

September 25, 2003

Mr. Steven Venkus
U.S. Coast Guard
U.S. Department of Homeland Security
Commandant (G-LRA), Room 3406
2100 2nd Street, SW
Washington, DC 20593

SUBJECT: COMMENTS ON THE USCG'S DRAFT FINAL RULE IMPLEMENTING THE NATIONAL MARITIME SECURITY INITIATIVES (RIN 1625-AA69)

Dear Mr. Venkus:

In response to your request presented at meetings between the U.S. Coast Guard (USCG) and other Federal agencies on September 3, 4, and 5, 2003, which included the U.S. Nuclear Regulatory Commission (NRC), I am providing comments on the USCG's draft final rule to revise 33 CFR Parts 101, 102, 103, 104, 105, and 106 implementing the National Maritime Security Initiatives, as described in your *Federal Register* notice of July 1, 2003 (68 FR 39239).

The NRC strongly supports the USCG's efforts to improve the security of our Nation's marine transportation system and the critical maritime infrastructure. The NRC staff has reviewed the draft final rule and is providing the enclosed comments for your consideration.

Additionally, we recommend developing a joint Memorandum of Agreement or Memorandum of Understanding (MOA or MOU) between our two agencies to ensure efficient and effective regulatory oversight of NRC-licensed activities which also fall under the USCG's concurrent jurisdiction under the *Maritime Transportation Security Act of 2002*. We look forward to working with the USCG in the future on such efforts.

The NRC's Office of Nuclear Security and Incident Response (NSIR) is available to meet with you, as necessary, to assist in your finalizing of the USCG's final rule implementing the National Maritime Security Initiatives. Please have your staff contact Mr. Albert Tardiff of the NSIR staff if you have any questions on our comments. He may be reached at (301) 415-7015, or by e-mail at AXT1@nrc.gov.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Nuclear Security
and Incident Response

Enclosure: NRC Comments on USCG Draft Final Rule

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Roy P. Zimmerman, Director
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NRC Comments on USCG Draft Final Rule Implementing the National Maritime Security Initiatives in 33 CFR Parts 101, 102, 103, 104, 105, and 106

The NRC is providing the following comments to the USCG's draft final rule to implement the National Maritime Security Initiatives as described in your *Federal Register* notice of July 1, 2003 (see 68 FR 39239).

General Comments:

1. Overall, there are various overlapping regulatory requirements between current NRC regulations and the USCG's draft final rule. The NRC recommends that the NRC and USCG establish a joint MOA or MOU to clarify agency responsibilities in a manner to assure protection of the public and reduce duplicative and unnecessary regulatory burden on NRC licensees who are also affected owners under the USCG's draft final rule. The objective of such an MOA or MOU should be to ensure both agency's security requirements are met in the most effective and efficient manner possible.

Specific topic areas the NRC suggests for consideration in an MOA or MOU include: risk (or vulnerability) assessments, security plans, alternative security programs, Area Maritime Security Committee involvement, Area Maritime Security plans, joint emergency preparedness exercises, maritime security (MARSEC) levels issued by the USCG under the Homeland Security Advisory System (HSAS) versus HSAS levels issued by the NRC, joint inspections, inspection reports, enforcement actions, and obligations regarding the protection of sensitive unclassified SAFEGUARDS INFORMATION under Section 147 of the *Atomic Energy Act of 1954*.

The NRC suggests development of an MOA or MOU begin after the USCG publishes the final rule and that an MOA or MOU be finalized by June 2004. This approach would support international shipping requirements that are required to be in place by July 2004.

2. With respect to the NRC's headquarters and regional emergency response organizations participating in periodic emergency preparedness exercises involving NRC-licensed facilities covered under Parts 103 and 105, the NRC already participates in several exercises annually and will participate in these exercises consistent with the NRC's strategic plan, our obligations to other agencies, available resources, and schedules. As noted in comment 1 above, the issue of joint emergency preparedness exercises is a topic recommended for the MOA or MOU.

Specific Comments:

3. In 33 CFR 101.305, paragraph (a), owners or operators who are required to have a security plan under 33 CFR Parts 104, 105, and 106 are required to report "suspicious activity" to the USCG's National Response Center via telephone or fax. It is not clear what activities are covered by the phrase "suspicious activity." NRC licensees who operate nuclear power plants and other significant NRC-licensed nuclear facilities

already report suspicious incidents to the NRC Operations Center. The NRC and USCG could exchange this information to enhance coordination and reduce unnecessary burden on licensed activities. The NRC also recommends adding a definition for suspicious activity to § 101.105 or providing clarification in a guidance document accompanying the final rule.

In addition, it may be desirable to treat such notifications received and assessed by the USCG as sensitive unclassified information, rather than classified national security information. This would permit the prompt sharing of such information to other NRC licensees and to first responders who do not possess security clearances.

4. In 33 CFR 101.305, paragraphs (a), (b), and (c), a timeliness requirement is not provided for owners and operators in completing notifications of security events to the USCG's National Response Center. To clarify expectations and to simplify future implementation of the rule, the NRC recommends adding a specific completion time for notifications under this section. The NRC suggests modifying the phrase "without delay" by adding "and not later than X minutes". The NRC believes that initial notification times of 15 minutes to local officials and subsequent notifications to national officials of 30 to 60 minutes are appropriate for the types of security events envisioned here. The NRC also suggests that a graded approach be utilized with shortest notification times for the most serious notifications (i.e., a Transportation Security Incident).

The NRC also notes that NRC power reactor licensees are already required to notify local officials and the NRC headquarters of security and non-security emergencies [see 10 CFR 50.72(a)(3)]. Consequently, the NRC recommends the USCG provide clarification to owners in meeting this requirement when separate notification requirements [under other Federal Regulations] simultaneously exist. In addition, consistent with comment 3 above, coordination between the agencies is warranted and encouraged.

5. In 33 CFR 101.300, paragraph (c), owners of facilities covered by Part 105 are required to "ensure confirmation" to the Captain of the Port (COTP) of their attainment of the provisions of their security plan or COTP directive, when a change in MARSEC levels is imposed. NRC licensees (who are covered by Part 105) will also receive changes in the Homeland Security Advisory System (HSAS) threat level from the NRC and notify the NRC that they are implementing the NRC's HSAS protective measures. As noted in comments 3 and 4 above, the NRC recommends the USCG provide clarification to owners in meeting this requirement when separate notification requirements simultaneously exist.

Additionally, the unstated implication of the final rule is that the MARSEC level is increasing to a higher threat level; however, the rule text only refers to changes in the MARSEC level, not whether the level is increasing or decreasing. The NRC does not believe that owners need to confirm that they have implemented lesser security measures associated with a reduction in MARSEC levels. The rule should be clarified on this point.

6. In 33 CFR 101.405 owners or operators, to receive a MARSEC Directive, are required "to prove [for each directive] that they are a person required by 49 CFR 1520.5(a) to restrict disclosure of and access to sensitive security information, and that under 49 CFR 1520.5(b) they have a need to know sensitive security information." The NRC believes that requiring owners of an NRC-licensed reactor facility covered by Parts 103 and/or 105 to prove each time that they have a need to know [when a MARSEC Directive is issued to them] is both overly burdensome and may delay dissemination of the important security information contained within the MARSEC Directive to affected facilities. The NRC recommends that affected facilities (i.e., facilities that are either part of an Area Committee or are covered by Part 105) which are included within the scope of the MARSEC Directive should be directly provided the directive on the basis that they have already demonstrated their need to know through their implementation of the USCG's regulations in Parts 103 and 105.
7. In 33 CFR 105.105, paragraph (a)(4), facilities that receive foreign cargo vessels greater than 100 gross registered tons are covered by Part 105. NRC licensed power reactor facilities may occasionally receive large replacement components (e.g. reactor vessel heads, steam generators, or main power transformers) that can weigh over a 100 tons themselves; however, these shipments occur very infrequently (on the order of once to twice per decade). In the meeting between the USCG and the NRC on September 5, 2003, the USCG staff indicated that it did not intend that such shipments would place a facility under Part 105. The NRC recommends that the rule be clarified to reflect this intent; e.g., § 105.105 should exempt facilities that receive foreign cargo vessels greater than 100 gross registered tons where such shipments are received by a facility at a frequency of no greater than once every three years.