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10 CFR Part 37, Physical Protection of Byproduct Material

Comment On: NRC-2026-2345-0004

Information Collection: Physical Protection of Category 1 and 2 Quantities of Radioactive Material

Document: NRC-2026-2345-DRAFT-0007

Comment on FR Doc # 2026-16433, NRC-2026-2345-0004, from Andrew Huff

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General Comment

Re: Information Collection: Physical Protection of Category 1 and 2 Quantities of Radioactive Material (10 CFR Part 37); Docket ID NRC-2026-2345; OMB Control Number 3150-0214; FR Doc. 2026-16433; 91 FR 52086 (August 12, 2026).

I submit the attached comment in my individual capacity. I hold a Ph.D. in epidemiology and an M.S. in security technologies, served as a Senior Member of Technical Staff at Sandia National Laboratories, and work as a security engineer; affiliation is for identification only. I support the collection and the vetting it documents. My comments follow the four questions in section III of the notice.

Summary of recommendations: (1) Practical utility: state in the supporting statement which security question each class of record answers, and publish annually, in aggregate without licensee attribution, three indicators derivable from records the NRC already holds: the interval from last verified presence of a source to discovery of a discrepancy and from discovery to the report under 10 CFR 37.57; LLEA coordination status and any response exercise result; and access authorization determinations made, denied, and revoked. A compliance

record is a control attestation, not a risk estimate. (2) Burden accuracy: reconcile this extension with the paperwork analysis in the April 9, 2026 proposed rule (Docket NRC-2025-1238, RIN 3150-AL51), which claims a reduction of 2,560 responses and 3,120 hours under the same control number, and state which estimate governs if the rule is finalized during the clearance period. (3) Burden accuracy: state the basis for counting recordkeeping responses, since the rule's reduction of 960 equals this notice's total of 960; show the per-person burden of the 2,880 individual respondents separately; and carry a cost figure into the notice. (4) Quality and clarity: for individuals responding under 10 CFR 37.23(d), state what personal history information is required, who holds the disclosure, fingerprint images, and criminal history results, for how long, and under what safeguards; bound retention to the period of access plus a stated interval; and offer a model disclosure form in guidance. (5) Technology: accept NRC Form 755 and 37.57 reports as structured submissions linked to National Source Tracking System records, accept electronic attestation for certifications and LLEA coordination, and define the detection interval as a derived data element so that any change to the verification and communication requirements of 37.49 is measured rather than assumed.

The full comment, with the standard applied and the reasoning for each item, is attached as a PDF (5 pages).

Disclosure: I have no financial interest in any vendor or contract involving this program, and I was not compensated for this comment.

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Attachments

Huff_Comment_03_NRC_Part37_13OCT2026

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October 13, 2026

U.S. Nuclear Regulatory Commission
Docket NRC-2026-2345 (document NRC-2026-2345-0004 (supplied in the task brief; the notice file states it could not be confirmed against regulations.gov; verify before filing and do not print it in the letter))

Federal Register document 2026-16433

Submitted via regulations.gov, Docket ID NRC-2026-2345 (the only submission method the notice lists); comments due October 13, 2026

Re: Information Collection: Physical Protection of Category 1 and 2 Quantities of Radioactive Material (10 CFR Part 37); Docket ID NRC-2026-2345; OMB Control Number 3150-0214; FR Doc. 2026-16433; 91 FR 52086 (August 12, 2026)

I submit this comment in my individual capacity on the renewal of OMB approval for the information collection Physical Protection of Category 1 and 2 Quantities of Radioactive Material, 10 CFR Part 37 (OMB control number 3150-0214; Docket ID NRC-2026-2345; 91 FR 52086, August 12, 2026). I hold a Ph.D. in environmental health sciences (epidemiology) and an M.S. in security technologies, served as a Senior Member of Technical Staff at Sandia National Laboratories from 2012 to 2014 in national security modeling, and have since worked as a security engineer and evaluated detection and surveillance systems for biodefense. Source security is adjacent to that work: the likelihood of a successful theft or diversion turns on how fast a loss is detected and how fast a response arrives. My comments follow the four questions in section III of the notice.

Summary of recommendations

1. Practical utility: state in the supporting statement which security question each class of record answers, and publish annually, in aggregate without licensee attribution, three indicators derivable from records the NRC already holds: the interval from last verified presence of a source to discovery of a discrepancy and from discovery to the report under 10 CFR 37.57; LLEA coordination status and any response exercise result; and access authorization determinations made, denied, and revoked.
2. Burden accuracy: reconcile this extension with the paperwork analysis in the April 9, 2026 proposed rule (Docket NRC-2025-1238, RIN 3150-AL51), which claims a reduction of 2,560 responses and 3,120 hours under the same control number, and state which estimate governs if the rule is finalized during the clearance period.
3. Burden accuracy: state the basis for counting recordkeeping responses, since the rule's reduction of 960 equals this notice's total of 960; show the per-person burden of the 2,880 individual respondents separately; and carry a cost figure into the notice.
4. Quality and clarity: for individuals responding under 10 CFR 37.23(d), state what personal history information is required and what is not; state who holds the disclosure, fingerprint images, and criminal history results, for how long, and under what safeguards; bound retention to the period of access plus a stated interval; and offer a model disclosure form in guidance.

5. Technology: accept NRC Form 755 and 37.57 reports as structured submissions linked to National Source Tracking System records, accept electronic attestation for certifications and LLEA coordination, and define the detection interval as a derived data element so that changes to verification and communication requirements are measured, not assumed.

The case for the collection as noticed

The strongest case for the collection as noticed is sound. The Atomic Energy Act charges the NRC with protecting the common defense and security, and these records are what an inspector needs to confirm that controls exist: a security program, vetted access, a briefed local law enforcement agency, and a reporting path. Theft of a category 1 or 2 source is rare, and when an outcome is rare the sensible leading indicator is the presence and quality of controls. The burden profile shows restraint: of 51,579 annual hours, only 1,227 are reporting. An extension is the routine vehicle. My comments concern what the collection does not yet tell the NRC, and what it must be able to tell the NRC if the pending rule changes how losses are detected.

Question 1: necessity and practical utility

Practical utility means the agency's ability to use the information, particularly to process it in a timely and useful fashion (44 U.S.C. 3502(11)). The abstract lists what licensees must do: maintain security plans, conduct background investigations and training, coordinate with local law enforcement, and report attempted or actual theft or diversion. That is a description of controls, not of what the NRC learns from the records; it does not say what security outcome any record measures. A trustworthiness determination, an LLEA coordination record, and a verification log each attest that a control existed on a date. Under NIST SP 800-30 Rev. 1, a control enters a risk estimate through vulnerability and likelihood; the attestation alone says nothing about the outcome of an attempt. A compliance record is a control attestation, not a risk estimate. The threat is nameable: theft or diversion of a source for malicious use, including a radiological dispersal device. So is the metric: a physical protection system succeeds when detection, assessment, and response complete before the adversary's task does.

The NRC already holds the data to measure it. Event reports under 37.57 and National Source Tracking System transactions under 10 CFR 20.2207 fix, for any discrepancy, the last verified presence of the source, the time of discovery, and the time of report; LLEA coordination and access authorization records yield the other two indicators. None of this is a new collection. It requires the supporting statement to say which record answers which question, and the NRC to publish a few aggregate indicators as the program's vital signs in the sense of the CDC surveillance evaluation guidelines: timeliness and sensitivity of detection, and the adverse-determination rate of vetting. A collection that can show those numbers has probative utility; one that can show only that forms were completed has documentary utility, which is not the same thing.

Question 2: accuracy of the burden estimate

The notice does not mention the Commission's proposed rule of April 9, 2026 (91 FR 17893), which would end the submission of reviewing official certifications under 37.23(b)(2), remove the 10-year reinvestigation under 37.25(c), extend LLEA coordination from 12 months to 3 years, and remove the weekly verification, continuous communication, and maintenance and testing requirements of 37.49 and 37.51. Its paperwork section, under the same control number,

claims a reduction of 2,560 annual responses and 3,120 hours against 960 licensee respondents. This extension counts 94,279 responses, 51,579 hours, and 3,840 respondents. Both estimates cannot govern at once, and a reader cannot tell from either document whether this extension is the pre-rule baseline, whether the reduction was computed against it, or what happens to the clearance if the rule becomes final during the three-year approval period. The supporting statement should say which, and the notice summary should carry it.

Two arithmetic points follow. The rule's reduction of 960 recordkeeping responses equals this notice's entire recordkeeping count of 960; unless the two documents count on different bases, one per licensee here and one per eliminated requirement there, the rule would reduce Part 37 recordkeeping responses to zero, which it does not propose. The basis should be stated. And the notice gives totals only. The 2,880 individuals responding under 37.23(d) are a different kind of respondent from a licensee; their per-person burden in hours and fingerprinting cost should be shown separately, and the notice, which states no cost figure, should carry one.

Question 3: quality, utility, and clarity of the information collected

Three quarters of the respondents are not licensees. They are 2,880 people a year who disclose personal history, give fingerprints under 10 CFR 37.27 and section 149 of the Atomic Energy Act (42 U.S.C. 2169), and are judged trustworthy and reliable or not. I support that vetting; unescorted access to a category 1 source should require it. The supporting statement should state, for the disclosure, the fingerprint images, and the criminal history results, who holds each, for how long, and under what safeguards, and should justify any retention that runs past the end of the individual's access. For records the NRC itself holds, the standard is already the Privacy Act's, 5 U.S.C. 552a(e)(1): only information relevant and necessary to a statutory purpose. A background investigation record held longer than its purpose needs is a liberty cost to the person described in it, and a file of vetted individuals with unescorted access to radioactive sources is itself a target. The proposed removal of the 10-year reinvestigation makes this more important, not less: a determination never refreshed rests on a record that only ages. Two salutary features of current 37.23(c)(1) should be kept through the rulemaking and made perspicuous to the individual: informed, signed consent, and the chance to correct inaccurate or incomplete information before an adverse determination. A model disclosure form in the NUREG-2155 guidance would serve both ends.

Question 4: minimizing burden, including through information technology

Reporting is the smallest share of the burden; recordkeeping and third-party disclosure account for 50,352 of 51,579 hours, and that is where technology can attenuate it. NRC Form 755 shipment notifications and 37.57 event reports should be accepted as structured, machine-readable submissions, with a Form 755 entry linked to the National Source Tracking System transaction for the same source so that a shipment is entered once. Reviewing official certifications and LLEA coordination records should accept electronic attestation on a standard template, which would obviate the bespoke memorandum. And the detection interval should be defined as a derived element the NRC computes from reports it already receives, so that no licensee reports a number it does not already know.

That last item carries a caution. Weekly verification under current 37.49 bounds a licensee's own detection interval for a category 2 source, and the continuous communication requirement bounds the time to summon a response. If both are removed as proposed, a quiet diversion is

detected by whatever comes next: a scheduled inventory, a tracking system reconciliation, an inspection, or a report from outside. Detection moves outward, toward the NRC, the Agreement State, and local law enforcement, and the interval lengthens by an amount no one has measured. The rule's comment period closed May 11, 2026, and I do not argue its merits here; the point is epistemic. A collection renewed for three years that may span the rule's effective date should let the Commission learn from its own data whether the interval changed, by how much, and for which licensees. To the extent electronic fingerprint submission and access authorization records rely on public-key cryptography for transport or signature, this clearance also overlaps the period in which NIST IR 8547 proposes to begin deprecating quantum-vulnerable algorithms, and the next supporting statement should note the migration plan under FIPS 203, 204, and 205.

Scope and confidence

I reviewed the Federal Register notice and the April 9, 2026 proposed rule as published, not the OMB Supporting Statement (ML26152A111) or burden spreadsheet (ML26152A113). I did not address transport security under subpart D beyond Form 755, Agreement State compatibility, or the merits of the proposed rule. My confidence that the two burden estimates need explicit reconciliation is high, 85 to 95 out of 100, because it rests on arithmetic from the two notices. My confidence that the proposed indicators can be derived from existing records is 75 to 85, subject to how event and tracking data are structured. My confidence that these are the best indicators is 60 to 70; the supporting statement may hold better ones.

Disclosure: I have no financial interest in any vendor or contract involving this program, and I was not compensated for this comment.

Thank you for the opportunity to comment.

Respectfully,

Andrew G. Huff, Ph.D., M.S.
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References

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2. U.S. Nuclear Regulatory Commission, Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, proposed rule, 91 FR 17893, April 9, 2026 (FR Doc. 2026-06877; Docket NRC-2025-1238; RIN 3150-AL51), <https://www.federalregister.gov/documents/2026/04/09/2026-06877/modernizing-requirements-relating-to-physical-protection-of-category-1-and-category-2-quantities-of>
3. U.S. Nuclear Regulatory Commission, OMB Supporting Statement (ADAMS ML26152A111) and burden spreadsheet (ADAMS ML26152A113) for OMB control number 3150-0214, available through ADAMS, <https://adams.nrc.gov/wba/>

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