



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 20, 2018

Mr. Gonzalo Perez, Branch Chief
Radiologic Health Branch
Div. of Food, Drug, & Radiation Safety
CA Dept. of Health Services
P.O. Box 997414, MS-7610
Sacramento, CA 95899-7414

Dear Mr. Perez:

This refers to questions raised by a member of your staff in regard to the proper citation for a security violation under an Agreement State's equivalent of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." Your staff questioned how to properly cite a licensee who has allowed an individual to provide access to areas containing category 1 and category 2 quantities of radioactive material by creating keys, keycards, or other means of entry, but has not deemed this individual trustworthy and reliable.

Given 10 CFR Part 37's performance based regulatory approach, each case, and each violation cited, is necessarily fact-specific. For the case in question, based on the limited information provided, U.S. Nuclear Regulatory Commission (NRC) staff would offer the following possible citations California may want to consider:

- An Agreement State's equivalent to 37.21(c)(1) where an individual's duties require unescorted access to category 1 and 2 material and yet the licensee failed to determine the employee's trustworthiness and reliability;
- An Agreement State's equivalent to 37.21(c)(3) where the individual's duties do not require unescorted access to the material, yet the licensee has nonetheless approved the employee for unescorted access;
- An Agreement State's equivalent to 37.43(c)(1) for not training individuals to ensure that they are properly implementing their assigned duties as part of the security program;
- An Agreement State's equivalent to 37.43(d)(1) for not limiting access to protected information to authorized individuals; and/or
- An Agreement State's equivalent to 37.47(c) for allowing unescorted access to an unapproved individual (one not deemed trustworthy and reliable) because the individual could make a keycard or otherwise allow access to areas containing category 1 or category 2 quantities of radioactive material;

The NRC has produced a variety of tools that you may find helpful as you implement California's equivalent to the 10 CFR Part 37 regulations. The NRC continues to update guidance on 10 CFR Part 37. NUREG-2155, Revision 1, "Implementation Guidance for 10 CFR Part 37, Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," contains questions and answers that may assist inspectors, as well as licensees. For guidance on some of the issues raised in the scenario presented, see, for example, questions 9 and 10 on pages 143 to 144 which discuss 10 CFR 37.43, and question 3 on page 161, which discusses

10 CFR 37.47. In March 2018, the NRC issued Regulatory Issue Summary (RIS) 2018-01 "Common Violations Cited During First 2 Years of 10 CFR Part 37, 'Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,' Implementation and Guidance Documents Available to Support Rule Implementation." The RIS provides an overview of the requirements of 10 Part 37 and highlights differences between the rule and the security orders issued prior to the promulgation of 10 CFR Part 37; provides an overview of the NRC's staff assessment of the effectiveness of 10 CFR Part 37; informs addressees of common violations that the NRC has identified during inspections conducted to verify compliance with the requirements of 10 CFR Part 37, in order to raise awareness of these particular violations and reduce their occurrence; and reminds addressees of resources available to answer questions and clarify issues regarding rule implementation.

Additionally, the NRC maintains a NRC & Agreement State Working Group List on the state communications portal: https://scp.nrc.gov/workinggroups/WG_Master_List_July_2018.pdf. The Working Group on Implementation of 10 CFR Part 37 has three Agreement State representatives, including one Agreement State representative on the Steering Committee. These Agreement State representatives may serve as valuable resources for you. As a courtesy, we have included these Agreement State representatives on distribution to this letter.

Finally, your staff asked the NRC to consider rulemaking to add clarity to the enforcement path for this type of factual scenario. The NRC staff will consider this question for possible rulemaking or guidance as part of our planned efforts to update 10 CFR Part 37 (for information related to this rulemaking activity, see docket ID: NRC-2015-0094 at Regulations.gov).

If you have further questions about this matter, we would be happy to discuss it further in a phone call. To arrange a call, please contact Paul Goldberg, 10 CFR Part 37 Working Group Team Leader, at Paul.Goldberg@nrc.gov, or call (301) 415-7842.

Sincerely,

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Daniel S. Collins, Director
Division of Materials Safety, Security, State,
and Tribal Programs
Office of Nuclear Material Safety
and Safeguards

cc: Robert Gregor, CA
Brandon Juran, MN
David Reindl, WI
Stephen James, OH
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SUBJECT: CALIFORNIA LETTER-INDIVIDUAL ABLE TO GRANT ACCESS

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