

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

RIN: 3150-AI12

[NRC-2008-0120]

Physical Protection of Byproduct Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Availability of preliminary draft rule language.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is making available preliminary draft proposed rule language to amend its regulations to add a new part 37 to Title 10 of the Code of Federal Regulations. This new Part 37 will contain the security (physical protection) requirements that are designed to provide reasonable assurance of preventing the theft or diversion of Category 1 and Category 2 quantities of radioactive material as designated by the International Atomic Energy Agency (IAEA). The new provisions will address background checks, fingerprinting, access control, physical security during use, and physical security during any transport of category 1 and category 2 quantities of material. At this time, the staff is only posting the preliminary draft language for the physical protection of the material while it is being transported. These requirements will be contained in subpart D of the new part 37. Draft preliminary language for other aspects of the proposed new part 37 will be posted and noticed in the future. The availability of the preliminary draft rule language is intended to inform stakeholders of the current status of the NRC's activities and solicit public comments on the

information at this time. Comments may be provided as indicated under the ADDRESSES heading. The NRC may post updates periodically under Docket # NRC-2008-0120 on the Federal eRulemaking Portal at <http://www.regulations.gov> that may be of interest to stakeholders.

**DATES:** Submit comment by [insert date that is 45 days after the date of publication in the Federal Register] Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the number RIN 3150-A112 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety in NRC's Agencywide Documents Access and Management System (ADAMS) and at <http://www.regulations.gov>. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

**Federal e-Rulemaking Portal:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0120]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

**E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1677)

**Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You can access publicly available documents related to this document using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to [pdresource@nrc.gov](mailto:pdresource@nrc.gov).

**Federal e-Rulemaking Portal:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0120].

**FOR FURTHER INFORMATION CONTACT:** Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-8126, e-mail [Merri.Horn@nrc.gov](mailto:Merri.Horn@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

The preliminary draft rule language can be viewed and downloaded electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> by searching for Docket # NRC-2008-0120 as well as in ADAMS ML082880108.

The staff is proposing to add a new part 37 that will contain the security (physical protection) requirements that are designed to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material as designated by the International Atomic Energy Agency. The new provisions will address background checks, fingerprinting, access control, physical security during use, and physical security during any transport of category 1 and category 2 quantities of material. At this time, the staff is only posting the preliminary draft language for the physical protection of the material while it is being transported. These requirements will be contained in subpart D of the new part 37. Draft preliminary language for other aspects of the proposed new part 37 will be posted and noticed in the future.

The NRC is making a preliminary version of this draft proposed rule language available to inform stakeholders of the current status of this proposed rulemaking. The NRC is inviting stakeholders to comment on the draft preliminary language. This preliminary draft rule language may be subject to significant revisions during the rulemaking process. Public input at this stage will help inform the development of the proposed rule.

The NRC will review and consider any comments received; however, the NRC will not respond to any comments received at this pre-rulemaking stage. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss any substantive changes made to the preliminary draft proposed rule language as a result of comments received on this preliminary version. Stakeholders will also have an opportunity to comment on the rule

language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedures Act. The NRC will respond to any such comments in the Statements of Consideration for the final rule.

The NRC may post updates to the preliminary draft proposed rule language on the Federal eRulemaking Portal under Docket # NRC-2008-0120. Regulations.gov allows members of the public to set-up notifications so that they may be alerted when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the automatic notifications can be found at <http://www.regulations.gov>. To do so, search for the docket you are interested in and then choose "Notification," found under the title of each action.

Dated at Rockville, Maryland, this 12 day of November, 2008.

For the Nuclear Regulatory Commission

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Mark Thaggard, Acting Director  
Division of Intergovernmental Liaison  
and Rulemaking  
Office of Federal and State Materials  
and Environmental Management Programs.