

## PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 20. The authority citation for part 51 continues to read as follows:

**Authority:** Atomic Energy Act sec. 161, 1701 (42 U.S.C. 2201, 2297f); Energy Reorganization Act secs. 201, 202, 211 (42 U.S.C. 5841, 5842, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act secs. 102, 104, 105 (42 U.S.C. 4332, 4334, 4335); Pub. L. 95–604, Title II, 92 Stat. 3033 3041; Atomic Energy Act sec. 193 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

■ 21. In § 51.22, the introductory text of paragraph (c)(3) is revised to read as follows:

**§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.**

\* \* \* \* \*

(c) \* \* \*

(3) Amendments to parts 20, 30, 31, 32, 33, 34, 35, 37, 39, 40, 50, 51, 52, 54, 60, 61, 63, 70, 71, 72, 73, 74, 81, and 100 of this chapter which relate to—

\* \* \* \* \*

## PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 22. The authority citation for part 71 continues to read as follows:

**Authority:** Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); 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). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 790.

■ 23. In § 71.97, the introductory text of paragraph (b) is revised to read as follows:

**§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.**

\* \* \* \* \*

(b) Advance notification is also required under this section for the shipment of licensed material, other

than irradiated fuel, meeting the following three conditions:

\* \* \* \* \*

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 24. 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).

■ 25. A new § 73.35 is added to read as follows:

**§ 73.35 Requirements for physical protection of irradiated reactor fuel (100 grams or less) in transit.**

Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel weighing 100 grams (0.22 pounds) or less in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 meter (3.3 feet) from any accessible surface without intervening shielding, shall follow the physical protection requirements for category 1 quantities of radioactive material in subpart D of part 37 of this chapter.

Dated at Rockville, Maryland, this 8th day of March, 2013.

For the Nuclear Regulatory Commission.  
**Annette Vietti-Cook,**  
*Secretary of the Commission.*

**Note:** This Appendix Will Not Appear in the *Code of Federal Regulations*.

## APPENDIX A TO THIS FINAL RULE—REGULATORY FLEXIBILITY ANALYSIS FOR THE AMENDMENTS TO 10 CFR PARTS 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, AND 73 (PHYSICAL PROTECTION OF BYPRODUCT MATERIAL)

### I. Background

The Regulatory Flexibility Act (RFA), as amended 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The U.S. Nuclear Regulatory Commission (NRC) has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities.

### *Description of the Reasons That Action by the Agency Is Being Considered*

The NRC has long participated in efforts to address radioactive source protection and security. The terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant radioactive materials could lead to their unauthorized use in a radiological dispersal device or a radiological exposure device.

Commission regulations provide requirements for the safe use, transport, and control of licensed material. A licensee's loss of control of risk-significant radioactive material, whether it is inadvertent or through a deliberate act, could result in significant adverse impacts that could reasonably constitute a threat to the public health and safety or the common defense and security of the United States. After the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security provisions and safeguarded during transport, and that individuals with unescorted access to risk-significant radioactive material should be subject to background investigations. For additional information see the Discussion portion of the Statements of Consideration (SOC).

### *Succinct Statement of the Objectives of, and Legal Basis for, the Final Rule*

The objective of this rule is to establish generically applicable security requirements for the protection of category 1 and category 2 quantities of radioactive materials possessed by certain NRC and Agreement State licensees. These security requirements are similar to the requirements imposed on these licensees through the NRC's applicable previously-issued security orders. The NRC has determined that it is preferable to regulate through rulemaking rather than order because notice and comment rulemaking is an open and transparent process that facilitates public participation. In developing the final rule, the NRC considered, among other things, the various orders, lessons-learned during implementation, the recommendations from the Independent Review Panel and the Materials Working Group, and stakeholder comments. The rule also considered a petition for rulemaking submitted by the State of Washington. For additional information see the Discussion portion of the SOC. The authority citation sections of the final rule contain the statutory authority for the rule.