

POLICY ISSUE
(Information)

February 18, 2016

SECY-16-0017

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: STAFF ACTIVITIES RELATED TO THE PROGRAM REVIEW OF
PART 37 OF TITLE 10 OF THE *CODE OF FEDERAL
REGULATIONS*

PURPOSE:

The purpose of this paper is to inform the Commission of the U.S. Nuclear Regulatory Commission (NRC) staff's activities related to a program review of 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" as requested in SRM-OGC150123-1, due September 2016 (Accession Nos. ML15041A643 and ML15072A408 in the NRC's Agencywide Documents Access and Management System). This review, led by the 10 CFR Part 37 Program Review Team (PRT), commenced March 2014 and will provide the technical basis for the report to the Committees on Appropriations of the House of Representatives and the Senate, pursuant to Public Law 113-235, and will address NRC commitments (ML12285A119) in response to Government Accountability Office (GAO) audits GAO-12-925 "Additional Actions Needed to Improve Security of Radiological Sources at U.S. Medical Facilities" and GAO-14-293 "Additional Actions Needed to Increase the Security of U.S. Radiological Sources." This review will also consider the final report from the ongoing GAO Engagement, Code 361565, "NRC Licensing of Radioactive Materials," which is expected in early 2016.

SECY Note: This SECY Paper, with the exception of Enclosure(s) 1 will be released to the public in 10 working days.

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DISCUSSION:

The NRC and its partners in 37 Agreement States took steps to strengthen the security of risk-significant radioactive materials by issuing orders after the terrorist attacks of September 11, 2001. With the issuance of 10 CFR Part 37 in 2013, the NRC transitioned from security orders to generally applicable requirements through rulemaking. The development of this rule considered the requirements of six sets of post September 11th security orders, the lessons learned during implementation of these orders, the recommendations of the Independent External Review Panel and the Materials Program Working Group (ML080700957 and ML080660424, respectively) following GAO-07-1038T, “Actions Taken by NRC to Strengthen its Licensing Process for Sealed Radioactive Sources are Not Effective,” and stakeholder comments received on the proposed rule and draft implementation guidance. Additionally, to continually ensure the security of domestic radioactive sources, the NRC cooperates with 13 Federal agencies and one State organization in the Radiation Source Protection and Security Task Force (Task Force). The Task Force, which represents agencies with broad authority over radioactive sources of all categories, including regulatory, security, intelligence, and international activities, concluded in its 2006, 2010, and 2014 reports to the President of the United States and Congress that risk significant radioactive sources were being protected and found no significant gaps in security that were not already being addressed (<http://www.nrc.gov/security/byproduct/task-force.html>).

This program review, in which the NRC was mandated by Congress to “evaluate the effectiveness of the requirements of 10 CFR Part 37,” consists of four distinct activities that are described below. The NRC staff has formed a Steering Committee to oversee the progress of the activities associated with this review. The Charter for the Steering Committee and the 10 CFR Part 37 PRT is provided as Enclosure 1. The review results will be documented in a technical report and accompanying Commission Paper that will be provided to the Commission by September 2016.

1. External Independent Assessment Review

In October 2014, the Office of Nuclear Material Safety and Safeguards (NMSS) appointed three consultants with specific expertise, to assist in the program review of 10 CFR Part 37. Each consultant has extensive knowledge of radioactive material safety and security and reports directly to the NMSS Director. These consultants do not work as an advisory committee, but rather, are reviewing separate, independent aspects of 10 CFR Part 37 as described within Enclosure 1 of a report to NMSS documenting their observations and recommendations, due by March 2016. Their reports will be available in public ADAMS, and their observations and recommendations will be addressed in the Commission Paper and discussed in the report to Congress. The three consultants and their areas of expertise are:

- Brian Dodd, International Security
- Cheryl Rogers, Agreement States
- Judith Joustra, Federal Regulation

2. Regulatory Comparison

The staff is conducting a comparison of 10 CFR Part 37 radioactive material security requirements and associated guidance with other international material security programs. This consists of reviewing national material security programs that are comparable to 10 CFR Part 37 regulatory requirements (e.g., the International Atomic Energy Agency [IAEA], Canada, and United Kingdom) and identifying any differences in the security programs used by other nations and the IAEA. Observations in which security requirements and practices differ between the United States and other nations will be evaluated by the PRT. Notable differences in the approaches taken by other countries to secure Category 1, 2, and 3 quantities of material will be discussed in the Commission Paper.

3. Self-Assessment

The staff is conducting its own review of the 10 CFR Part 37 requirements. In addition to evaluating 10 CFR Part 37 based on the results of inspections of NRC licensees, this comprehensive review also considers the concerns raised in the 2012 and 2014 GAO audits as well as the ongoing GAO audit of NRC's licensing process. Planned for completion by June 2016, the PRT's ongoing activities include assessment of:

- Trustworthiness and reliability program
- Collocation of well-logging sources
- Enhanced tracking and accounting of radioactive sources
- Training for NRC and Agreement State inspectors
- Nuclear Material Events database
- Security Incident Database
- 10 CFR Part 37 inspections results

4. Stakeholder Outreach

The staff has prepared a *Federal Register* notice (FRN) (Enclosure 2) that requests public comment on a series of questions regarding the effectiveness and clarity of the new 10 CFR Part 37 regulations. The FRN provides specific questions for stakeholders to consider. To facilitate input, the staff will conduct a series of licensee-specific webinars and a public meeting to gather stakeholder experience with 10 CFR Part 37. The staff believes 10 CFR Part 37 provides strong regulatory framework to ensure the security of Category 1 and 2 materials, however, there may be areas in which the rule could be clearer or additional guidance is appropriate. The goal of the stakeholder outreach is to identify such areas for improvement and provide recommendations to the Commission. The FRN is planned to be published during March 2016.

In a separate but related effort in FY 2017, the staff will evaluate whether to request Commission approval to undertake a medium-priority rulemaking to consider issues raised in a petition for rulemaking (PRM), PRM 37-1, submitted by Anthony R. Petrangelo, on behalf of the Nuclear Energy Institute, on June 12, 2014 (ML14199A570). After completing the 10 CFR Part 37 program review, the staff will analyze the results to determine the need for further revisions to the current 10 CFR Part 37 regulations. If the staff recommends revisions to the current 10 CFR Part 37 regulations, then the staff may combine these activities.

COORDINATION:

The Office of General Counsel has reviewed this paper and has no legal objection.

/RA/
Victor M. McCree
Executive Director
for Operations

Enclosures:

1. Charter for Steering Committee and Program Review Team
2. Draft FRN

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***Please see previous concurrence.**

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