
CHECKS, AND SECURITY EVENT NOTIFICATION RULE

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PURPOSE:

This enforcement guidance memorandum (EGM) provides guidance to U.S. Nuclear Regulatory Commission (NRC) inspection staff on the use of enforcement discretion for dispositioning violations related to a licensee's implementation of the "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," final rule (hereafter referred to as the Enhanced Weapons rule (EWR)). Specifically, this EGM provides guidance to the NRC staff to exercise enforcement discretion for certain violations associated with Title 10 of the *Code of Federal Regulations* (10 CFR) 73.1215, "Suspicious activity reports," and certain violations associated with licensees identifying and reporting instances of contraband at their sites. This EGM also provides guidance associated with enforcement discretion in cases where a licensee has submitted a request for an exemption from portions of the EWR.

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BACKGROUND:

The EWR was published in the *Federal Register* on March 14, 2023 ([88 FR 15864](#)), and became effective on April 13, 2023. Licensees subject to the rule (e.g., power reactors, independent spent fuel storage installations, fuel cycle facilities, and non-power production and utilization facilities) are required to come into compliance with the rule by January 8, 2024.

The rule has three parts: (1) enhanced weapons and preemption authority, (2) revised security event notification requirements, and (3) new requirements for suspicious activity reporting. To support compliance with the rule, the staff revised Regulatory Guide 5.62, and issued Regulatory Guides 5.86, and 5.87, and NUREG-2264.^{1 2 3 4}

The NRC staff conducted three public workshops in May 2023. The purpose of these workshops was to discuss the new requirements and answer questions about the rule and guidance. Subsequent to the workshops, the NRC staff and industry stakeholders (e.g., the Nuclear Energy Institute and the Decommissioning Plant Coalition) identified rule language that created implementation challenges. The specific rule provisions at issue include the requirement in 10 CFR 73.1215(c)(3)(iv) for licensees to notify “the local Federal Aviation Administration (FAA) control tower” of suspicious activity involving overflights and the new definition of the term “contraband” in 10 CFR 73.2, which includes a specific reference to “disease-causing agents.” The NRC staff and industry also identified aspects of the regulatory guidance associated with the EWR that would benefit from additional clarification. Some industry stakeholders indicated that the challenges created by the ambiguities in the rule language and the regulatory guidance would result in them needing additional time to implement the EWR. Accordingly, these stakeholders indicated that they would be seeking exemption requests from the compliance date of the EWR rule.

After assessing the issues identified through the workshops, the NRC staff concluded that licensees may not be able to comply with certain provisions of the EWR as written. With respect to FAA notifications, the staff concluded that licensees may have difficulty implementing the EWR provision requiring licensees to notify the “local FAA control tower.” Specifically, through interactions with the FAA, the NRC staff concluded that the local FAA control tower may not be the correct point of contact for making suspicious activity reports involving aircraft because local FAA control towers may not have the on-site resources or mission requirement to process these types of reports. With respect to the definition of contraband in 10 CFR 73.2, the NRC staff concluded that requiring licensees to identify and report disease-causing agents as an example of other dangerous materials could not practically be implemented because such identification would exceed the reasonable capabilities of a licensee’s physical protection program.

¹ RG 5.62, Revision 2, “Physical Security Event Notifications, Reports, and Records,” (ML17131A285).

² RG 5.86, Revision 0, “Preemption Authority, Enhanced Weapons Authority, and Firearms Background Checks,” (ML17131A296).

³ RG 5.87, Revision 0, “Suspicious Activity Reports under 10 CFR Part 73” (ML17132A163).

⁴ NUREG-2264, Revision 0, Volumes 1 – 4, “Weapons Safety Assessment,” (ML18108A014).

BASIS FOR ENFORCEMENT DISCRETION:

This EGM is intended to provide guidance to the NRC inspection staff on conditions under which enforcement discretion is appropriate to disposition apparent violations associated with notification of the FAA under 10 CFR 73.1215, "Suspicious activity reports." The EGM also provides guidance on dispositioning violations associated with requirements for searching for and reporting on contraband, such as those in 10 CFR 73.55, 10 CFR 73.1200, and 10 CFR 73.1210, based on the challenges created by the new definitions of "contraband" and "Time of Discovery" in 10 CFR 73.2. Finally, the EGM also provides guidance on the use of enforcement discretion in cases where a licensee has submitted an exemption request associated with specific elements of the EWR (e.g., to request additional time to implement specific provisions of the rule), but the NRC staff has not dispositioned that request by the rule's compliance date.

ACTIONS:

If an inspector identifies a potential violation in these specified areas, the inspector should notify the appropriate Regional or Headquarters Branch Chief before conducting the exit meeting with the licensee. All potential violations shall be brought back to the applicable Regional or Headquarters Office for evaluation of each potential violation and as appropriate take the actions described below.

A. Violations Associated with 10 CFR 73.1215(c)(3)(iv) and 10 CFR 73.1215(c)(5)(ii)

The applicable office shall evaluate each potential violation and take the following action:

1. Use ENFORCEMENT DISCRETION to not issue a violation for a) failure to comply with the requirement to notify the local FAA control tower within 4 hours, in accordance with 10 CFR 73.1215(c)(3)(iv), or b) failure to establish a point of contact with the local FAA control tower in accordance with 10 CFR 73.1215(c)(5)(ii), if the following conditions are met:
 - a) In lieu of reporting suspicious activities involving aircraft within 4 hours of discovery to the local FAA control tower or establishing a point of contact with the local FAA control tower, the licensee:
 - i. Makes a reasonable attempt to contact the FAA within 4 hours of discovery using either the FAA's Domestic Event Network at 540-422-4423, 540-422-4424, or 540-422-4425 (for licensees with approved temporary flight restrictions); the appropriate FAA Flight Standard District Office point of contact (for licensees without approved temporary flight restrictions); or through other preestablished arrangements with the FAA; and
 - ii. Completes other notifications regarding suspicious activity reporting to specified local and Federal agencies in accordance with 10 CFR 73.1215; and
 - iii. Ensures that these reporting protocols are included in relevant licensee procedures or guidance.

B. Violations Associated with Application of the 10 CFR 73.2 Definition of Contraband to Search and Reporting Requirements in 10 CFR 73.55, 10 CFR 73.1200, and 10 CFR 73.1210

The applicable office shall evaluate each potential violation and take the following action:

1. Use ENFORCEMENT DISCRETION to not issue a violation for failure to search for and report attempted or actual introduction of contraband into the facility in accordance with 10 CFR 73.55, 10 CFR 73.1200, and 10 CFR 73.1210, using the definition of contraband in 10 CFR 73.2, if the following conditions are met:
 - a) In lieu of conducting searches for and reporting contraband using the definition of contraband in 10 CFR 73.2, the licensee:
 - i. Continues to search for, identify, and report instances of contraband as described in the licensee's current physical security plan, security procedures, or NRC-approved guidance, as applicable; and
 - ii. Continues to maintain all training in accordance with the licensee's current training and qualification plan, if applicable; and
 - iii. Continues to maintain all site procedures covering the process for searching and identifying contraband in accordance with the licensee's current physical security plan, security procedures, or NRC-approved guidance, as applicable.

C. Violations Associated with Issues Addressed by Exemption Requests Under NRC Review

If the licensee submits a request for an exemption from certain provisions of the EWR because of asserted ambiguities in the EWR regulatory guidance, the NRC will defer reaching an enforcement decision on any potential violations that would be addressed by the exemption request until the NRC staff completes its review of the request, if the following conditions are met:

1. The NRC has docketed an exemption request from the licensee associated with one or more of the following requirements:
 - a) 10 CFR 73.2, "Definitions," for the terms "Contraband," and "Time of Discovery;"
 - b) 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping;"
 - c) 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events;"
 - d) 10 CFR 73.1205(a) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events;"
 - e) 10 CFR 73.1210(a) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events;" and/or
 - f) 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports;" and
2. The licensee continues to comply with security event reporting, consistent with the

requirements in 10 CFR 73.71, "Reporting of Safeguards Events;" Appendix G to Part 73, "Reportable Safeguards Events;" in effect prior to March 2023, and the licensee's current physical security plans and procedures; and

3. The licensee continues to apply the definitions of the terms "Contraband" and "Time of Discovery" in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors," or in the licensee's physical security plans and procedures as applicable.

If the NRC finds that the exemption request should be granted, it will exercise enforcement discretion and not take enforcement action for any prior violation that was remedied by the exemption. If the NRC denies or the licensee withdraws the exemption request, the NRC will disposition the violation through the normal enforcement process, i.e., Enforcement Policy.

Use of the Normal Enforcement Process

The NRC will use the normal enforcement process to evaluate and disposition violations in cases not described in paragraphs A, B, or C above.

DISPOSITION OF VIOLATIONS:

If it is determined that the violation meets the criteria for using discretion, the appropriate office can disposition the violation without a Headquarters enforcement panel. However, the violation shall be assigned an enforcement action number to document the exercise of enforcement discretion and use of this EGM. This discretion is not limited to the initial inspection identifying the violation and can be applied to subsequent inspections provided that all the criteria continue to be met.

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

A violation associated with [insert requirement as appropriate] was identified during this inspection. In accordance with the Enforcement Policy, this violation would normally be categorized as a [insert the appropriate significance] violation. However, in accordance with NRC Enforcement Guidance Memorandum EGM-23-001, issued 12/05/23, the NRC is exercising enforcement discretion and not pursuing an enforcement action for this violation.

The letter to the licensee should include the following, or similar, language:

Although a violation associated with [insert requirement as appropriate] was identified and the issue was discussed during the exit meeting, [insert as appropriate: the licensee's name or "your program"] met all criteria in EGM-23-001 for use of enforcement discretion, therefore NRC is exercising enforcement discretion and will not issue an enforcement action for this violation.

EXPIRATION:

This EGM will remain effective until the underlying technical issue is dispositioned through rulemaking or NRC determination on all exemption requests, whichever occurs later.

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM – INTERIM GUIDANCE FOR DISPOSITIONING VIOLATIONS ASSOCIATED WITH THE ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATION RULE. DATE: 12/05/2023

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