

**Proposed Interim Enforcement Policy – Section 9.3, “Enforcement Discretion for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material (10 CFR Part 37)”**

**9.3 Enforcement Discretion for Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material (10 CFR Part 37)**

This section sets forth the Interim Enforcement Policy (IEP) that the NRC will use to exercise enforcement discretion for certain noncompliances with the requirements of 10 CFR Part 37, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,” involving large components containing category 1 or category 2 quantities of radioactive material, or category 1 or category 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” or 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.”

For this IEP, a large component is defined as an item weighing 2,000 kilograms or more that does not contain either discrete sources or ion-exchange resins. In this context, large components typically include 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.

For this IEP, a robust structure is defined as a closed concrete bunker or modular vault for which the radioactive materials contained within the structure can only be accessed using heavy equipment to remove structural components or large access blocks weighing 2,000 kilograms or more. Access to these robust structures requires significant execution time. Typically, routine work activities, observation by licensees’ authorized individuals located within or close to these robust structures, or observation by licensees’ authorized individuals conducted in accordance with 10 CFR 73.55(i)(5)(ii) requirements make it likely that any actual or attempted theft and diversion would be detected, considering the time needed to accomplish these activities. This IEP’s definitions of “large component” and “robust structure” are identical to those used successfully for several years under Enforcement Guidance Memorandum (EGM)-14-001, “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),” dated March 13, 2014 (Agencywide Document Access and Management System (ADAMS) Accession No. ML14056A151), and to date have proven sufficient to address past or future violations until the underlying technical issue is dispositioned through rulemaking or other regulatory action.

Under this IEP, the NRC will typically exercise enforcement discretion and not issue a notice of violation pursuant to 10 CFR 37.11(c)(1) and (2), “Specific exemptions,” or 10 CFR Part 37 Subpart B, “Background Investigations and Access Authorization Program,” Subpart C, “Physical Protection Requirements During Use,” and Subpart D, “Physical Protection in Transit,” except for violations of 10 CFR 37.43(c), “General security program requirements – Training”;

10 CFR 37.45, "LLEA coordination"; 10 CFR 37.49(b), "Monitoring, detection, and assessment"; 10 CFR 37.49(d), "Response"; 10 CFR 37.57, "Reporting of events"; and 10 CFR 37.81, "Reporting of events," involving robust structures containing category 1 or category 2 quantities of radioactive material, or large components containing category 1 or 2 quantities of radioactive material, if the licensee meets the following conditions:

- 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.
- 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, as well as 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 above.
- The licensee has a written analysis documenting that the measures above do not decrease the effectiveness of the 10 CFR Part 73 security plan.

An enforcement panel is not required to disposition a ~~violation-noncompliance~~ using this discretion; however, each time discretion is granted, an enforcement action number will be assigned to document the use of discretion under this IEP. This discretion is not limited to the initial inspection identifying a noncompliance and can be applied to subsequent inspections, provided that all the criteria continue to be met.

Licensees ~~shall~~must comply with all other requirements, as applicable, unless explicitly replaced or amended through this interim policy.

Licensees ~~are allowed to~~ can 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 that does not contain 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 the request is submitted before the NRC inspects the licensee's facility, the NRC will postpone 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 remedied by the exemption. If the NRC denies, or the licensee withdraws, the exemption request, the NRC will disposition the violation through the enforcement process.

~~The NRC will intends to keep t~~his interim policy will remain in place until the underlying technical issue is dispositioned through rulemaking or other regulatory action.