
TEMPORARY INSTRUCTION 2800/042

EVALUATION OF TRUSTWORTHINESS AND RELIABILITY DETERMINATIONS

2800/042-01 OBJECTIVES

01.01 To determine and document whether licensees have chosen to establish criteria that would disqualify an individual from unescorted access to Category 1 and Category 2 quantities of radioactive material and the extent to which the U.S. Nuclear Regulatory Commission (NRC) or other guidance is utilized.

01.02 To collect and document specific information on the trustworthiness and reliability (T&R) determination process for the approval of reviewing officials, individuals requiring unescorted access to Category 1 and Category 2 quantities of radioactive material, and individuals requiring access to security plans or implementing procedures, after the implementation of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37.

01.03 To assist in the review of the effectiveness of the access authorization and background investigation requirements to determine whether any enhancements are needed through guidance, outreach or rulemaking actions.

2800/042-02 BACKGROUND

This Temporary Instruction (TI) provides additional direction to inspectors in collecting and documenting specific information regarding the conduct of a licensee's T&R determination process, after the implementation of Part 37. The TI is limited to routine security inspections conducted under Inspection Procedure (IP) 87137, "10 CFR Part 37 Materials Security Programs."

This information gathering and evaluation process is in response, in part, to the U.S. Government Accountability Office (GAO) Report GAO-14-293, "Nuclear Nonproliferation: Additional Actions Needed to Increase the Security of U.S. Industrial Radiological Sources," dated June 12, 2014. The GAO report provided four recommendations. Recommendation 3 requested that the NRC conduct an assessment of the T&R process by which licensees approve employees for unescorted access to category 1 and 2 quantities of radioactive material in order to determine if it provides reasonable assurance against insider threats. In the NRC's response to the GAO (Agencywide Documents Access and Management System (ADAMS) Accession Number ML14224A323), the agency committed to conducting a review of the effectiveness of the T&R requirements in Part 37, over the next year or two, to determine whether any additional security measures, guidance documents, rulemaking changes or licensee outreach efforts are appropriate.

Part 37, Subpart B, requires that licensees assume responsibility for determining the T&R of individuals granted unescorted access to Category 1 and Category 2 quantities of radioactive material. This is accomplished through the establishment of an access authorization program, of which a background investigation is a key component. The access authorization program is applicable to any Reviewing Official (RO) as well as individuals requiring unescorted access to risk-significant radioactive material. Subpart C also requires a background investigation, which does not include fingerprinting, and T&R determination for individuals not approved for unescorted access but requiring access to security plans or implementing procedures. As a result, licensees may have established separate T&R determination procedures for background investigations conducted under Subpart C.

Licensees must document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable. NUREG-2155, Revision 1, "Implementation Guidance for 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material" and NUREG-2166, "Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material" provide guidance to assist licensees in the evaluation of the trustworthiness and reliability of those requiring unescorted access to risk-significant radioactive material. As stated in the guidance, licensees should establish criteria that would disqualify an individual from unescorted access to Category 1 and Category 2 quantities of radioactive material. As outlined in Section 01.01, one objective of this TI is to ascertain whether licensees have established criteria using NRC or other guidance. If not, the information collection effort should document the method, if any, licensees are using in the T&R determination process. The inspector should be cognizant that Part 37 does not require that licensees establish such criteria. This TI will assist the NRC in the evaluation of a licensee's T&R determination process.

2800/042-03 INSPECTION REQUIREMENTS AND INSPECTION GUIDANCE

As stated, the information collection requirements of this TI are limited to routine inspection activities conducted after the implementation date of 10 CFR Part 37 (March 2014). The TI does not apply to T&R determinations made under any security orders. In addition to completing the access authorization inspection requirements outlined in Section 03.01.02 through Section 03.01.07, and information protection requirements in 03.02.02(e) of IP 87137, NRC inspectors should collect information regarding the following items:

03.01 Inspectors should determine and document whether the licensee has established criteria that would disqualify an individual from unescorted access to Category 1 and Category 2 quantities of radioactive material, to include reviewing officials. The inspector should be cognizant that the reviewing official may have been determined to be trustworthy and reliable by a licensee certifying officer under other criteria. Inspectors should also determine and document whether the reviewing official(s) utilized the T&R guidance contained in NUREG-2155 (Annex A), NUREG-2166 or other guidance if such criteria was established.

03.02 Inspectors should determine (through discussions with the licensee or through a review of information documenting the basis for concluding that a person is trustworthy and reliable) and document whether a conviction, charge or report involving any of the following circumstances were noted for individuals approved and/or denied for unescorted access (including reviewing

officials) to Category 1 and Category 2 quantities of radioactive material or approved and/or denied access to a security plan or implementing procedures:

- Committed, attempted to commit, aided, or abetted another individual who committed or attempted any act of sabotage, espionage, treason, sedition, or terrorism as traditionally defined under federal law;
- Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means;
- Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionary; with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interest of the United States; or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means;
- Misrepresented, falsified, or omitted relevant information from documentation provided to the licensee (as identified by the licensee);
- Was convicted of a felony that may, in the opinion of the RO, indicate poor judgment, unreliability, or untrustworthiness;
- Was associated with reliable derogatory information from a previous employer or other NRC-licensed facility which, in the opinion of the RO, tends to show that the individual may not be reliable or trustworthy; or,
- Was involved in any other conduct or subject to any other circumstances which, in the opinion of the licensee certifying officer or RO, tend to show that the individual may not be trustworthy or reliable.

If yes, the inspector should document the type of information collected and determination basis for the approval and how many years ago the circumstance occurred. The inspector should also document the circumstance, determination basis, and number of cases that resulted in a denial of T&R approval.

03.03 Inspectors should document the total number of individuals approved and/or denied unescorted access and number of individuals approved and/or denied access to a security plan and implementing procedures since the Part 37 implementation date, excluding any personally identifiable information. Inspectors should document cases where no new approvals or reinvestigations (reviewing officials or others) have been required since the implementation of Part 37. Inspectors should document how many licensee T&R files were reviewed, if applicable. Inspectors should also document cases where a Part 37 inspection was conducted but T&R determinations were not reviewed (i.e., field office, temporary job site).

2800/042-04 REPORTING REQUIREMENTS

Inspectors should provide a separate summary report briefly describing the results of the information collected regarding Items 03.01 through 03.03. The summary report should include the licensee name, license number, docket number and address of the licensee; location inspected; NRC Region; inspection report number; date(s) of the inspection; program code; priority code; the inspector's name, and the results of the information collected. Exhibit 1 of this TI may be used as a template for documenting and reporting information collected under this TI. Summary reports, once completed, should be marked by the inspector as "Official Use Only-Security Related Information." Summary reports should be submitted within 30 days of the completion of the inspection, by e-mail, to Part37Resource@nrc.gov, ATTN: Willie Lee, Source Management and Protection Branch (SMPB), Division of Material, State, Tribal and Rulemaking Programs (MSTR), Office of Nuclear Material Safety and Safeguards (NMSS). Summary reports will be placed into the ADAMS by Headquarters staff after submission to the designated e-mail inbox.

2800/042-05 COMPLETION SCHEDULE

The expected completion schedule for this TI is 12 months from the date of issuance.

2800/042-06 EXPIRATION

This TI remains in effect 12 months from the date of issuance.

2800/042-07 CONTACT

Questions regarding this TI should be addressed to Willie Lee, SMPB/MSTR/NMSS, at (301) 415-8024 or willie.lee@nrc.gov.

2800/042-08 STATISTICAL DATA REPORTING

In support of this TI, inspectors should charge time in the Human Resources Management System to CAC TM3070, "10 CFR Part 37 Assessment."

2800/042-09 RESOURCE ESTIMATE

Inspection activities conducted under this TI are not expected to require staff hour expenditures exceeding two hours beyond the time required for routine security inspections performed under IP 87137.

2800/042-10 TRAINING

Inspections conducted under this TI will be performed by staff already qualified to perform security inspections under IP 87137. No additional training is required.

2800/042-11 REFERENCES

Inspection Procedure 87137, "10 CFR Part 37 Materials Security Programs"

NUREG-2155, Revision 1, "Implementation Guidance for 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"

NUREG-2166, "Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material"

END

EXHIBIT 1

EVALUATION OF TRUSTWORTHINESS AND RELIABILITY DETERMINATIONS

Licensee:
Licensee Address:
Location Inspected:
NRC/Regional Office:
Inspection Report Number:
Docket Number(s):
License Number(s):
Date(s) of Inspection:
Program Code:
Priority Code:
Inspector's Name:

INSTRUCTIONS: Please complete the following items, when applicable. If no trustworthiness and reliability (T&R) determinations or reinvestigations (reviewing officials or others) have been required since the implementation of Part 37 or T&R determinations were not reviewed during this inspection, such as during a field office inspection or temporary job site inspection, make a note under "Additional Comments."

Inspectors should be mindful not to put any Personally Identifiable Information on this form, such as individual's names and convictions, etc. in the "Additional Comment" section. Summary reports, once completed, should be marked by the inspector as "Official Use Only-Security Related Information."

ITEM 1:

Did the licensee choose to establish criteria as outlined in Section 03.01 using NUREG-2155, NUREG-2166 or other guidance?

Yes (NUREG-2155 or NUREG-2166) ___ RO included (Yes or No): ___

Other (Please Specify): ___ RO included (Yes or No): ___

Criteria used in T&R determination process (Yes or No) ___

No criteria established: ___

ITEM 2:

Did information for any reviewing official, individual approved for unescorted access or individual approved for access to security plans or implementing procedures indicate any issue outlined in Section 03.02 of Temporary Instruction 2800/042?

Yes ___

No ___

If yes, what was the circumstance, year of occurrence, and the determination basis for the approval?

Did such circumstances result in any denial of T&R approval (Yes or No)?

If yes, what was the circumstance?

ITEM 3:

Number of individuals approved for unescorted access: ____

Number of individuals denied unescorted access: ____ Number of individuals approved for access to security plan/implementing procedures: ____

Number of individuals denied access to security plan/implementing procedures: ____

Number of licensee T&R files reviewed (if applicable): ____

ADDITIONAL COMMENTS:

Attachment 1 - Revision History for TI 2800/042

Commitment Tracking Number	Accession Number Issue Date Change Notice	Description of Change	Description of Training Required and Completion Date	Comment and Feedback Resolution Accession Number (Pre-Decisional, Non-Public)
	ML15154A731 11/25/15 CN 15-027	This is an initial issuance that has been created to gather information on licensees' trustworthiness and reliability determinations under 10 CFR Part 37		