

[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 30, 37, 73, and 150**

**[NRC-2012-0140]**

**RIN 3150-AJ18**

**Safeguards Information - Modified Handling Categorization**

**Change for Materials Facilities Revision**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations to remove the Safeguards Information – Modified Handling (SGI-M) designation of the security-related information for large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive material. The rulemaking will also result in the removal of the SGI-M designation of the security-related information for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The security-related information for these facilities and the transportation of certain materials would no longer be designated as SGI-M and will be protected under the information protection requirements that apply to other materials licensees that possess category 1 and category 2 quantities of radioactive material.

**DATES:** ~~Submit comments on the proposed rule by~~ ~~– Comments on the proposed rule must be received on or before~~ **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].** ~~Submit comments specific to the information collections aspects of this proposed rule by~~ **[INSERT DATE 30 DAYS AFTER 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.

**Comment [VC1]:** Revised due to OMB review process requirements.

**ADDRESSES:** ~~You may access information and comment submissions related to this proposed rule, which the NRC possesses and is publicly available, by searching on~~ ~~<http://www.regulations.gov> under Docket ID NRC-2012-0140.~~ You may submit comments

related to this proposed rule by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

**Comment [VC2]:** Revised due to OMB review process requirements.

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0140. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).
- **E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Vanessa Cox, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-8342; e-mail: [Vanessa.Cox@nrc.gov](mailto:Vanessa.Cox@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Accessing Information and Submitting Comments**

**A. Accessing Information**

Please refer to Docket ID NRC-2012-0140 when contacting the NRC about the availability of information for this proposed rule. You may access information related to this proposed rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0140.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**  
You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2012-0140 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

For additional information see the direct final rule published in the Rules and Regulations section of this issue of the *Federal Register*.

## II. Procedural Background

Because the NRC considers this action non-controversial, the NRC is publishing this proposed rule concurrently as a direct final rule in the Rules and Regulations section of this issue of the *Federal Register*. The direct final rule will become effective on **[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**~~March 19, 2014~~. However, if the NRC receives a significant adverse comment on the proposed rule by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rules underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

**Comment [VC3]:** Revised due to OMB review process requirements

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

This proposed rule decreases the burden on recordkeepers to mark documents containing Safeguards Information designated as SGI-M as specified in § 73.23 (b), (d), and (f). The NRC is requesting comment on this decrease in recordkeepers' burden in Section III, Paperwork Reduction Act Statement, of this proposed rule.

### III. **Paperwork Reduction Act Statement.**

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

*Type of submission, new or revision:* Revision.

*The title of the information collection:* 10 CFR Parts 30, 37, 73, and 150, Safeguards Information - Modified Handling Categorization, Change for Materials Facilities.

*The form number if applicable:* Not applicable.

*How often the collection is required:* The proposed rule would reduce annual recordkeeping requirements.

*Who will be required or asked to report:* The proposed rule would affect panoramic and underwater irradiators that possess greater than 370 TBq of byproduct materials; manufacturers and distributors of items containing source ~~material~~, ~~or~~ byproduct, or special nuclear material in greater than or equal to category 2 quantities of concern; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of concern.

*An estimate of the number of annual responses:* A reduction of 112 recordkeeping responses.

*The estimated number of annual respondents:* A reduction of 112 recordkeepers subject to 10 CFR Part 73, Physical Protection of Plants and Materials.

*An estimate of the total number of hours needed annually to complete the requirement or request:* A reduction of 616 recordkeeping hours.

*Abstract:* The proposed rule would decrease burden on 112 recordkeepers to mark documents containing Safeguards Information designated as SGI-M as specified in § 73.23 (b), (d), and (f). These 112 licensees include panoramic and underwater irradiators that possess greater than 370 TBq of byproduct materials; manufacturers and distributors of items containing source ~~material~~, ~~or~~ byproduct, or special nuclear material in greater than or equal to category 2 quantities of concern; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of concern.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

The public may examine and have copied for a fee publicly available documents, including the supporting statement, at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/>.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the previously stated issues, by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** to the FOIA, Privacy, and Information Collections Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV) and to the Desk Officer, Danielle Y. Jones, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0002), Office of Management and Budget, Washington, DC 20503. You may also e-mail comments to [Danielle\\_Y\\_Jones@omb.eop.gov](mailto:Danielle_Y_Jones@omb.eop.gov) or comment by telephone at 202-395-1741. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.



### **Public Protection Notification.**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**Comment [VC4]:** Revised due to OMB review process requirements.

### **List of Subjects**

#### 10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirement.

#### 10 CFR Part 37

Byproduct material, Criminal penalties, Export, Hazardous materials transportation, Import, Licensed material, Nuclear materials, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

#### 10 CFR Part 150

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 37, 73, and 150.

## **PART 30 – RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

1. The authority citation for part 30 continues to read as follows:

**AUTHORITY:** Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95-601, sec. 10, as amended by Pub. L. 102-486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

### **§ 30.4 [Amended]**

2. In § 30.4, remove the definition for “Quantities of Concern.”

**§ 30.32 [Amended]**

3. In § 30.32, remove paragraph (k).

**§ 30.34 [Amended]**

4. In § 30.34, remove paragraph (l).

**PART 37 – PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES  
OF RADIOACTIVE MATERIAL**

5. The authority citation for part 37 continues to read as follows:

**AUTHORITY:** Atomic Energy Act secs. 53, 81, 161, 182, 183, 68 Stat. 935, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 223 (42 U.S.C. 2273); sec 234, 83 Stat. 445, as amended; sec. 147, 149 (42 U.S.C. 2133, 2134, 2167, 2168, 2169).

**§ 37.29 [Amended]**

6. In § 37.29, revise paragraph (a)(10) to read as follows:

**§ 37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.**

Paragraph (a)(10) is revised to include category 1 drivers.

\* \* \* \* \*

(a) \* \* \*

(10) Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

**§ 37.43 [Amended]**

7. In § 37.43, remove paragraph (d)(9).

8. In § 37.77, revise paragraph (f) to read as follows:

**§ 37.77 Advance notification of shipment of category 1 quantities of radioactive material.**

\* \* \* \* \*

(f) *Protection of information.* State officials, State employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in § 37.77(b) shall protect that information against unauthorized disclosure as specified in § 37.43(d) of this chapter.

**PART 73 – PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

9. The authority citation for part 73 continues to read as follows:

**AUTHORITY:** Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005). Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

**§ 73.2 Definitions [Amended]**

10. In §73.2, remove the definition for “Quantities of Concern.”

11. In § 73.21, revise paragraph (a)(1)(ii) to read as follows:

**§ 73.21 Protection of Safeguards Information: Performance Requirements.**

(a) \* \* \*

(1) \* \* \*

(ii) Establish, implement, and maintain an information protection system that includes the applicable measures for Safeguards Information specified in § 73.23 related to: research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance.

\* \* \* \* \*

12. In § 73.23, revise the introductory text and paragraph (a)(2) to read as follows:

**§ 73.23 Protection of Safeguards Information-Modified Handling: Specific Requirements.**

This section contains specific requirements for the protection of Safeguards Information in the hands of any person subject to the requirements of § 73.21(a)(1)(ii) and research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance. The requirements of this section distinguish Safeguards Information requiring modified handling requirements (SGI-M) from the specific Safeguards Information handling requirements applicable to facilities and materials needing a higher level of protection, as set forth in § 73.22.

(a) \* \* \*

(2) *Physical protection in transit.* Information not classified as Restricted Data or National Security Information related to the physical protection of shipments of special nuclear material in less than a formula quantity (except for those materials covered under § 73.22), including:

\* \* \* \* \*

**Appendix I to Part 73 [Removed]**

13. Remove Appendix I to Part 73.

**PART 150 - EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274**

14. The authority citation for part 150 continues to read as follows:

**AUTHORITY:** Atomic Energy Act secs. 161, 181, 223, 234(42 U.S.C. 2201, 2021, 2231, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under Atomic Energy Act secs. 11e(2), 81, 83, 84 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under Atomic Energy Act sec. 53 (42 U.S.C. 2073).

Section 150.15 also issued under Nuclear Waste Policy Act secs. 135 (42 U.S.C. 10155, 10161). Section 150.17a also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 150.30 also issued under Atomic Energy Act sec. 234 (42 U.S.C. 2282).

**§ 150.15 [Amended]**

15. In § 150.15, remove paragraph (a)(9).

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2012201314

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
Annette Vietti-Cook,  
Secretary of the Commission.

**Comment [vc5]:** SRM Change No.1 to the Federal Register for Proposed Rule

**Comment [VC6]:** Change to curent year.