

March 13, 2014

MEMORANDUM TO: Those on the Attached List

FROM: Roy P. Zimmerman, Director */RA/*  
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 2014-001: INTERIM GUIDANCE FOR DISPOSITIONING 10 CFR PART 37 VIOLATIONS WITH RESPECT TO LARGE COMPONENTS OR ROBUST STRUCTURES CONTAINING CATEGORY 1 OR CATEGORY 2 QUANTITIES OF MATERIAL AT POWER REACTOR FACILITIES LICENSED UNDER 10 CFR PARTS 50 AND 52 (RIN 3150-A112)

**Purpose:**

This enforcement guidance memorandum (EGM) provides guidance for dispositioning violations associated with Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," with respect to large components containing category 1 or category 2 quantities of radioactive material, or category 1 and category 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR Parts 50 and 52.

**Background:**

On March 19, 2013 (78 FR 16921), the U.S. Nuclear Regulatory Commission (NRC) issued a final rule establishing 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material" (RIN 3150-A112; NRC-2008-0120, NRC-2010-0194). The rule establishes physical protection requirements for licensees in possession of aggregated quantities of category 1 or category 2 radioactive material listed in Appendix A of 10 CFR Part 37. These requirements are similar to those imposed by orders from the NRC and the Agreement States after September 11, 2001. The NRC licensees are required to be in compliance with the rule by March 19, 2014.

For this EGM, a large component is defined as an item weighing 2,000 kilograms or more, but not containing either discrete sources or ion exchange resins. For the purpose of this definition, large components are limited to steam generators, steam dryers, turbine rotors, reactor vessels, reactor vessel heads, reactor coolant pumps, and shielding blocks. Due to their size and weight, these large components are not easily moved without cranes, rigging, and heavy equipment. In addition, these large components are not easily concealed during loading or when they are in motion, and the amount of time required to steal or divert these large components is such that it is reasonable to expect that the licensee would detect these activities.

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Also for this EGM, a robust structure is defined as a closed concrete bunker or modular vault, for which access to the radioactive materials contained within the structure, is gained only through the use of heavy equipment to remove structural components or large access blocks that weigh 2,000 kilograms or more. Access into these robust structures requires significant execution time. Typically, routine work activities, observation by licensees' authorized individuals located within or proximal to these robust structures, and/or observation by licensees' authorized individuals conducted in accordance with 10 CFR 73.55(i)(5)(ii) will provide the ability to detect actual or attempted theft and diversion considering the time needed to accomplish these activities.

After review of how 10 CFR Part 37 applies to large components and category 1 or category 2 quantities of radioactive material stored in robust structures, and after interaction with stakeholders in public meetings, the NRC has determined that enforcement discretion, under certain conditions, is appropriate for some violations of 10 CFR Part 37 at power reactor facilities while a long-term regulatory action is considered.

The licensee may submit a request for a specific exemption, as described in 10 CFR 37.11(a), for material that may not be included in the definitions above. If the licensee submits such a request for a component weighing 2,000 kilograms or more, but not containing either discrete sources or ion exchange resins, or for a structure sufficiently robust that it would take significant time to access the material inside, and does so prior to the NRC inspection of the licensee's facility, the NRC will withhold reaching an enforcement decision until the NRC staff completes its review of the exemption request. If the NRC grants the exemption request, it will also consider enforcement discretion 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.

### **Disposition of Violations:**

If an inspector identifies a potential 10 CFR Part 37 violation at a power reactor facility with respect to large components or category 1 or category 2 quantities of radioactive material stored in robust structures, the inspector should notify the appropriate Regional Branch Chief before conducting the exit meeting with the licensee. All potential violations shall be considered by the applicable Regional Office prior to disposition.

The Regional Office shall evaluate each potential violation and consider which of the following three actions is appropriate:

1. Use of ENFORCEMENT DISCRETION to not issue a notice of violation pursuant to 10 CFR 37.11(c)(1) and (2), or Subparts B, C, and D of 10 CFR Part 37, except for violations of 10 CFR 37.43(c), 37.45, 37.49(b) and (d), 37.57, and 37.81 with respect to robust structures containing category 1 or category 2 quantities of radioactive material, or to large components containing category 1 or 2 quantities of radioactive material, if the licensee meets the following conditions:

- a. The licensee has identified in writing those large components, and robust structures that contain category 1 or category 2 quantities of radioactive material, for which it is not in compliance with 10 CFR Part 37; and
  - b. The licensee has an approved 10 CFR Part 73 security plan or a written 10 CFR Part 37 security plan that provides security measures adequate to detect, assess, and respond to actual or attempted theft or diversion with a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for those large components and robust structures identified in 1.a. above; and
  - c. The licensee has a written analysis documenting that the measures above do not decrease the effectiveness of the 10 CFR Part 73 security plan.
2. Decision on EXEMPTION REQUEST followed by consideration of ENFORCEMENT DISCRETION: If the licensee submits a request for a specific exemption as described in 10 CFR 37.11(a) for a component weighing 2,000 kilograms or more, but not containing either discrete sources or ion exchange resins, or for a robust structure prior to the NRC inspection of the licensee's facility, the NRC will withhold reaching an enforcement decision until the NRC staff completes its review of the exemption request. If the NRC finds that the exemption request should be granted, it will also consider enforcement discretion 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.
3. Use of NORMAL ENFORCEMENT process: The NRC will use the normal enforcement process to evaluate and disposition the violation in cases not described in paragraphs 1 or 2 above.

If the Regional Office determines that the noncompliance meets the criteria for using discretion, the Regional Office will disposition the violation through the Security Issues Forum process, or a modified enforcement panel process, or a Headquarters enforcement panel, as appropriate.

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 non-compliance and can be applied to subsequent inspections provided that all the criteria continue to be met.

This EGM will remain effective until the underlying technical issue is dispositioned through rulemaking or other regulatory action.

cc: M. Weber, DEDMRT  
M. Johnson, DEDR  
SECY

- a. The licensee has identified in writing those large components, and robust structures that contain category 1 or category 2 quantities of radioactive material, for which it is not in compliance with 10 CFR Part 37; and
  - b. The licensee has an approved 10 CFR Part 73 security plan or a written 10 CFR Part 37 security plan that provides security measures adequate to detect, assess, and respond to actual or attempted theft or diversion with a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for those large components and robust structures identified in 1.a. above; and
  - c. The licensee has a written analysis documenting that the measures above do not decrease the effectiveness of the 10 CFR Part 73 security plan.
2. Decision on EXEMPTION REQUEST followed by consideration of ENFORCEMENT DISCRETION: If the licensee submits a request for a specific exemption as described in 10 CFR 37.11(a) for a component weighing 2,000 kilograms or more, but not containing either discrete sources or ion exchange resins, or for a robust structure prior to the NRC inspection of the licensee's facility, the NRC will withhold reaching an enforcement decision until the NRC staff completes its review of the exemption request. If the NRC finds that the exemption request should be granted, it will also consider enforcement discretion 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.
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