

Safeguards Information-Modified Handling Rulemaking Proposal

BACKGROUND:

The NRC has issued three sets of security orders for the protection of category 1 and category 2 quantities of radioactive material containing safeguards information-modified handling (SGI-M). The first set of orders was issued to panoramic and underwater irradiator licensees that possess more than 370 Terabequerels (TBq) (10,000 curies (Ci)) of radioactive material (large irradiators). The second set of orders was issued to Manufacturing and Distribution licensees (M&D). The third set of orders was issued to licensees that transport category 1 quantities of radioactive material.

The orders issued to panoramic and underwater irradiators, M&D licensees, and licensees transporting category 1 quantities of radioactive materials, require these licensees to perform specified actions within specific timeframes. The information related to these timeframes is designated SGI-M. Some licensees have developed security plans incorporating these timeframes. Therefore, these security plans have been designated as SGI-M. Furthermore, the orders to licensees transporting category 1 quantities of radioactive material require these licensees to develop transportation security plans and coordinate itinerary information with the states through which the shipment will be traveling. These transportation security plans and itinerary information are also designated as SGI-M.

A fourth set of orders, commonly called the Increased Controls (ICs) Order, was issued to all other licensees that possessed greater than category 2 quantities of radioactive material. The IC Orders require licensees to immediately detect, assess, and respond to any unauthorized access to category 2 or greater quantities of radioactive material. These orders do not contain any specific response times or other SGI-M information. Because these licensees' security plans are based on the IC Orders, and these orders do not contain SGI information, the security plans for licensees' subject only to the IC Orders are not designated as SGI-M.

The Part 37 working group (hereinafter working group) notes that 10 CFR 73.23 requires that the security information for large irradiators, M&D licensees, and those licensees that transport category 1 quantities of radioactive material be designated as SGI-M and protected accordingly. However, the security information for the vast majority of licensees covered by the new Part 37 does not have to be protected as SGI-M.

For the reasons discussed below, the working group does not believe that it is necessary to protect the security information for large irradiators, M&D licensees, and transportation of category 1 quantities as SGI-M as required by 10 CFR 73.23. The working group believes that this information is adequately protected under the information security provisions in the new Part 37. Therefore, the working group is requesting that the Commission determine that the security related information for large irradiators, M&Ds, and for transport of category 1 quantities of radioactive material does not have to be designated as SGI-M.

DISCUSSION:

The working group believes that this re-designation is in order based on the following: large irradiators have a lower risk of theft, and M&D licensees a similar risk of theft when compared to other licensees; the information protection requirements in the draft final Part 37 rule provide adequate protection of the security related information; the security requirements under Part 37 are the same for all licensees; information security requirements should be consistent across all

areas that are regulated under NRC authority for public health and safety; under Part 73, NRC would continue to inspect Agreement State licensee programs for the protection of SGI-M; and ease of communication between regulator and licensee.

Vulnerability

Sandia National Laboratory (SNL) performed vulnerability assessments on a variety of materials licensees before the ICs were developed. The ICs and Part 37 incorporate security measures identified in the draft vulnerability assessments as effective in providing reasonable assurance that public health and safety and the common defense and security will be adequately protected. The SNL study also indicates that certain licensees are less vulnerable to theft than other licensees. Large irradiators have a lower risk of theft, and M&D licensees a similar risk of theft when compared to other licensees subject to the security requirements in Part 37. The working group, therefore, concludes that licensee security plans for M&D and large irradiator licensees need not be protected at a higher level than the security plans of other licensees subject to Part 37.

Information Protection

The working group believes that a change in the designation of these licensees' security information would not result in public disclosure of the information as it would still be protected under Part 37. Part 37 requires a need-to-know before an individual is allowed to have access to the security information. Part 37 requires licensees to limit access to and prevent unauthorized disclosure of their security plans and implementing procedures. When not in use, the security plan and implementing procedures must be stored in a manner to prevent removal. Information stored in non-removable electronic form must be password-protected.

Part 37 also requires a background investigation to determine the trustworthiness and reliability (T&R) of an individual seeking access to protected information. This determination must be conducted by a reviewing official who has also been determined to be trustworthy and reliable. The background investigation for access to information under Part 37 is similar to that required by Part 73, with the exception that fingerprints are not submitted and an FBI criminal history records check is not required. However, many of the individuals needing access to the protected information would also require access to the radioactive material. Access to the radioactive material requires fingerprinting and an FBI criminal history records check as part of the background investigation under Part 37. Therefore, the NRC anticipates that most individuals requiring access to security information would already have undergone fingerprinting and an FBI criminal history records check.

Part 37 does not have requirements for the transmission of information or for marking the material. However, with the exception of route information, licensees do not routinely transmit security information. NRC does not require licensees to submit the security plan or procedures.

Continued NRC Responsibility

The Part 73 requirements are compatibility Category NRC. These are NRC program elements that address areas of regulation that cannot be relinquished to Agreement States. As a result, the NRC will need to inspect and enforce the SGI-M protection requirements for the transportation of category 1 quantities of material, large irradiator licensees, and M&D licensees. While the NRC could contract with States to perform these inspections under 274(i)

agreements, many States have chosen not to participate in previous 274(i) agreements. Therefore, some Agreement State licensees would continue to be regulated and inspected by both their Agreement State regulators and the NRC. The Agreement States conducting the security-related inspections for these licensees could generate SGI-M as part of the inspection, placing additional burden on the State. Re-designation of the SGI-M information for large irradiators, M&Ds, and licenses that transport category 1 quantities of radioactive material would avoid dual regulatory authority and dual inspections and reduce the potential burden on the State.

Other

The actual security requirements in Part 37 are the same for all licensees. These security requirements do not contain any of the information from the security orders that was designated as SGI-M. The SGI-M timeframes that were in the orders are replaced in the Part 37 rule by terms such as prompt, immediate, and without delay. Therefore, disclosure of a licensee's response times would not compromise other licensees' security information because the response time designated in the rule is already public knowledge, i.e. immediate.

Currently, itinerary information for the transportation of category 1 quantities of material is designated as SGI-M under Part 73. Licensees are required to coordinate this information with states through which the shipment will pass. Shipment information is shared on a need-to-know basis for preplanning, coordination, and advance notification purposes and need not be designated as SGI-M; however, once it is received, it must be handled as SGI-M. If the SGI-M designation for these licensees is revised, the licensees will be able to communicate freely with the States possessing a need-to-know and without exception, under no SGI-M restrictions.

The security orders for the transportation of category 1 quantities of material, large irradiator licensees, and M&D licensees were issued under NRC's common defense and security authority. Part 37 security requirements, however, will be issued under the NRC's authority for protection of the public health and safety. The working group believes that this change in the statutory basis of NRC's authority justifies adopting the Part 37 requirements for sensitive security information protection instead of those contained in Part 73. This would make the information security requirements consistent across all areas that are regulated under public health and safety. Several commenters on the proposed Part 37 rule, including several Agreement States, indicated that the security information for large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material should not be considered SGI-M.

Protection of information at a level less than SGI-M would allow licensees to communicate more easily with regulators regarding implementation of the Part 37 requirements, but still require licensees to control internal access to specific security plans. For example, licensees would be required to limit access to the plans to those employees who need access to perform a job function. Licensees would also be required to store their security plans in locked cabinets while not in use, but could use normal lines of communication with the NRC or an Agreement State to discuss security questions or concerns. This approach achieves meaningful information protection without unduly burdening licensees' and regulators' ability to achieve effective implementation of the Part 37 requirements.

CONCLUSION:

The Part 37 working group believes that the information protection requirements should be the same for all licensees that will be implementing the new Part 37. If information regarding a particular licensee's security program is publicly disclosed, the disclosure will not create a system-wide vulnerability, because the specific features of each licensee's security program will not be identical. An individual licensee's security plan will not contain information that could jeopardize the security of any other licensee implementing Part 37 requirements. The working group believes that the facility security related information for large irradiators and M&Ds and transportation security information should not be designated as SGI-M. The working group believes that adequate protection of the information is provided under Part 37. The Part 37 working group recommends that the Commission determine that the security related information for large irradiators, M&Ds, and transport of category 1 quantities of radioactive material is not SGI-M and approve a rulemaking to revise the categories of licensees subject to the provisions of 10 CFR Part 73 for the protection of SGI-M.

RESOURCES:

The staff estimates that 0.5 full-time equivalents (FTE) (0.1 for the Office of the General Counsel, Office of Administration, and Office of Nuclear Security and Incident Response and 0.2 FTE for the Office of Federal and State Materials and Environmental Management Programs) would be necessary to conduct the rulemaking.