



U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards Office Instruction

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Office Instruction Title: **NMSS Coordination of Enforcement Activities**

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Responsible Organization: **NMSS/FCSS**

Summary of Changes: This is the initial issuance of NMSS-LIC-156. This office instruction was developed from NMSS Policy and Procedures Letter 1-55, Rev.1 "Procedure for Coordination of Regional Events and Enforcement Activities," 1998, with modifications to address current practices as described in the NRC Enforcement Manual.

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OFFICIAL RECORD

NMSS Office Instruction

NMSS-LIC-156

NMSS Coordination of Enforcement Activities

1. **PURPOSE**

The purpose of this office instruction is to define the process which the Office of Nuclear Material Safety and Safeguards (NMSS) will use to coordinate enforcement activities for U.S. Nuclear Regulatory Commission (NRC) licensees and certificate holders under Title 10 of the Code of Federal Regulations (10 CFR) Part 40, 70, 71, 72 and/or Part 76 with the Office of Enforcement (OE) and the Regional Offices.

This office instruction is being issued to provide more consistent NMSS involvement in both Headquarters and regional enforcement cases involving NRC fuel cycle, and spent fuel storage and transportation licensees and certificate holders. The processes and procedures in this office instruction are consistent with the authorities, delegations, and procedures outlined in more detail in the NRC Enforcement Manual.

2. **GENERAL GUIDANCE**

The NRC Enforcement Policy governs the processes and procedures for the initiation and review of violations of NRC requirements. The NRC Enforcement Manual provides guidance on the implementation of the NRC Enforcement Policy. Both the NRC Enforcement Policy and Enforcement Manual are owned and issued by the Office of Enforcement.

Enforcement actions are dispositioned in accordance with the NRC Enforcement Policy. The NRC Enforcement Policy applies to NRC licensees and certificate holders, applicants, their contractors and suppliers, vendors supplying components to NRC licensees, and employees of any of these entities, for work done under an NRC construction authorization, license or certificate.

During the enforcement process, as a program office, NMSS determines whether technical issues are being addressed in accordance with relevant technical guidance, identifies regulatory implications, and assures regulatory interpretations are consistent. Staff with specific technical expertise may be consulted as needed to facilitate the enforcement panel discussion.

In addition, for fuel cycle facilities licensed or certified in accordance with 10 CFR Part 40, 70 or 76, and for spent fuel storage installations licensed under Part 72, and transportation packages certified under Part 71, this office instruction incorporates by reference the guidance outlined in the following Inspection Manual chapters (IMC):

- IMC 0616, "Fuel Cycle Safety and Safeguards Inspection Reports"
- IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports"
- IMC 0617, "Vendor and Quality Assurance Implementation Inspection Reports"

- IMC 2606, "Assessment of the Change in Risk Resulting From a Violation at a Fuel Cycle Facility"
- IMC 2630, "Mixed Oxide Fuel Fabrication Facility Construction Inspection Program"
- IMC 2690, "Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for 10 CFR Part 71 Transportation Packagings"
- IMC 2694, "USEC Inc. Gas Centrifuge Facility Construction and Pre-Operational Readiness Review Inspection Programs"
- IMC 2696, "Louisiana Energy Services Gas Centrifuge Facility Construction and Pre-Operational Readiness Review Inspection Programs"

Currently, Region II, Division of Fuel Facility Inspection maintains responsibility for conducting the majority of the inspections at operating fuel facilities. Region II, Division of Construction Projects and the Division of Construction Inspection, conduct the majority of inspections at fuel facilities under construction. Certain inspections, such as material control and accounting inspections and criticality safety inspections are conducted by inspection staff from the NMSS/Division of Fuel Cycle Safety and Safeguards (FCSS). NMSS/FCSS maintains the responsibility to oversee the development and effective implementation of the fuel cycle oversight programs, with support from Region II.

Likewise, inspections of shipping packages and casks, including fabrication of components for these packages and casks are conducted by NMSS/Division of Spent Fuel Storage and Transportation inspection staff.

It is expected that the NMSS Enforcement Coordinator (Coordinator) will work with RII, NMSS and OE staff to ensure that appropriate enforcement actions are taken for all fuel cycle, packaging and cask inspection findings. The Coordinator will keep NMSS/FCSS informed of any potential enforcement action that could impact their roles and responsibilities.

3. SPECIFIC REQUIREMENTS

3.1 Assignment and Responsibilities of the NMSS Enforcement Coordinator

The Director of NMSS assigns the personnel (and assistants or alternates as necessary) to perform the role of the NMSS Enforcement Coordinator.

The NMSS Enforcement Coordinator performs the following duties as outlined below:

- Oversees the implementation of the Enforcement Policy, the Enforcement Manual and this office instruction. Acts as the primary contact within the office and supports the Region for all enforcement matters. This includes issues evaluated by the Revised Fuel Cycle Oversight Process (RFCOP), once it is implemented, and issues evaluated using Traditional Enforcement (i.e., issues involving actual consequences, willfulness, or that have the potential for impacting the regulatory process).

- Ensures that the staff follows the guidance provided in the Enforcement Manual for the issuance of Demands for Information (DFIs), Orders and Notices of Deviations (NODs), and Confirmatory Action Letters (CALs).
- Serves as the point of contact for issuing an Enforcement Action number to NMSS generated CALs, along with updating the status of the CAL in the Enforcement Action Tracking System; and ensures that NMSS issued CALs meet the requirements of the Enforcement Manual.
- Keeps any impacted NMSS division informed of any enforcement actions that could potentially affect their roles and responsibilities. Works with the NMSS cognizant staff and managers as appropriate to ensure that the enforcement strategy for actions proposed by the Region and headquarters inspectors are technically adequate, have been evaluated from an overall agency perspective, and are consistent with previous actions or staff positions.
- Supports and provides guidance to the appropriate division and branch in NMSS for issues identified during inspections. These activities include the review of inspection reports and the documentation of issues identified as notice of nonconformance (NON), notice of violation (NOV), non-cited violations (NCV), coordination with OE for disputed non-escalated and escalated enforcement actions (NOVs, NCVs, and NONs) or any other applicable enforcement action.
- Maintains communication with the Region on emerging enforcement issues and ensures appropriate staff participation at enforcement panels) and for pre-decisional enforcement conferences to provide policy support, when warranted.
- Consolidates NMSS views on the enforcement strategy for proposed escalated actions and forwards NMSS comments (verbally, electronically, or in writing) to OE and to the regional enforcement specialist.
- Reviews all applicable Office of Investigation (OI) reports to identify immediate safety issues, coordinates with appropriate NMSS staff, provides NMSS' perspective in determining appropriate enforcement action and supports the Regional Office, as needed with any received OI report (see the Enforcement Manual).

3.2 Coordination of Escalated Enforcement Actions using Traditional Enforcement

At this time, most NMSS enforcement issues are addressed under the traditional enforcement approach (i.e., use of severity levels and civil penalties). The Enforcement Manual contains detailed guidance on escalated enforcement actions. The Coordinator is the primary point of coordination within NMSS for escalated enforcement actions.

The Coordinator performs the following functions in support of the traditional enforcement process:

- Serves as the primary point of coordination for regional and headquarters personnel for severity determinations and enforcement panel worksheets. The Coordinator normally accomplishes these activities via communication with the Regional Enforcement Officer or regional enforcement specialist. The Coordinator will distribute the packages received from the Region to the responsible technical divisions, usually not later than three working days prior to the panel.
- Reviews all NMSS-related enforcement packages for escalated enforcement actions recommended by the regional offices. The purpose of this review is to ensure that violations have been adequately established; the significance of the violations has been evaluated from an overall agency perspective; and all requirements in the Enforcement Manual are addressed. This review serves as a check prior to the enforcement panel to assure consistency among the panels. To improve efficiency and effectiveness of panels, if the program office does not agree with the Region's proposed enforcement action, the NMSS Coordinator should assure that NMSS SES level management is in attendance at the Enforcement Panel.
- Participates in enforcement panels as a representative of NMSS. .
- Supports pre-decisional enforcement conferences (PECs) for traditional enforcement issues, as necessary, and participates in enforcement caucuses to ensure the enforcement policy is adequately implemented. NMSS participation in the enforcement panel, PEC, and caucus shall be in accordance with the relevant guidance in the Enforcement Manual.
- Clarifies whether NMSS review or concurrence of the choice letter is requested for inspection findings that are characterized as potentially Severity Level I, II, or III (see examples in Section 6 of Enforcement Policy). The Coordinator also coordinates review of Notice of Violation letters, coordinates NMSS comments, as applicable, and provides verbal concurrence for NMSS to the Region via the assigned OE specialist. For Severity Level IV findings, these reviews and concurrences will be done only if the panel determines they are needed.
- Works with OE to support their completion of the following actions:
 - OE concurrence on those inspection findings that are identified as apparent violations. Such findings are deemed escalated enforcement actions and require review and concurrence from the Director, Office of Enforcement.
 - Issuing Enforcement Notifications (ENs) to the Commission prior to the issuance of an escalated enforcement action.
 - Providing a Regulatory Notification (RN) to the Commission prior to issuing a significant regulatory action or an order that requires additional safety measures beyond the regulatory framework (versus an order based on compliance issues, e.g., 2002 security orders).
 - Tracking the timeliness and status of enforcement actions that are associated with findings that have been identified as apparent violations.

- Providing a status update to the Congressional Report that includes Non-Cited Violations and Escalated Enforcement actions issued under the Fuel Cycle Safety Program or Spent Fuel Storage and Transportation Safety Program.

3.3 Coordination of Enforcement Actions using the Fuel Cycle Oversight Process

UNDER DEVELOPMENT: A new Revised Fuel Cycle Oversight Process (RFCOP) is being developed to provide more consistent and predictable oversight of fuel cycle licensees. This new process will include guidance for processing inspection findings, determining their significance, and identifying appropriate escalated enforcement actions for apparent violations.

The RFCOP also provides licensees the opportunity to develop and implement a corrective action program (CAP). Once NRC has verified the effectiveness of the licensee's CAP, it can be used to disposition certain violations (Severity Level IV) in lieu of traditional NRC enforcement actions.

3.4 Deleted

3.5 Coordination of OI Related Cases or Staff Suspected Wrong-Doing

Non-compliances associated with "Deliberate Misconduct" and "Employee Protection," as defined by the applicable regulation, or other matters related to Office of Investigations activities will be coordinated through the assigned OE Enforcement Specialist. The assigned OE staff will work with the Office of General Counsel to provide clarification on regulations and assistance in preparing enforcement related packages. The Coordinator reviews all substantiated OI reports transferred by the Allegation Team. If further action from NMSS is warranted, the Coordinator provides the report to the appropriate Division Director in NMSS. As discussed in the Enforcement Manual, NMSS will have the lead for preparing the enforcement worksheet, scheduling and leading the enforcement panel, drafting the choice letter or preliminary enforcement conference letter, holding the enforcement conference and related follow-up for the final enforcement action, for cases NMSS has the lead on (see Section 2 above).

3.6 Coordination with OE Pertaining to Issuance of Orders

The issuance of Orders in relation to an enforcement action is addressed in the Enforcement Policy. In addition, 10 CFR 2.202 sets forth the procedures for issuing orders. An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such action as may be proper. Orders may be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Requirements contained in orders are legally binding (i.e., enforceable).

Once the decision is made that an order is necessary, the lead NMSS Division should inform the Coordinator. The lead Division will draft the order. The Coordinator will review the draft order and serve as the point of contact for NMSS

reviews, comments, and concurrence for subsequent changes or revisions made to the order after submission to OE and OGC for review and approval. The Coordinator will interact with OE to ensure that the Order is assigned an Enforcement Action (EA) number, that a RN is issued, and that the Order can be posted on the public web site. Orders based on compliance issues are issued by OE. The Coordinator should facilitate any interaction between NMSS and OE necessary for issuance of compliance based Orders.

3.7 Coordination with OE when Issuing Confirmatory Action Letters

Detailed guidance on development, issuance, and tracking of CALs is provided in the Enforcement Manual.

A CAL is a letter issued by the NRC to a licensee, applicant, certificate holder, vendor, etc., confirming an agreement to take specific actions in response to significant NRC concerns regarding health and safety, safeguards, or the environment. A recipient of a CAL is expected to adhere to any obligations and commitments. However, unlike orders, the provisions of a CAL are not legally binding requirements. CALs are normally used for emergent situations where the staff believes that it is neither necessary nor appropriate to develop a legally binding requirement in light of the agreed-on commitment.

The OE is the agency's centralized control point for oversight and implementation of the CAL process. However, CALs do not need to be coordinated with or concurred in by OE, unless specifically requested.

If NMSS staff is considering issuing a CAL, they should contact the Coordinator. The lead Division is responsible for drafting the CAL. Copies of all CALs should be forwarded to the Coordinator for review before issuance, to enable the Coordinator to verify that the actions are consistent with the enforcement policy and precedents. The Coordinator is responsible for:

- Ensuring that CALs meet the guidance in the Enforcement Manual.
- Assigning an Enforcement Action (EA) number to CALs issued by NMSS.
- Updating the Enforcement Action Tracking System (EATS) with the status of the CAL.

3.8 Documentation of Enforcement Actions

The Coordinator and alternate are expected to keep records of all cases in which they participated in the enforcement board/panel. After the enforcement board/panel, the Coordinators should create a folder for the EA and maintain all records associated with the EA, including the draft inspection report, draft NOV, pre-decisional enforcement conference transcript, etc. Once the action is issued, the Coordinators should delete all associated documents, except for the EA issued.

All EAs issued to individuals (i.e., Individual Actions (IAs)) are assigned EA and IA numbers. However, because of privacy law prohibitions, actions against

individuals, such as orders, must not be kept in EA files. Rather, IA folders must be created that do not associate the individual action with the assigned EA number.

3.9 Follow-up on Enforcement Actions

The Coordinator should review all escalated enforcement actions in the EATS on a monthly basis to maintain an awareness of the status of all NMSS-related cases and to identify potential generic issues that may be associated with frequently cited violations.

3.10 General Time Line for Processing Escalated Enforcement Actions

The Enforcement Manual provides timeliness metrics for various escalated and non-escalated enforcement actions. In certain cases, the time necessary for processing enforcement actions may vary from these metrics, depending upon the complexity of the inspection findings, involvement with the OI, and other factors which may delay the process. Coordination with the OE is important to ensure the metrics are met whenever possible.

4. RESPONSIBILITIES AND AUTHORITIES

Office Director

The Director, NMSS, appoints the Coordinator and oversees the implementation and effectiveness of the responsibilities contained within this office instruction. The Director also ensures that all NMSS personnel conduct activities related to enforcement consistent with established policy, guidance, and procedures. The delegation of authority from OE to NMSS for matters related to enforcement is described in the Enforcement Manual.

NMSS Enforcement Coordinator

The Coordinator carries out the duties described in this office instruction and the Enforcement Manual and maintains this office instruction to ensure consistency with current policy and procedures.

NMSS Staff

NMSS staff members are responsible for following the procedures in this office instruction. Staff members assigned to process an enforcement action should contact the NMSS Coordinator.

Signature Authority

All matters related to signature authority for enforcement actions are delineated in the NRC Enforcement Manual. Within NMSS, signature authority shall be consistent with NMSS Office Instruction NMSS-ADM-101, "Delegation of Signature Authority."

5. REFERENCES

- NRC Enforcement Policy
- NRC Enforcement Manual
- NMSS Office Instruction ADM-101 "NMSS Delegation of Authority"
- NUREG/CR-6314 Quality Assurance Inspections for Shipping and Storage Containers"
- IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports"
- IMC 0616, "Fuel Cycle Safety and Safeguards Inspection Reports"
- IMC 2606, "Assessment of the Change in Risk Resulting From a Violation at a Fuel Cycle Facility"
- IMC 2630, "Mixed Oxide Fuel Fabrication Facility Construction Inspection Program
- IMC 2690, "Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for 10 CFR Part 71 Transportation Packagings"
- IMC 2694, "USEC Inc. Gas Centrifuge Facility Construction and Pre-Operational Readiness Review Inspection Programs"
- IMC 2696, "Louisiana Energy Services Gas Centrifuge Facility Construction and Pre-Operational Readiness Review Inspection Programs"
- NMSS Policy and Procedures Letter 1-55, Rev.1 "Procedure for Coordination of Regional Events and Enforcement Activities"

Enclosures:

1. Change History
2. List of Acronyms
3. Checklist for Development and Closure of Confirmatory Action Letters

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List of Acronyms

CAL	Confirmatory Action Letter
CAP	Corrective Action Program
CoC	Certificate of Compliance
DFI	Demand for Information
EA	Enforcement Action
EATS	Enforcement Action Tracking System
EN	Enforcement Notification
FCOP	Fuel Cycle Oversight Process
IA	Individual Action
IMC	Inspection Manual Chapter
NCV	Non-cited Violation
NOD	Notice of Deviation
NON	Notice of Non-Conformance
NOV	Notice of Violation
OE	Office of Enforcement
OGC	Office of General Counsel
OI	Office of Investigations
PEC	Pre-decisional Enforcement Conference
RN	Regulatory Notification
SERP	Significance and Enforcement Review Panel

Checklist for Development and Closure of Confirmatory Action Letters

General instructions

- Guidance, instructions and formats for the preparation of a Confirmatory Action Letter (CAL) is contained in the Enforcement Manual.
- All phone calls to licensee, vendor, or certificate holder should be made by a Supervisor, or manager and another person.
- Material drafted for a CAL should have author, date and time, and Agencywide Documents Access and Management System number.
- Until issued, treat a CAL as pre-decisional.

Development

- ___ 1. Discuss concept, rationale, and basic content of CAL with Division management.
- ___ 2. Coordinate with a Regional Coordinator (RC), if necessary.
- ___ 3. Get CAL number from the Office of Nuclear Material Safety and Safeguards Enforcement Coordinator.
- ___ 4. Develop draft CAL using the format in the Enforcement Manual, and include a list of actions to be confirmed, with schedule for each action.
- ___ 5. Discuss with licensee, vendor, or certificate holder management.
- ___ 6. Get draft CAL reviewed by branch chief and inspection team leader.
- ___ 7. Revise draft as needed and send CAL to the RC, the Office of the General Counsel, and Division management for review.
- ___ 8. Incorporate any additional comments and prepare final package for concurrence.
- ___ 9. Coordinate with the following, as appropriate:
 - ___ Office of Congressional Affairs
 - ___ Regional Office(s)
 - ___ Office of Federal and State Materials and Environmental Management Programs
 - ___ Office of Public Affairs (OPA)
 - ___ Office of Nuclear Reactor Regulation
 - ___ Office of Nuclear Security and Incident Response
 - ___ NMSS Divisions (as appropriate)
 - ___ U.S. Department of Transportation
 - ___ Agreement State (if applicable)
 - ___ Office of International Programs
 - ___ Executive Director for Operations staff assistant
 - ___ Other specific to CAL
- ___ 10. Read final letter to licensee, vendor, or certificate holder for agreement after Division Director's concurrence, but before Office Director's.
- ___ 11. After Office Director signs send a copy to licensee, vendor, or certificate holder management.
- ___ 12. Give to Division secretary for dispatch, including fax, or hand-carry to OPA and
- ___ 13. Consider issuing Preliminary Notification (see Inspection Manual Chapter 1120, "Preliminary Notifications").

Closure

- ___ 1. Maintain cognizance of licensee, vendor, or certificate holder's status of completion of CAL commitments and due dates.

- ___ 2. Where NRC actions are required, provide timely responses to licensee, vendor, or certificate holder.
- ___ 3. Include inspections to determine compliance with CAL commitments, as appropriate.*
- ___ 4. When all CAL commitments have been satisfactorily met, transmit letter to licensee, vendor, or certificate holder closing out the CAL. Provide RC a copy of the letter.

* To be determined on a case-by-case basis.