



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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April 16, 2019

MEMORANDUM TO: Doug Huyck, Chief
Security Oversight and Support Branch
Division of Security Operations
Office of Nuclear Security and Incident Response

FROM: Richard Costa, Senior Security Specialist **/RA**
Security Oversight and Support Branch
Division of Security Operations
Office of Nuclear Security and Incident Response

SUBJECT: FINAL REPORT DOCUMENTING RESULTS AND
RECOMMENDATIONS ASSOCIATED WITH TEMPORARY
INSTRUCTION 2800/041, REVISION 1 "10 CFR PART 37
PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2
QUANTITIES OF RADIOACTIVE MATERIAL AT FACILITIES WITH
A 10 CFR PART 73 PHYSICAL PROTECTION PROGRAM"

The Temporary Instruction (TI) 2800/041, Revision 1, "10 CFR Part 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material at Facilities with a 10 CFR Part 73 Physical Protection Program" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15103A415) was issued on July 1, 2015, in order to support a review of licensees' procedures, processes and implementation required by Title 10 of the *Code of Federal Regulations* (10 CFR), Part 37 for the physical protection of Category 1 and Category 2 quantities of radioactive material. Inspections associated with the TI were completed by January 2018. The TI inspection results, which have been documented within inspection reports in the Reactor Program System (RPS), identified that there were no risk-significant safety or security issues with licensee implementation at these facilities; in fact only one violation, a Severity Level (SL) IV, was identified as a result of the TI.

In March 2017, one reactor licensee was issued two SL III violations for a failure to fully comply with the requirements in Part 37 when the licensee temporarily stored a shipment of radioactive material inside of its owner controlled area. Both violations resulted from the same event and were initially identified by the licensee and documented in the licensee's corrective action program prior to being identified by the U.S. Nuclear Regulatory Commission (NRC); therefore, the violations were not identified as a result of the TI.

CONTACT: Richard Costa, NSIR/DSO/SOSB
301-287-3634

D. Huyck

The NRC inspection efforts, related to the Part 37 TI, have revealed no areas of particular concern at licensed facilities that implement Part 73 physical protection programs and, in general, the staff has concluded that implementation of the requirements of Part 37 at these facilities has been adequate. It is important to note that the security apparatus at these facilities, pursuant to Part 73, is robust and exceeds the requirements of Part 37 for material that is stored inside of the Protected Area (PA). In addition, the existence of a security personnel at these facilities (many of which include a ready response force) provides an additional deterrent and is a security provision that may be considered when evaluating the risk significance of noncompliance's with Part 37 requirements.

As the inspection activity outlined in TI 2800/041, Revision 1 yielded information that demonstrates overall acceptable levels of licensee performance, the staff is considering a range of options in establishing a risk-informed approach for providing oversight of Part 37 compliance at these facilities. Options being considered include proceeding with the development of a dedicated inspection procedure (IP): including aspects of Part 37 oversight within existing IPs as inspection samples; development of a new performance indicator; and development of an "as-needed" IP. The staff's level of effort in this area will be commensurate with the safety and security significance of issues identified to date and is additionally informed by the fact that the security apparatus at reactor facilities is robust and, for the most part, sufficient to meet the security requirements of Part 37 within the PA as noted by the TI results. Throughout its efforts the staff will ensure that appropriate interaction with internal and external stakeholders occurs; that decisions concerning oversight at these facilities are justifiable; and that the bases for these decisions are adequately documented in the NRC's Inspection Manual. The staff tentatively expects to complete this effort by the fall of 2020. Meanwhile, the requirements of Part 37 remain in effect and licensed facilities that implement a Part 73 physical protection program remain accountable for identifying and correcting deficiencies in their compliance with the applicable requirements of Part 37. Additionally, NRC inspectors continue to review licensee corrective action programs for deficiencies and are able to disposition violations of Part 37 that are identified during the course of normal baseline or core inspection activities.

The objectives of TI 2800/041, Revision 1 have been accomplished. In accordance with Inspection Manual Chapter 0040, "Preparing, Revising, and Issuing Documents for the NRC Inspection Manual," TI 2800/041, Revision 1 will be deleted in conjunction with issuance of this memorandum.

D. Huyck

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ASSOCIATED WITH TEMPORARY INSTRUCTION 2800/041, REVISION 1 "10
CFR PART 37 PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2
QUANTITIES OF RADIOACTIVE MATERIAL AT FACILITIES WITH A
10 CFR PART 73 PHYSICAL PROTECTION PROGRAM

Date: April 16, 2019

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OFFICE	NSIR/DSO/SOSB	NSIR/DSO/SOSB
NAME	R. Costa	D. Huyck
DATE	04/16 /2019	04/16/2019

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