

# POLICY ISSUE NOTATION VOTE

April 24, 2013

SECY-13-0045

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: DIRECT FINAL RULE: SAFEGUARDS INFORMATION -  
MODIFIED HANDLING CATEGORIZATION CHANGE FOR  
MATERIALS FACILITIES (RIN 3150-AJ18)

PURPOSE:

To request Commission approval to publish a direct final rule and companion proposed rule in the *Federal Register* that removes the Safeguards Information – Modified Handling (SGI-M) designation of the security-related information for panoramic and underwater irradiator licensees that possess more than 370 Terabequerels (TBq) (10,000 curies (Ci)) of radioactive material (large irradiators), manufacturer and distributor (M&D) licensees, and any licensee that transports category 1 quantities of radioactive material or transports small quantities of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The information will be protected under the requirements of the new Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR) entitled, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.”

BACKGROUND:

In SECY-11-0170, “Final Rule: Physical Protection of Byproduct Material (RIN 3150-AI12)” (Agencywide Documents Access and Management System (ADAMS) accession number ML112920083), the staff recommended conducting a rulemaking to remove the SGI-M requirements for certain licensees (Enclosure 3 to SECY-11-0170 (ADAMS accession number ML112920106)).

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In the Staff Requirements Memorandum for the final rule (ADAMS accession number ML120760457), the Commission approved the staff's recommendation to conduct a rulemaking to remove the SGI-M requirement for certain licensees. The direct final rule ([Enclosure 1](#)) and the companion proposed rule ([Enclosure 2](#)) are provided for Commission approval.

#### DISCUSSION:

The U.S. Nuclear Regulatory Commission (NRC) staff is proposing that the Commission approve the direct final rule and companion proposed rule to remove the SGI-M designation of the security-related information for large irradiators, M&D licensees, and for any licensee that transports category 1 quantities of radioactive material or transports small quantities 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 the above mentioned materials would no longer be designated as SGI-M and would be protected under the information protection requirements that apply to other materials licensees that possess category 1 and category 2 quantities of radioactive material, *i.e.* the new 10 CFR Part 37. The direct final rule will result in a revision to 10 CFR 73.21, "Protection of Safeguards Information: Performance requirements" and 10 CFR 73.23, "Protection of Safeguards Information-Modified Handling: Specific requirements," as well as conforming changes to 10 CFR Part 30, 10 CFR Part 37, 10 CFR Part 73, and 10 CFR Part 150.

Protection of the information at a level less than SGI-M allows licensees to communicate more easily with regulators regarding implementation of 10 CFR Part 37 requirements, but still requires licensees to control access to specific security plans and implementing procedures to those individuals who have established a valid need to know and have met the requirements for access to such information. With this change, the information protection requirements would be the same for all licensees implementing the new 10 CFR Part 37. The NRC staff has concluded that adequate protection of the information is provided under 10 CFR Part 37. Additional information is provided in the direct final rule.

The NRC staff is proposing to use a direct final rule approach instead of the traditional notice and comment rulemaking process (*i.e.*, proposed rule and final rule process) because the staff considers this rulemaking to be non-controversial and does not expect to receive significant adverse comments. In addition, by using the direct final rule approach, the NRC staff anticipates that the rule will be effective at the same time that licensees begin implementing 10 CFR Part 37. If the NRC receives significant adverse comments, the NRC would withdraw the direct final rule and proceed with a final rule that addresses the comments received on the companion proposed rule.

#### Strategic Goals and Objectives

The direct final rule is consistent with the NRC's strategic objectives and performance goals. The rule will continue to ensure the protection of public health and safety and the promotion of common defense and security.

AGREEMENT STATE ISSUES:

A copy of the draft *Federal Register* notice was provided to the Agreement States so they could have an early opportunity for review. Comments were received from Virginia, Illinois and the Organization of Agreement States (OAS). Virginia and OAS noted that the definition for “quantities of concern” and Appendix I to 10 CFR Part 73 should also be removed from the regulations. The NRC agrees and has included those changes in the direct final rule. Suggested editorial changes were made as appropriate.

Although Illinois encouraged the NRC’s pursuit of the rulemaking, the State expressed concern over the resources to implement and enforce the rulemaking. Illinois expressed concern over the fragmented implementation of the provisions that could result in significant transboundary issues, i.e., the fact that licensees in Agreement States would continue to treat the information as SGI-M until the Agreement State adopted the provisions which will result in some licensees treating the same information differently. Illinois suggested that NRC modify the orders for Agreement State licensees so that all licensees would be implementing the provisions at the same time. Illinois also noted that radioactive material is most vulnerable while in transit and that without protecting this information, the routes and the specified times with locations could easily be intercepted. The NRC understands the State’s concern on fragmented implementation; however, this rulemaking is no different than any other rulemaking that the Agreement States must adopt. Agreement State licensees implement the provisions as their Agreement State adopts the rule requirements. The only transboundary issue that may occur is with the transmittal of route and time information for the shipments of category 1 quantities of radioactive material. For licensees implementing 10 CFR Part 37, the route and time information would not be considered SGI-M and would be protected under the provisions of 10 CFR Part 37. For licensees in Agreement States that have not adopted 10 CFR Part 37, the route and time information would continue to be protected under the SGI-M protection provisions in the orders. It is possible that shipping and receiving licensees may be under different requirements for the protection of the information. The NRC staff does not expect this to be a problem. Licensees that receive shipment information that is not designated as SGI-M can protect the information as SGI-M. Licensees that receive SGI-M shipment information from a licensee still subject to the orders could protect the information as SGI-M in accordance with the requirements in 10 CFR Part 73 or could initiate the process to decontrol the information such that it could be protected under the requirements of 10 CFR Part 37. The NRC would treat any issues that arise on a case-by-case basis. From a practical standpoint, the information is not currently transmitted as SGI-M. Licensees may use regular phone and facsimile lines to transmit the information; therefore, there is no additional risk that someone might intercept the information. Licensees are still required to protect the information before and after receipt from unauthorized access. Illinois expressed concern over resources to implement and enforce the rule. Although additional information would be protected under 10 CFR Part 37 when this rule becomes effective, the Agreement States would be inspecting the information protection program under 10 CFR Part 37 even without this rulemaking. With the change in designation, the inspection would be easier and consistent, because all of the security related information at a facility would be protected in the same manner instead of some protected as SGI-M and some protected under the requirements of 10 CFR Part 37.

The Standing Committee on Compatibility (Committee) reviewed the direct final rule and agreed that a portion of these amendments to the NRC regulations are a matter of compatibility between the NRC and the Agreement States. The Committee and the NRC staff have reached agreement on the compatibility designations that are reflected in the direct final rule.

#### COMMITMENTS:

The NRC staff will issue errata sheets to the 10 CFR Part 37 implementation guidance document before the direct final rule is effective. No changes are needed to Regulatory Guide 5.79, "Protection of Safeguards Information."

#### RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the *Federal Register* the direct final rule and companion proposed rule ([Enclosures 1 and 2](#)).
2. Certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities to satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This certification is included in the enclosed direct final rule.
3. Note:
  - a. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b);
  - b. A final Regulatory Analysis has been prepared for this rule ([Enclosure 3](#));
  - c. An Environmental Assessment has been prepared for this rule ([Enclosure 4](#));
  - d. The Office of Management and Budget (OMB) has determined that this action is not a "major rule" as defined in the Congressional Review Act of 1996 (5 U.S.C. 804(2)). The appropriate Congressional and Government Accountability Office contacts will be informed;
  - e. The appropriate Congressional committees will be informed;
  - f. A press release will be issued by the Office of Public Affairs when the direct final rule is filed with the Office of the Federal Register; and
  - g. The direct final rule contains amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) that must be submitted to the OMB for its review and approval before publication of the direct final rule in the *Federal Register*.

RESOURCES:

The estimated resources to complete the rule and revise the implementation guidance are estimated to be less than 0.1 full time equivalent.

COORDINATION:

The Office of the General Counsel has no legal objection to the rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

*/RA by Michael F. Weber for/*

R. W. Borchardt  
Executive Director  
for Operations

Enclosures:

1. Direct Final Rule
2. Companion Proposed Rule
3. Regulatory Analysis
4. Environmental Assessment

**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:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending 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 will 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:** This rule is effective March 19, 2014, unless a significant adverse comment is received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please refer to Docket ID NRC-2012-0140 when contacting the NRC about the availability of information for this direct final rule. You may access information and comment submittals related to this direct final rule, which the NRC possesses and are 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 document (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.

**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. Background**

The NRC has issued three sets of security orders containing SGI-M for the protection of category 1 and category 2 quantities of radioactive material. These orders were all issued under the Commission's authority for common defense and security. 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) (EA-02-249; June 6, 2003) (68 FR 35458; June 13, 2003). The second set of orders was issued to manufacturing and distribution (M&D) licensees (EA-03-225; January 12, 2004) (69 FR 5375; February 4, 2004). The third set of orders was issued to licensees that transport source, byproduct or special nuclear material in category 1 quantities of radioactive material (EA-05-006; July 19, 2005) (70 FR 44407; August 2, 2005). The third set of orders also covered transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel.

The orders issued to large 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, information contained in these security plans has 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. Portions of these transportation security plans and itinerary information are also designated as SGI-M.

A fourth set of orders, commonly called the Increased Control (IC) Orders, was issued to all other licensees that possessed greater than category 2 quantities of radioactive material (EA-05-090; November 14, 2005) (70 FR 72128; December 1, 2005). These orders were issued under the Commission's authority for protection of public health and safety. 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.

On October 24, 2008 (73 FR 63546), the NRC published a final rule that established, among other things, the requirements for protection of SGI-M and designated categories of licensees that would be subject to the SGI-M provisions. The SGI-M requirements are located in 10 CFR part 73, "Physical Protection of Plants and Materials." This rulemaking required certain licensees to establish, implement, and maintain an information protection system that includes the applicable measures for SGI-M specified in § 73.23, "Protection of Safeguards Information – Modified Handling: Specific requirements." This section contains specific requirements related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; 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; the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of concern. The rule was effective on February 23, 2009. Orders containing the requirements for protection of SGI-M were not modified or rescinded after issuance of the final rule; therefore, licensees are currently subject to both the requirements in the regulations and the orders.

On March 16, 2012, the Commission approved publication of a new part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.” The final rule was published on March 19, 2013 (78 FR 16922). NRC licensees are required to comply with 10 CFR part 37 by March 19, 2014. The 10 CFR part 37 final rule establishes the security requirements for the protection of category 1 and category 2 quantities of radioactive material and for transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The rule also contains information protection requirements for the security plan, procedures, and other information.

## **II. Discussion**

### *A. What Action is the NRC Taking?*

The NRC is amending its regulations to remove the SGI-M designation of the security-related information for large irradiators, M&Ds, and 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 will instead be protected under the new 10 CFR part 37, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.”

### *B. What is the Purpose of the Direct Final Rule?*

The purpose of the direct final rule is to remove the SGI-M designation of the security-related information for large irradiators, M&Ds, 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.

*C. Whom Will This Action Affect?*

The direct final rule will apply to any panoramic and underwater irradiator licensee that possesses more than 370 TBq (10,000 Ci) of radioactive material, M&D licensees, and any licensee that transports small quantities of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel or category 1 quantities of radioactive material whether the facility is licensed by the NRC or an Agreement State. There are 85 Agreement State licensees and 27 NRC licensees that will be impacted by this rule. These are the materials licensees that received orders under the Commission's authority to protect the common defense and security.

*D. With the Redesignation of the Security-related Information, Will the Security Plans Become Public Information?*

No, the security-related information will not be made public. The change in the designation of the security-related information does not result in public disclosure of the information as the information will still be protected under 10 CFR part 37. Access to this information will be based upon a trustworthiness and reliability determination and on a need-to-know determination.

*E. Will Documents Now Designated SGI-M Still Have to be Protected as SGI-M?*

Documents must be marked and protected as SGI-M until they are removed from the SGI category (decontrolled). Documents or other matter originally containing SGI-M must be removed from the SGI category in accordance with § 73.23(h) when the information no longer meets the criteria for designation as SGI as defined by 10 CFR part 73. The authority to

determine that a document or other matter may be decontrolled must be exercised only by the NRC, or with NRC approval, or in consultation with the individual or organization that made the original SGI determination, in accordance with § 73.23(h). By issuance of this direct final rule, the NRC is approving the decontrol of the security-related information for licensees of panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; 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; licensees that transport irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel; and licensees that transport source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of radioactive material.

NRC licensees may decontrol their SGI-M once this direct final rule is effective and the orders have been rescinded. Agreement State licensees will continue to be subject to the SGI-M provisions of the orders until the NRC rescinds the orders after the Agreement State adopts the provisions of 10 CFR part 37. Once an Agreement State adopts 10 CFR part 37 and the provisions are effective in the State, the NRC will rescind all security orders for the licensees in that State. At that time the licensees may decontrol SGI-M in their possession.

To decontrol the security-related information that is currently designated as SGI-M, the licensee should draw a horizontal line through the SGI designation on each page of the document and initial adjacent to the horizontal line. The NRC does not expect a licensee to find all documents designated as SGI-M that may be in storage solely for the purpose of decontrolling the documents. Instead, as those documents are removed from storage for use, the licensee can decontrol the document at that time. Instead of decontrolling a document, the licensee may also destroy the document in accordance with § 73.23(i) once the document is no

longer needed. Additional information on the decontrol of SGI is available in Section 9 of Regulatory Guide 5.79, "Protection of Safeguards Information."

*F. What are the Information Protection Requirements under 10 CFR Part 37? How Does This Compare to the Information Protection Requirements Prescribed for SGI-M?*

Part 37 rulemaking (10 CFR part 37) requires that a need-to-know determination be made before an individual is allowed to have access to the security-related information. Part 37 rulemaking (10 CFR 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 that will prevent the unauthorized removal of those documents. Information stored in non-removable electronic form must be password-protected. These requirements are similar to the requirements for SGI-M.

The regulation in part 37 also require a background investigation to determine the trustworthiness and reliability 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 10 CFR part 37 is similar to that required by § 73.23, with the exception that fingerprints are not submitted and a Federal Bureau of Investigation (FBI) criminal history records check is not required. However, many of the individuals needing access to protected information would also require access to radioactive material. Unescorted access to radioactive material requires fingerprinting and an FBI criminal history records check as part of the background investigation required under 10 CFR part 37. Therefore, the NRC anticipates that most individuals requiring access to security-related 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 routing information, licensees do not routinely transmit security-related information and the routing information is not transmitted as SGI-M, but is protected as SGI-M once received. Licensees are not required to submit the security plan or implementing procedures to the NRC.

The NRC concludes that 10 CFR part 37 provides adequate protection of the security-related information without unduly burdening licensees with the additional requirements for protection of SGI-M.

*G. What is the Reason for the Designation Change?*

The NRC considers that this re-designation is appropriate based on the following:

- 1) large irradiators have a lower risk of theft, and M&D licensees have a similar risk of theft when compared to other licensees possessing category 1 and category 2 quantities of radioactive material;
- 2) the information protection requirements in 10 CFR part 37 provide adequate protection of the security-related information;
- 3) the security requirements under 10 CFR part 37 are the same for all licensees;
- 4) information security requirements should be consistent across all areas that are regulated under NRC authority for public health and safety;
- 5) ease of communication between regulator and licensee; and
- 6) under 10 CFR part 73, the NRC would continue to inspect Agreement State licensee programs for the protection of SGI-M until the regulation in part 37 or compatible Agreement State requirement become affective.

Additionally, several commenters on the proposed 10 CFR part 37 rule, including several Agreement States, indicated that the security-related information for large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material should not be considered SGI-M.

Sandia National Laboratory (SNL) performed vulnerability assessments on a variety of materials licensees before the ICs were developed. The ICs and 10 CFR part 37 incorporate security measures that were identified in the draft vulnerability assessments as being 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 10 CFR part 37. The NRC, 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 10 CFR part 37.

As noted in the response to Question F, 10 CFR part 37 will provide adequate protection of the security-related information that is currently designated as SGI-M for these licensees. The actual security requirements in 10 CFR 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 10 CFR part 37 rule by terms such as prompt, immediate, and without delay. Therefore, disclosure of one licensee's response times will not compromise another licensees' security-related 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 and for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel is designated as SGI-M under 10 CFR part 73 and the orders. 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 pre-planning, coordination, and advance notification purposes. Although the information is considered to be SGI-M, the

information is not handled as SGI-M for the purposes of communication (telephone and facsimile) with the States and other licensees; however, once the shipment information 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 and transportation companies possessing a need-to-know and will not need to deal with the inconsistency in transmitting the SGI-M shipment information as non-SGI-M.

The security orders for the transportation of category 1 quantities of material, large irradiator licensees, and M&D licensees were issued under the NRC's common defense and security authority. The new part 37 security requirements, however, were issued under the NRC's authority to protect the public health and safety. The NRC has determined that the information protection requirements set forth in the new rule are adequate to protect the security information associated with large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material. Therefore, once the SGI-M rule is effective, the security information requirements associated with these licensees is no longer required to be handled as SGI-M. Furthermore, this will ensure that all the information security requirements are consistent across all areas that are regulated under public health and safety.

Protection of information at a level less than SGI-M will allow licensees to communicate more easily with regulators regarding implementation of the 10 CFR part 37 requirements, but still require licensees to limit access to specific security plans and procedures. For example, licensees will be required to limit access to the plans to those employees who need access to perform a job function. Licensees will 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-related questions or concerns. This approach achieves meaningful information protection without unduly burdening licensees' and regulators' ability to achieve effective implementation of the 10 CFR part 37 requirements.

If the security-related information for these facilities remains designated as SGI-M, the NRC will be responsible for inspection and enforcement of the SGI-M programs at those facilities regulated by an Agreement State. This can result in confusion for licensees. Results of many aspects of the security inspections would be SGI-M and could not be discussed in an open environment. Because only some security-related information at these facilities would be SGI-M, licensees would need to maintain two systems to protect security-related information, which needlessly increases the burden on the licensee.

*H. Will the Orders be Rescinded?*

Yes, the orders will be rescinded once 10 CFR part 37 is implemented for NRC licensees. For Agreement State licenses, the orders will be rescinded when the Agreement State adopts requirements compatible with the 10 CFR part 37 requirements. Agreement States have until March 2016 to adopt requirements compatible with the 10 CFR part 37.

*I. Will the NRC Issue Guidance for This Rule?*

No, the NRC does not plan to issue guidance specific to this rule. Existing guidance on SGI does not contain references to these types of facilities and, therefore, does not need to be revised. The guidance on 10 CFR part 37 will be revised to remove references to SGI-M. Change pages will be issued for the 10 CFR part 37 guidance document; the complete document will not be re-issued. The changes will be included in the next update.

### III. Summary of Changes

#### **§ 30.4 Definitions.**

The definition for “Quantities of concern” is removed from the regulations as it is no longer needed.

#### **§ 30.32 Application for specific licenses.**

Paragraph (k) is removed from the regulations to remove the reference to the SGI requirements in 10 CFR part 73.

#### **§ 30.34 Terms and conditions of licenses.**

Paragraph (l) is removed from the regulations to remove the reference to the SGI requirements in 10 CFR part 73.

#### **§ 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.

#### **§ 37.43 General security program requirements.**

Paragraph (d)(9) is removed from the regulations to remove the reference to the SGI requirements in 10 CFR part 73.

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

Paragraph (f) is revised to change the reference for protection of the information from § 73.21 to § 37.43(d).

**§ 73.2 Definitions**

The definition for “Quantities of concern” is removed from the regulations as it is no longer needed.

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

Paragraph (a)(1)(ii) is revised to remove panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, or byproduct or special nuclear material in greater than or equal to category 2 quantities of radioactive material; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of radioactive material from the list of categories of licensees subject to the provisions of 10 CFR part 73 for the protection of SGI-M.

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

The introductory text in this section is revised to remove panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; 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; transportation of more than 1000 TBq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel; and transportation of source, byproduct, or special nuclear material in

greater than or equal to category 1 quantities of radioactive material from the list of categories of licensees subject to the provisions of 10 CFR part 73 for the protection of SGI-M.

Paragraph (a)(2) is revised to remove the security-related information that is associated with the physical protection of shipments of more than 1000 TBq (27000 Ci) but less than or equal to 100 grams of spent nuclear fuel, source material and byproduct material in category 1 quantities of concern from the SGI-M category.

#### **Appendix I to Part 73-Category 1 and 3 Radioactive Materials.**

Appendix I is removed from the regulations as it is no longer needed.

#### **§ 150.15 Persons not exempt.**

Paragraph (a)(9) is removed from the regulations to remove the reference to the SGI requirements in 10 CFR part 73.

### **IV. Procedural Background**

Because the NRC considers this action to be non-controversial, the NRC is using the direct final rule process for this rule. The amendment to the rule will become effective on March 19, 2014. However, if the NRC receives a significant adverse comment by **[INSERT 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the NRC will publish a document that withdraws this action and will address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's 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.

(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.

For detailed instructions on submitting a comment, please see the companion proposed rule published elsewhere in this issue of the *Federal Register*.

## **V. Compatibility of Agreement State Regulations**

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this direct final rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the

Agreement States and the NRC requirements. The NRC staff and Agreement State representation analyzed the rule in accordance with the procedure established within Part III, “Categorization Process for NRC Program Elements,” of Handbook 5.9 to Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (a copy of which may be viewed at <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>).

The NRC program elements (including regulations) are placed into four compatibility categories (see the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.*, adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should

adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act, as amended, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that will be revised and their corresponding categorization under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs.”

**Compatibility Table for Direct Final Rule**

| Section        | Change | Subject  | Compatibility |     |
|----------------|--------|--|---------------|-----|
|                |        |  | Existing      | New |
| 10 CFR Part 30 |        |  |               |     |
| 30.4           | Remove | Definition of Quantities of Concern  | NRC           | -   |
| 30.32(k)       | Remove | Application for specific licenses.   | NRC           | -   |
| 30.34(l)       | Remove | Terms and conditions of licenses.  | NRC           | -   |
| 10 CFR Part 37 |        |  |               |     |
| 37.29(a)(10)   | Amend  | 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. | NRC           | NRC |
| 37.43(d)(9)    | Remove | General security program requirements.   | NRC           | -   |
| 37.77(f)       | Revise | Advance notification of shipment of category 1 quantities of radioactive material.   | NRC           | C   |
| 10 CFR Part 73 |        |  |               |     |
| 73.2           | Remove | Definition of Quantities of Concern  | NRC           | -   |
| 73.21          | Amend  | Protection of Safeguards Information: Performance Requirements.  | NRC           | NRC |

| Section         | Change | Subject  | Compatibility |     |
|-----------------|--------|--|---------------|-----|
|                 |        |  | Existing      | New |
| 73.23           | Amend  | Protection of Safeguards Information-Modified Handling: Specific Requirements. | NRC           | NRC |
| Appendix I      | Remove | Category 1 and Category 2 Radioactive Materials                                | NRC           | -   |
| 10 CFR Part 150 |        |  |               |     |
| 150.15(a)(9)    | Remove | Persons not exempt.  | NRC           | -   |

## VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

## VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the categories of licensees subject to the provision of 10 CFR part 73 for the protection of SGI-M by removing panoramic and underwater irradiator licensees that possess more than 370 TBq (10,000 Ci) of radioactive material, M&D licensees, licensees that transport category 1 quantities of radioactive material, and licensees that transport irradiated reactor fuel that weighs

100 grams or less in net weight of irradiated fuel from the listing. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

### **VIII. Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule changes the information protection requirements for 112 licensees. The rule will not affect either radiological or nonradiological releases nor occupational or public exposure. The NRC has determined that there is no significant environmental impact associated with the rulemaking action

The environmental assessment (ADAMS Accession No. ML13046A330) is available for inspection at the NRC's PDR, 11555 Rockville Pike, Rockville, MD 20852.

### **IX. Paperwork Reduction Act Statement**

This direct final rule decreases the burden on recordkeepers to mark documents containing Safeguards Information designated as SGI-M as specified in 10 CFR 73.23 (b), (d), and (f). The burden reduction for this information collection is estimated to average 5.5 hours per recordkeeper. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

## **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 request unless the requesting document displays a currently valid OMB control number.

## **X. Regulatory Analysis**

The Commission has prepared a regulatory analysis (ADAMS Accession No. ML13046A332) for this direct final rule. The regulatory analysis examines the costs and benefits of the alternatives considered by the Commission. The rule will reduce the burden on affected licensees as they will no longer be required to protect security-related information as SGI-M. The analysis is available for inspection in the NRC's PDR, 11555 Rockville Pike, Rockville, MD 20852.

## **XI. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The direct final rule will impact 112 licensees, 27 are licensed by the NRC and 85 are licensed by Agreement States. These licensees include large irradiators, M&Ds, any licensee that ships category 1 quantities of radioactive material, and any licensee that transports irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. Most of the companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by

the NRC (10 CFR 2.810). However, some of the licensees may. The rule will reduce the burden on affected licensees as they will no longer be required to protect security-related information as SGI-M.

## **XII. Backfitting and Issue Finality**

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) and the issue finality provisions in 10 CFR part 52 do not apply to this direct final rule because this amendment does not involve any provisions that will either impose backfits as defined in 10 CFR chapter I, or represent non-compliance with the issue finality of provisions in 10 CFR part 52. Therefore, a backfit analysis is not required for this direct final rule, and the NRC did not prepare a backfit analysis for this direct final rule.

## **XIII. Congressional Review Act**

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### **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.**

\* \* \* \* \*

(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 \_\_\_\_\_, 2012.

For the Nuclear Regulatory Commission.

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Annette Vietti-Cook,  
Secretary of the Commission.

**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:** Comments on the proposed rule must be received on or before [**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.

**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):

- **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 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.

(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.

### **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 \_\_\_\_\_, 2012.

For the Nuclear Regulatory Commission.

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

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**Regulatory Analysis for Direct Final Rule:  
Safeguards Information - Modified Handling  
Categorization Change for Materials Facilities  
(10 CFR Parts 30, 37, 73, and 150)**

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**U.S. Nuclear Regulatory Commission  
December 2012**



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## Executive Summary

The U.S. Nuclear Regulatory Commission (NRC) is amending Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical Protection of Plants and Materials," to remove the Safeguards Information – Modified Handling (SGI-M) designation of the security-related information for large irradiators, manufacturers and distributors (M&Ds) of items containing source, byproduct, or special nuclear material in category 2 quantities or greater, and for transport of category 1 quantities of radioactive material. This rulemaking will also result in the removal of the SGI-M designation of security related information for the transportation of irradiated reactor fuel in net weights of 100 grams or less. The security-related information for these facilities and the transportation of certain materials will no longer be designated as SGI-M under 10 CFR Part 73, and will be protected under the information protection requirements of 10 CFR Part 37, which applies to all materials licensees that possess aggregated category 1 or category 2 quantities of radioactive material.

The purpose of this regulatory analysis is to measure the incremental costs of the rule. The baseline for the analysis is the no action alternative, or how things would be without the rule. The costs evaluated in the regulatory analysis are only those costs that would be incurred under the rule. Under these assumptions, the analysis presented in this document examines the benefits and costs of the new requirements. The analysis found:

- *Total Cost to Industry.* This rule will result in an annual savings for each NRC licensee of approximately \$302. The total industry annual savings is approximately \$33,850. The net present value of the savings to industry is approximately \$0.62 million (using a 7-percent discount rate) and \$.87 million (using a 3-percent discount rate) over a 20-year analysis period.
- *Costs to NRC.* There is an estimated \$25,000 annual savings for the NRC associated with the implementation of the rule. The NRC has a one-time cost associated with updating the associated guidance. The cost of this updating is estimated to be \$1,200.
- *Decision Rationale.* The NRC decision is to conduct this rulemaking to remove the SGI-M categorization of security-related information for large irradiators, M&D licensees, and licensees that transport category 1 quantities of radioactive material and irradiated reactor fuel in 100 grams or less net weight. The rationale for this decision is that this information will be protected under the information protection requirements of 10 CFR Part 37, which provides adequate protection of this information without needlessly maintaining an effectively redundant burden on the licensee to protect this information under 10 CFR Part 73.

No backfit analysis was conducted for this rule. As stated in the "Backfit Analysis" section in this Regulatory Analysis, a Backfit Analysis does not apply to this rule because this amendment does not add or modify any requirements as backfits are defined in 10 CFR 50.109 or 10 CFR 70.76.

## Acronyms and Abbreviations

|       |   |
|-------|---|
| ADAMS | Agencywide Documents Access and Management System |
| AEA   | Atomic Energy Act                                 |
| CFR   | <i>Code of Federal Regulations</i>                |
| Ci    | curies  |
| FR    | <i>Federal Register</i>                           |
| M&D   | manufacturer and distributor                      |
| NRC   | U.S. Nuclear Regulatory Commission                |
| OMB   | Office of Management and Budget                   |
| RA    | regulatory analysis                               |
| SGI   | safeguards information                            |
| SGI-M | safeguards information – modified handling        |
| TBq   | Terabequerels                                     |

# 1. Introduction

The NRC is amending 10 CFR Part 73, "Physical Protection of Plants and Materials," to remove the SGI-M designation of the security-related information for panoramic and underwater irradiator licensees that possess more than 370 Terabequerels (TBq) (10,000 curies (Ci)) of radioactive material (large irradiators), M&D licensees, and licensees that transport category 1 quantities of radioactive material. This rulemaking will also result in the removal of the SGI-M designation of security-related information for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The security information for these facilities will no longer be protected as SGI-M. The information will be protected under the information protection requirements of 10 CFR Part 37, which applies to all materials licensees possessing aggregated category 1 and category 2 quantities of radioactive material. This regulatory analysis (RA) is part of the Commission's analysis of options being considered and is a supporting document to the direct final rule. The purpose of this RA is to evaluate the costs and benefits associated with the regulatory changes to be imposed by this rule. The NRC considers the RA process an integral part of its statutory mission to ensure reasonable assurance for the protection of public health and safety, property, environmental quality, and common defense and security from civilian uses of nuclear materials. This document presents background material, describes the regulatory problem, the objective of the rule, outlines the alternatives being considered, and evaluates the values and impacts of the regulatory alternatives.

## 1.1 Background

### 1.1.1 Current Regulatory Framework

Safeguards Information (SGI) is a special category of sensitive unclassified information authorized by Section 147 of the Atomic Energy Act, as amended (AEA), to be protected from unauthorized disclosure. Safeguards Information – Modified Handling is a subset of SGI. Part 73 contains requirements for the protection of SGI and SGI-M. Specifically, 10 CFR 73.21, "Protection of Safeguards Information: Performance requirements" and 10 CFR 73.23, "Protection of Safeguards Information-Modified Handling: Specific requirements" apply to SGI-M. An individual's access to SGI-M is controlled by a valid "need-to-know" determination, a criminal history records check (which includes fingerprinting), and a background check to determine trustworthiness and reliability. Information designated as SGI-M must be withheld from public disclosure and must be physically controlled and protected. Physical protection requirements include (1) secure storage, (2) document marking, (3) access restrictions to authorized individuals who have been fingerprinted, (4) limited reproduction, (5) protected transmission, (6) controls for information processing on electronic systems, and (7) prescribed information destruction procedures.

Examples of the types of information designated as SGI-M include security plans for a facility or site, scheduling and itinerary information for shipments of category 1 quantities of radioactive material, and security implementing procedures.

Section 73.23 requires that the security-related information for large irradiators, M&D licensees, and those licensees that transport category 1 quantities of radioactive material be designated as SGI-M and be protected accordingly.

On March 16, 2012, the Commission approved publication of a new 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." The final rule was published in the *Federal Register* on March 19, 2013 (78 FR 16922). NRC licensees will be required to implement 10 CFR Part 37 on March 19, 2014. Part 37 rulemaking (10 CFR Part 37) establishes security requirements for the protection of aggregated category 1 and category 2 quantities of radioactive material. The rule also contains information protection requirements for the licensee's security plan, implementing procedures, and other information. Part 37 rulemaking (10 CFR Part 37) requires that an individual seeking access to security-related information have a valid need-to-know before gaining such access. Part 37 rulemaking (10 CFR 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 its unauthorized removal. Information stored in non-removable electronic form must be password-protected. Part 37 rulemaking (10 CFR Part 37) also requires a background investigation to determine the trustworthiness and reliability of an individual seeking access to protected information. Although fingerprinting and a criminal history records check are not required for access to the protected information, most individuals with access to the information do undergo fingerprinting and a criminal history records check because they also have unescorted access to the radioactive material, which requires fingerprinting. The trustworthiness and reliability determination must be conducted by a reviewing official who has also been determined to be trustworthy and reliable.

### **1.1.2 Commission Orders**

The NRC has issued four sets of security orders for the protection of category 1 and category 2 quantities of radioactive material. The first set of orders was issued to large irradiators. The second set of orders went to M&D licensees. The third set went to licensees that transport category 1 quantities of radioactive material.

The orders issued to large irradiators, M&D licensees, and licensees transporting category 1 quantities of radioactive materials, require these licensees to perform specified actions within specific timeframes. The security-related 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. The orders also applied to the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel.

A fourth set of orders, commonly called the Increased Controls Order, was issued to all other licensees that possessed greater than category 2 quantities of radioactive material. The Increased Control 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 Increased Controls Order, and these orders do not contain SGI-M information, the security plans for licensees' subject only to the Increased Controls Order are not designated as SGI-M. Once Part 37 rulemaking (10 CFR Part 37) or

equivalent Agreement State requirements are effective, all of the security orders will be rescinded.

## **1.2 Statement of the Problem and Reasons for Rulemaking**

The actual security requirements in 10 CFR 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 10 CFR 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-related 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 10 CFR 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. The new Part 37 rulemaking (10 CFR Part 37) security requirements, however, were issued under the NRC's authority to protect the public health and safety. The security requirements for protection of security-related information for large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material will now be set forth in the new 10 CFR Part 37. The NRC has determined that the information protection requirements set forth in the new rule are adequate to protect the security information associated with large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material. Therefore, once the SGI-M rule is effective, the security information requirements associated with these licensees is no longer required to be handled as SGI-M. Furthermore, this will ensure that all the information security requirements are consistent across all areas that are regulated under public health and safety.

Protection of information at a level less than SGI-M would allow licensees to communicate more easily with regulators regarding implementation of the 10 CFR Part 37 requirements, but still require licensees to limit 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 10 CFR Part 37 requirements.

If the security-related information for these facilities remains designated as SGI-M, NRC will be responsible for inspection and enforcement of the SGI-M programs at those facilities regulated

by an Agreement State. This can result in confusion for licensees. Results of many aspects of the security inspections would be SGI-M and could not be discussed in an open environment. Because some security-related information at these facilities would be SGI-M and some would not be, licensees would need to maintain two systems to protect security-related information, which needlessly increases the burden on the licensee.

### **1.3 Regulatory Objectives**

The objective of this rule is to remove the SGI-M designation for the security-related information for large irradiators, M&D licensees, and licensees transporting category 1 quantities of radioactive material. The security-related information would be protected under 10 CFR Part 37 information protection requirements. This would allow all licensees subject to 10 CFR Part 37 to be treated the same in regards to information protection.

## **2. Identification and Preliminary Analysis of Alternative Approaches**

This section presents analysis of the alternatives that the NRC considered to meet the regulatory goals identified in the previous section. The NRC considered two alternatives for the rule as discussed below.

### **2.1 Option 1: No Action**

Option 1 is the no action alternative. The no-action alternative is how the world would look absent the rule. Under the no action alternative, the Commission would make no changes to the current regulations. Licensees would continue to comply with the SGI-M provisions in 10 CFR 73.21 and 10 CFR 73.23 and NRC would continue to inspect the information protection programs of both NRC and Agreement State licensees. Some licensees would be required to maintain two information protection programs. The no action alternative would require the NRC to conduct inspections of Agreement State licensees solely due to the need to conduct the inspection of the SGI-M information protection program. The no-action alternative serves as the baseline against which other options are measured.

### **2.2 Option 2: Revise the SGI-M Categorization for Certain Licensees**

Option 2 is the NRC's modification to revise the regulations (10 CFR Part 73) to remove the SGI-M designation of the security-related information for large irradiators, M&Ds, and for transport of category 1 quantities of radioactive material. The security-related information for these facilities will no longer be protected 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, *i.e.*, 10 CFR Part 37. Conforming changes are made to 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," 10 CFR Part 150, "Exemptions and continued regulatory authority in Agreement States and in offshore waters under section 274," and 10 CFR Part 37. The specific changes are listed below:

- § 30.4 is removed;
- § 30.32(k) is removed;
- § 30.34(l) is removed;
- § 37.29(a)(10) is revised to add category 1 drivers;
- § 37.43(d)(9) is removed;
- § 37.77(f) is revised to change the reference for protection of the information from § 73.21 to § 37.43(d);
- § 73.21(a)(1)(ii) is revised to remove the discussion of large irradiators, M&D licenses, and transportation of category 1 quantities of concern;
- § 73.23 is revised to remove discussion of large irradiators, M&D licenses, and transportation of byproducts, source material and special nuclear material in category 1 quantities of concern in the introductory text;
- § 73.23(a)(2) is revised to remove the discussion of transport of category 1 quantities of concern; and
- Appendix 1 to 10 CFR Part 73 is removed;
- § 150.15(a)(9) is removed.

The NRC has estimated the benefits and costs of this option, as described in Sections 3 and 4 of this regulatory analysis, and has pursued Option 2 for the reasons discussed in Section 5.

### **3. Evaluation of Benefits and Costs**

This section examines the benefits and costs expected to result from the two options described in the previous section. The information is presented in two subsections. Section 3.1 identifies the attributes that are expected to be affected by the rulemaking. Section 3.2 describes how the benefits and costs have been analyzed.

#### **3.1 Identification of Affected Attributes**

This section identifies the factors within the public and private sectors that the regulatory alternatives (discussed in Section 2) are expected to affect. These factors are classified as “attributes” using the list of potential attributes provided by the NRC in Chapter 5 of its *Regulatory Analysis Technical Evaluation Handbook*. Affected attributes include the following:

- Safeguards and Security Considerations – Option 2 could be viewed as reducing the level of protection of security-related information.
- Industry Implementation – Under Option 2, large irradiators, M&D licensees, and licensee that transport category 1 quantities of radioactive material will no longer need to protect security-related information as SGI-M. All security-related information will be protected under the requirements of 10 CFR Part 37.
- Industry Operation – Under Option 2, communications with States, NRC, or other entities related to security information will be easier to accomplish. Licensee will not need to maintain two information protection processes.

- NRC Implementation – Under Option 2, NRC will revise 10 CFR Part 37 guidance to remove any references to SGI-M.
- NRC Operation – Under Option 2, the NRC will no longer inspect the SGI-M program at facilities regulated by the Agreement States.
- Regulatory Efficiency - Option 2 results in enhanced regulatory efficiency. There is no split in responsibility between the NRC and the Agreement States for the affected licensees. All of the security-related information related to category 1 and category 2 quantities of radioactive material will be protected under the same requirements.
- Other Government – Under Option 2, Agreement States will not need to revise their regulations, but will be responsible for inspecting all of the information protection aspects for the affected licensees.

Attributes that are not expected to be affected under any of the options include the following: public health (routine), public health (accident), occupational health (routine), occupational health (accidental), general public, environmental, improvements in knowledge, off-site property, on-site property, and antitrust considerations.

### **3.2 Analytical Methodology for Analysis**

This section describes the process used to evaluate benefits and costs associated with the various regulatory options. The benefits (values) include desirable changes in affected attributes, e.g., monetary savings and improved security and safety. The costs (impacts or burdens) include undesirable changes in affected attributes, e.g., increased monetary costs and increased radiation exposure levels.

The analysis evaluates several attributes on a quantitative basis. (These include industry implementation, industry operation, NRC implementation, and NRC operation.) Quantitative analysis requires a baseline characterization, including factors such as the number of licensees affected, the nature of activities being conducted, and the types of new activities that licensees will implement as a result of the rule. However, licensees may respond to the rule in different ways depending on their licensed activities. It is beyond the scope of this analysis to characterize and analyze the individually affected licensees. The analysis proceeds quantitatively for these attributes by making general assumptions. Sections 3.2.1 – 3.2.3 describe the most significant analytical data and assumptions used in the quantitative analyses of these attributes.

This analysis relies on a qualitative evaluation of several of the safeguards and security considerations due to the subjective nature of the impact.<sup>1</sup>

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<sup>1</sup> The regulatory efficiency attribute also is evaluated qualitatively by definition. See NRC's *Regulatory Analysis Technical Evaluation Handbook*, Section 5.5.14.

### **3.2.1 Analysis**

This RA measures the incremental impacts of the rule relative to a baseline, which reflects anticipated behavior in the event that the regulation is not revised. The analysis assumes full licensee compliance with existing NRC requirements, including current regulations and relevant orders. This is consistent with NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Rev. 4, which states that, "in evaluating a new requirement..., the staff should assume that all existing NRC and Agreement State requirements have been implemented." Section 4 presents the estimated incremental costs and savings of the direct final rule relative to the no action or baseline.

In accordance with guidance from the Office of Management and Budget (OMB) and NUREG/BR-0058, Rev. 4, this RA presents the results of the analysis using both 3-percent and 7-percent real discount rates. The real discounted rates or present-worth calculation simply determines how much society would need to invest today to ensure that the designated dollar amount is available in a given year in the future. By using present-worth, costs and benefits, regardless of when averted in time, are valued equally. Based on OMB guidance (OMB Circular No. A-4, September, 17, 2003), present-worth calculations are presented using both 3-percent and 7-percent real discount rates. The 3-percent rate approximates the real rate of return on long-term government debt which serves as a proxy for the real rate of return on savings. This rate is appropriate when the primary effect of the regulation is on private consumption. Alternatively, the 7-percent rate approximates the marginal pre-tax real rate of return on an average investment in the private sector, and is the appropriate discount rate whenever the main effect of a regulation is to displace or alter the use of capital in the private sector.

### **3.2.2 Data**

Information (e.g., the nature and magnitude of safeguards and security impacts) on attributes affected by the rule have been obtained from NRC staff. The NRC staff considered the potential differences between the new requirements and the current requirements and has incorporated available, non-safeguards information into this regulatory analysis. Information on the cost of implementing the SGI-M for these facilities was taken from the RA for the final rule on protection of SGI (73 FR 63546; October 24, 2008). The RA is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML072190656.

There are 112 licensees that will be impacted by the rule, 27 are licensed by the NRC and 85 are licensed by Agreement States. The costs of these licensees to implement the information protection requirements of 10 CFR Part 37 were captured by the RA conducted for 10 CFR Part 37 final rule (ADAMS Accession No. ML112920114) and, therefore, are not included in this analysis.

One-time costs for these 112 licensees to develop and implement an SGI-M program have already been expended and are considered sunk costs. The NRC inspection costs were not calculated as part of the 2008 rulemaking because it was assumed that the inspection would occur at the same time as the security inspection and there would be no additional costs. However, after 10 CFR Part 37 is adopted by an Agreement State, NRC will no longer be responsible for the routine security inspections and would need to schedule inspections just to review the SGI-M program. Typically, NRC would conduct this inspection every 2 years. The

total NRC cost to conduct inspections for the 85 Agreement State licensees that currently have SGI-M programs is \$25,288.

The States should not have any costs associated with this rule. Agreement States already inspect the 85 state licensees impacted by the rule and would not need to make a special trip. As part of the inspection, the Agreement State already reviews the non-SGI protection program. States would continue to maintain their SGI program because they receive other SGI, therefore, there would be no savings from the elimination of the SGI program as there is for licensees. Although, there should be fewer documents that are considered to be SGI-M, the NRC is not including this as a savings.

### **3.2.3 General Assumptions**

Costs are expressed in 2012 dollars and are modeled either on an annual recurring cost basis or on a one-time implementation basis. Ongoing costs of operation related to the options are assumed to begin in 2014, and are modeled on an annual cost basis. The RA calculates costs over a 20-year analysis period, with the annual costs in each year beyond 2014 discounted back at a 7-percent and 3-percent discount rate, in accordance with NUREG/BR-0058, Rev. 4.

The general input assumptions for the analysis are discussed below.

- The NRC's labor rates are determined using the methodology in Abstract 5.2, "NRC Labor Rates," of NUREG/CR-4627, Rev. 1. This methodology considers only variable costs that are directly related to the implementation, operation, and maintenance of the proposed amendments. Currently, the NRC hourly labor rate is \$119.
- The NRC will update guidance to support this rulemaking, this is a minor task and will require only 10 hours of staff time.
- Licensee labor rates were obtained from National Wage Data available on the Bureau of Labor Statistics Web site ([www.bls.gov](http://www.bls.gov)). Depending on the industry and the occupation (e.g., manufacturing, health and safety, etc.), an appropriate mean hourly labor rate is selected. Because exact hourly rates would be difficult to obtain and may not be sufficiently recent, nationwide mean hourly rates are used. For all licensee labor a rate, \$41.86/hour is used, which is from Bureau of Labor Statistics Employer Costs for Employee Compensation data set, "Health and safety engineers, except mining safety engineers and inspectors."
- The NRC staff estimates 112 entities will be directly impacted by the amendments.
- The NRC staff estimates that each licensee will save 5.5 labor hours annually. The breakdown of the functions are presented in the below table.

| Licensees with Radioactive Materials in Quantities of Concern | Hours |
|---|-------|
| Establishing SGI program                                      | 0     |
| Background checks   | 1     |
| Training Staff  | 2     |
| Marking SGI   | 2.5   |
| Total   | 5.50  |

- The NRC staff estimates that each licensee will save \$72 annually for the cost of background checks, additional storage of SGI, and document stamps for marking SGI.
- Licensees will incur a one-time cost to decontrol current documents. The NRC staff estimates this will be on average 2 hours per licensee.
- The time period for the analysis is 20 years. The 20-year period for the analysis was selected to cover the estimated timeframe the affected entities will be impacted.
- Estimates have been made for one-time implementation costs. It is assumed that the costs will be incurred in the first year of the analysis.
- Estimates have been made for recurring annual operating expenses to support implementation of the rule. The values for annual operating expenses are assumed to be identical for each of the 20 years in the analysis. The annuity formula used to discount the annual expense values is on page B.3 of NUREG/BR-0184.
- On NRC inspection costs assume 1 hour of inspection time and 4 hours of travel time for a total of 5 labor hours.

#### 4. Results

This section presents the analytical results and findings on the overall benefits and costs of the two options under the analysis. To the extent that the affected attributes could be analyzed quantitatively, the net effect of each option has been calculated and is presented below. However, some values and impacts could be evaluated only on a qualitative basis.

The results of the value-impact analysis are summarized in Exhibit 4-1. Option 2 results in a net quantitative impact estimated between -\$615,934 and -\$869,246 (7-percent and 3-percent discount rate over the 20-year analysis period, respectively).

### Exhibit 4-1

#### Summary of Benefits/Savings and Costs/Burdens

|                | One-time Implementation Costs | Annual Operating Costs | Total Combined Implementation and Annual Cost for 20-year period at 3% | Total Combined Implementation and Annual Cost for 20-year period at 7% |
|----------------|-------------------------------|------------------------|--|--|
| Industry Costs | \$9,377                       | -\$33,850              | -\$494,222   | -\$349,228   |
| NRC Costs      | \$1,190                       | -\$25,288              | -\$375,024   | -\$266,706   |
| Total          | \$10,567                      | -\$59,137              | -\$869,246   | -\$615,934   |

Exhibit 4-2 shows the estimated annual cost and benefit, by attribute, for Options 1 and 2, for the first year of implementation.

### Exhibit 4-2

#### Summary of Annual Benefits/Savings by Attribute

|                         | Option 1 | Option 2  |
|-------------------------|----------|-----------|
| Industry Implementation | \$0      | \$9,377   |
| Industry Operation      | \$0      | -\$33,850 |
| NRC Implementation      | \$0      | \$1,190   |
| NRC Operation           | \$0      | -\$25,288 |
| Total                   | \$0      | -\$48,571 |

## 4.1 Backfit Analysis

The NRC has determined that the Backfit Rule does not apply to this rule, because this amendment does not add or modify any regulations to impose backfits as defined in 10 CFR 50.109 or 10 CFR 70.76. Part 50.109 (a)(1) of 10 CFR defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. This rulemaking will not make any modification or addition to any systems, structures or components or the design of a facility, affect the design approval or manufacturing license of a facility, or affect the procedures or organization required to design, construct or operate a facility. Therefore, it is the NRC's determination that a backfit analysis is not required.

## **5. Decision Rationale**

The NRC decision is to conduct the rulemaking to remove the SGI-M categorization of the security-related information for large irradiators, M&D licensees, and licensees that transport category 1 quantities of radioactive material. The information will be protected under the information protection requirements of 10 CFR Part 37. This will provide adequate protection of the security-related information without needlessly imposing burden on the licensee. The change will result in an annual savings of \$33,850 for industry and savings of \$25,288 for the NRC while still providing adequate protection of the security-related information.

Therefore, this direct final rule is not considered a major rule as defined by the Congressional Review Act.

## **6. Implementation**

The action will be implemented through a direct final rule. The direct final rule will be effective on the compliance date of the 10 CFR Part 37 final rule. The NRC has not identified any impediments to implementing the recommended alternative.

## **7. References**

NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Rev. 4.

NUREG/BR-0184, "Regulatory Analysis Technical Evaluation Handbook, Final Report," Office of Nuclear Regulatory Research, January 1997.

U.S. Department of Labor, Bureau of Labor Statistics Employer Costs for Employee Compensation data set, "Health and safety engineers, except mining safety engineers and inspectors."

## **Appendix A: Regulatory Flexibility Analysis**

The NRC is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as amended by the Small Business Regulatory Enforcement Fairness Act to consider the impact of its rulemakings on small entities and evaluate alternatives that would accomplish regulatory objectives without unduly burdening small entities or erecting barriers to competition.

The NRC has established size standards that it uses to determine which NRC licensees qualify as small entities (60 FR 18344; April 11, 1995). These size standards are codified in 10 CFR 2.810. The size standards pertinent to licensees impacted by this rulemaking include the following: Under 10 CFR 2.810 (a)(1), a small business is a for-profit concern and is a concern that provides a service or a concern not engaged in manufacturing with average annual gross receipts of \$5 million or less over its last 3 completed fiscal years. The NRC estimates that this rule will affect 112 licensees some of which may be considered small entities. However, the rule will reduce the burden on affected licensees as they will no longer be required to protect security-related information as SGI-M.

ENVIRONMENTAL ASSESSMENT AND FINDING OF  
NO SIGNIFICANT IMPACT  
FOR THE  
DIRECT FINAL RULE  
AMENDING 10 CFR PARTS 30, 37, 73, AND 150  
Safeguards Information-Modified Handling Categorization  
Change for Materials Facilities

Office of Federal and State Materials and Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
December 2012

Proposed Action

The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to remove the Safeguards Information – Modified Handling (SGI-M) designation of the security-related information for panoramic and underwater irradiator licensees that possess more than 370 Terabequerels (TBq) (10,000 curies (Ci)) of radioactive material (large irradiators), manufacturer and distributors (M&D), and licensees that transport category 1 quantities of radioactive material. The security-related information for these facilities will no longer be protected as SGI-M. The information 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 set forth in Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Category 1 and Category 2 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.

## Need for the Proposed Action

The security requirements in 10 CFR Part 37 are the same for all licensees. These security requirements do not contain any of the information from the security orders that were designated as SGI-M. The SGI-M timeframes that were in the orders are replaced in the 10 CFR Part 37 rule by terms such as prompt, immediate, and without delay. Therefore, disclosure of a licensee's response times will not compromise other licensees' security-related information because the response time (i.e., immediate) designated in the rule is already public knowledge.

Currently, itinerary information for the transportation of category 1 quantities of material is designated as SGI-M under 10 CFR 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 is not designated as SGI-M; however, once the shipment information 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 and transportation companies possessing a need-to-know and will not need to deal with the inconsistency in transmitting the shipment information as non-SGI-M.

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. The new Part 37 rulemaking (10 CFR Part 37) security requirements, however, were issued under the NRC's authority to protect the public health and safety. The security requirements for protection of security-related information for large irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material will now be set forth in the new 10 CFR Part 37. The NRC has determined that the information protection requirements set forth in the new rule are adequate to protect the security information associated with large

irradiators, M&Ds, and licensees that transport category 1 quantities of radioactive material. Therefore, once the SGI-M rule is effective, the security information requirements associated with these licensees is no longer required to be handled as SGI-M. Furthermore, this will ensure that all the information security requirements are consistent across all areas that are regulated under public health and safety.

Protection of information at a level less than SGI-M would allow licensees to communicate more easily with regulators regarding implementation of the 10 CFR Part 37 requirements, but still require licensees to limit access to security plans and implementing procedures. For example, licensees would be required to limit access to the plans to those employees who need access to perform a job function. Licensees will 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 10 CFR Part 37 requirements.

If the security-related information for these facilities remains designated as SGI-M, the NRC will be responsible for inspection and enforcement of the SGI-M programs at those facilities regulated by an Agreement State. This can result in confusion for licensees. Results of many aspects of the security inspections would be SGI-M and could not be discussed in an open environment. Because some security-related information at these facilities would be SGI-M and some would not be, licensees will need to maintain two systems to protect security-related information, which needlessly increases the burden on the licensee.

## Environmental Impact

This environmental assessment focuses on those aspects of the SGI-M program designation change rulemaking where there is a potential for the requirements to affect the environment. This proposed action will remove the SGI-M categorization of the security-related information for large irradiators; M&D licensees; and licensees that transport byproduct material, source material, or special nuclear material in category 1 quantities. The proposed action will also result in the transportation security-related information for small quantities of irradiated fuel being re-categorized as non-SGI-M. The rule will impact 112 licensees. The rule only impacts information protection requirements. The NRC has concluded that there will be no significant radiological environmental impacts associated with implementation of the rule requirements.

The requirements will not result in changes to the systems in affected licensees' facilities that function to limit the release of radiological effluents. All systems associated with limiting the releases of offsite radiological effluents will, therefore, continue to be able to perform their functions, and as a result, there are no significant radiological effluent impacts. The standards and requirements applicable to radiological releases and effluents are not affected by the rulemaking and continue to apply.

The principal effect of this action is to revise the governing regulations pertaining to the protection of security-related information. None of the revisions affect current occupational exposure requirements; consequently, the NRC has concluded that this action has no impact on occupational exposure.

The proposed action does not significantly increase the probability or consequences of accidents, nor result in changes being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure.

With regard to potential nonradiological impacts, implementation of the rule requirements does not have a significant impact on the environment. Facility footprints should not change due to the proposed action. No construction of new structures is required to meet the requirements in the rule. In addition, the requirements do not affect any historic site and do not affect nonradiological plant effluents. Consequently, there are no significant non-radiological plant effluents. Therefore, there is no significant non-radiological environmental impact associated with this rule.

Accordingly, the NRC concludes that there is no significant environmental impact associated with the rulemaking action.

#### Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered not taking the action (i.e., the no-action alternative). Not revising the regulations results in no change in current environmental impacts since the requirements will result in no significant environmental impact. Therefore, taking no action results in no net change to the environmental impact. However, the no-action alternative would leave the existing information protection requirements intact, and as such, impose unnecessary burden on the 112 affected licensees.

#### Alternative Use of Resources

There are no irreversible commitments of resources determined in this assessment.

## Agencies and Persons Consulted

A copy of the draft *Federal Register* notice was provided to the Agreement States so they could have an early opportunity for review.

## Finding of No Significant Impact

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required for this rulemaking. The amendments are procedural in nature and will have no significant impact on the environment. The determination of this environmental assessment is that there will be no significant impact to the public from this action.

Documents related to this rulemaking, including any comments received by the NRC, may be examined at the NRC's Public Document Room, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.