

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 37, 73, and 150

[NRC-2012-0140]

RIN 3150-AJ18

Safeguards Information - Modified Handling Categorization

Change for Materials Facilities Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: 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 ~~direct final~~ rule is effective ~~[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]~~~~March 10, 2014~~, unless a significant adverse comment is received by ~~[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]~~.

Comment [vc1]: Staff recommends the revision as a result of OMB review process requirements.

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

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. 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.

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.

Comment [vc3]: SRM Change No.1 to the Federal Register for Direct Final Rule

Comment [vc4]: SRM Change No.2 to the Federal Register for Direct Final Rule

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 10 CFR § 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.

Comment [vc5]: Staff recommends the revision as a result of OGC review for the NLO.

Comment [vc6]: SRM Change No.3 to the Federal Register for Direct Final Rule

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?

The SGI-M security Orders, security plans required by the Orders, and any other SGI-M information must be destroyed in accordance with 10 CFR 73.23(i) once the rule is effective and the Orders are rescinded. Documents must be marked and protected as SGI-M until they are removed from the SGI category (decontrolled) destroyed. Documents or other matter originally

Comment [vc7]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc8]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

~~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. Additionally, if a panoramic irradiator or M&D licensee develops a part 37 security plan in preparation for compliance with part 37, before § 73.23 is revised, the licensee may decontrol the part 37 security plan in accordance with § 73.23(h). To decontrol the part 37 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.~~

~~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 ~~regulations compatible to~~ the provisions of 10 CFR part 37. Once an Agreement State adopts ~~regulations compatible to~~ 10 CFR part 37 and the provisions are effective in the State, the NRC will rescind ~~all-relevant~~ security orders for the licensees in that State. At that time the licensees may ~~decontrol-destroy~~ SGI-M in their possession. ~~To decontrol the security related~~

Comment [vc9]: SRM Change No.4 to the Federal Register for Direct Final Rule

Comment [vc10]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc11]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc12]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5. Moved from paragraph below.

Comment [vc13]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc14]: Staff recommends the revision as a result of OGC review for the NLO.

Comment [vc15]: Staff recommends the revision as a result of OGC review for the NLO.

Comment [vc16]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc17]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

~~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.~~

Comment [vc18]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.. Moved up to paragraph above.

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-destroying~~ the documents. Instead, as those documents are removed from storage for use, the licensee can ~~decontrol-destroy~~ 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 ~~and destruction~~ of SGI is available in Section 9 of Regulatory Guide 5.79, "Protection of Safeguards Information."

Comment [vc19]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5..

Comment [vc20]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

Comment [vc21]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5..

Comment [vc22]: Staff recommends the revision as a result of the SRM changes due to SRM Change No.5.

~~In addition, the SGI-M security Orders and security plans required by the Orders must be destroyed in accordance with 10 CFR 73.23(i) once the rule is effective and the Orders are rescinded. Documents must be marked and protected as SGI-M until they are destroyed. Additionally, if a panoramic irradiator or M&D licensee develops a Part 37 security plan, in preparation for compliance with Part 37 before § 73.23 is revised, the licensee may decontrol the Part 37 security plan in accordance with § 73.23(h).~~

Comment [vc23]: SRM Change No.5 to the Federal Register for Direct Final Rule
Staff recommends moving the text to the beginning of Section E.

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 regulations 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 becomes ~~effective~~ effective. 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.

Comment [vc25]: SRM Change No.7 to the Federal Register for Direct Final Rule

Sandia National ~~Laboratory-Laboratories~~ (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 ~~have 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.

Comment [vc26]: SRM Change No.8 to the Federal Register for Direct Final Rule

Comment [vc27]: SRM Change No.9 to the Federal Register for Direct Final Rule

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.

J. Are individuals transporting Category 1 radioactive material subject to the background investigation requirements?

As part of this rulemaking, the NRC considered the level of responsibility to place on its licensees regarding fingerprinting and criminal history records checks for persons involved in the transportation of category 1 of radioactive material. Licensees covered by the fingerprinting and criminal history records check requirements of 10 CFR Part 37 may decide to transfer radioactive material away from the site or may receive radioactive material from another entity.

Such transfers or receipts may occur either as part of a shipment to or from a domestic company or an international company. Individuals involved in the shipment, in particular those employed by carriers or other organizations handling shipments, may have unescorted access to the material during the shipment process. These persons may not be employees of the licensee and thus may not be under the licensee's direct control. Section 37.29(a) grants relief from the background investigation for those individuals who are commercial vehicle drivers for category 2 road shipments and package handlers at transportation facilities such as freight terminals and railroad yards.

Under this final rule, the Commission is revising the listing of categories of individuals relieved from the background investigation requirements with the following modification. Employees of carriers that transport category 1 quantities of radioactive material are also

Comment [vc28]: Staff recommends as a result of the SRM changes.

relieved. These individuals would typically be outside the control of the licensee and the licensee would have no way of knowing or influencing who those individuals might be. Additionally, information related to the physical protection of shipments of source material and byproduct material in category 1 quantities of radioactive material is no longer designated as SGI-M. The NRC will rely on the U.S. Department of Transportation (DOT) and the Transportation Security Administration (TSA) programs for background investigations of these personnel. While the background investigation may not be identical to those required under 10 CFR part 37, the NRC believes that the potential risk that a commercial driver or package handler might pose due to any difference in the background investigation is acceptably small.

Comment [vc29]: SRM Change No.10 to the Federal Register for Direct Final Rule

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.

Comment [vc30]: SRM Change No.11 to the Federal Register for Direct Final Rule

§ 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.

Comment [vc31]: SRM Change No.12 to the Federal Register for Direct Final Rule

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 ~~3-2~~ Radioactive Materials.

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

Comment [vc32]: SRM Change No.13 to the Federal Register for Direct Final Rule

§ 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

[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]~~March 19,~~

~~2014.~~ However, if the NRC receives a significant adverse comment **on this direct final rule** 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.

Comment [VC33]: Revised due to OMB review process requirements.

Comment [vc34]: Revised due to OMB review process requirements.

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				

Comment [vc35]: Grammar correction.

Section	Change	Subject	Compatibility	
			Existing	New
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.	NRCB	NRCB
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
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	-

Comment [vc36]: SRM Change No.14 to the Federal Register for Direct Final Rule

Comment [vc37]: SRM Change No.15 to the Federal Register for Direct Final Rule

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. Further information about information collection requirements associated with this direct final rule can be found in the companion proposed rule published elsewhere in this issue of the *Federal Register*. 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.

This direct final rule is being issued prior to approval by the Office of Management and Budget (OMB) of these information collection requirements, which were submitted under OMB control number 3150-0002. When OMB notifies us of its decision, we will publish a document in the *Federal Register* providing notice of the effective date of the information collections or, if approval is denied, providing notice of what action we plan to take.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch, Mail Stop T-5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to Infocollects.Resource@NRC.gov and to the Desk Officer, Danielle Jones, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0002), Office of Management and Budget, Washington, DC 20503.

Comment [VC38]: Revised due to OMB review process requirements.

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~~2013.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

Comment [vc39]: SRM Change No.16 to the Federal Register for Direct Final Rule

Comment [VC40]: Revise to current year.