



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

(FSME-09-083, September, Program, NSTS)

September 18, 2009

ALL AGREEMENT STATES, MICHIGAN, NEW JERSEY

NRC NOTIFICATION OF ISSUANCE OF ENFORCEMENT GUIDANCE
MEMORANDUM-09-007, REVISION 1, INTERIM GUIDANCE FOR DISPOSITIONING
VIOLATIONS OF NATIONAL SOURCE TRACKING SYSTEM (NSTS)
REQUIREMENTS (FSME-09- 083)

Purpose: On August 28, 2009, the U.S. Nuclear Regulatory Commission (NRC) issued the enclosed revised enforcement guidance memorandum (EGM) for use as interim guidance in dispositioning violations of NSTS requirements. This letter is intended to inform all Agreement States of NRC's action. No action or response on the part of the Agreement States is requested or required. The Agreement States may choose to take similar actions.

Background: The President signed the Energy Policy Act of 2005 into law on August 8, 2005. That statute contains a national source tracking provision, which required the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. In response to that mandate, the National Source Tracking System (NSTS) was developed through close cooperation with other Federal and State agencies to enhance the accountability of radioactive sources. The NRC determined that the sources to be tracked nationally are Category 1 and Category 2 sources, as described by the International Atomic Energy Agency (IAEA) *Code of Conduct*. The NRC also expanded the list of nationally tracked sources by adding four extra materials (Actinium-227, Polonium-210, Thorium-228, and Thorium-229). The NRC issued the Final Rule incorporating the NSTS into the agency's regulations in November 2006, set forth in Title 10, Section 20.2207, of the Code of Federal Regulations, "Reports of Transactions Involving Nationally Tracked Sources." The NRC determined that the interim guidance was needed until the enforcement manual or enforcement policy could be revised to include the topic of dispositioning NSTS violations.

Discussion: The NSTS meets the U.S. Government's commitment to implement a national source registry which will help the NRC and the Agreement States to track and regulate the uses of certain nuclear materials from the time they are manufactured or imported through the time of their disposal or exportation.

The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of national source tracking system (NSTS) requirements. The EGM contains a discussion of the conditions under which a certain severity level of violation should be issued and examples of violations that would warrant a Notice of Violation (NOV). The EGM also provides sample inspection report and cover letter language.

The first revision performed on the NSTS EGM was to take out an inaccurate example that was given in the escalated enforcement section of the EGM that said that a licensee must have a credentialed point of contact. A credentialed person is required for actual use of the internet NSTS database, but credentialing is not needed for a person who is faxing information to the NRC.

This EGM is in effect until further notice.

If you have any questions regarding this correspondence, please contact me at (301) 415-3340 or the individual named below.

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Terry Reis for */RA/*
Robert J. Lewis, Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosure:
EGM-09-007, Revision 1, Enforcement
Guidance Memorandum – Interim
Guidance for Dispositioning Violations of
National Source Tracking System (NSTS)
Requirements

August 28, 2009

EGM-09-007 Rev.1

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
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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 (e.g., repeat violations and those resulting from the licensee not having an established tracking system); 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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