

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[NRC-2015-0109]

Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: On March 19, 2013, the U. S. Nuclear Regulatory Commission (NRC) published a final rule that amended its regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. Specifically, the final rule provided reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material, and included security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. In December 2014, the Committees on Appropriations of the House of Representatives and the Senate directed the NRC to evaluate the effectiveness of the new regulations and determine whether the requirements are adequate to protect “high-risk radiological material.” In response to this mandate, the NRC is implementing a retrospective program review to provide an objective assessment of the new requirements and associated implementation guidance. This action seeks information that will be used in developing a report to Congress.

The NRC plans to hold a series of public meetings to facilitate public participation. These meetings will consist of a public meeting and a series of webinar teleconferences, and the staff will publicly notice the date and times of these meetings. The staff is planning to conduct these meetings in March 2016.

DATES: Submit comments by **[INSERT DATE 60 DAYS FROM DATE OF 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 ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments 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-2015-0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Please include the Docket ID NRC-2015-0109 in the subject line of your submission.

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

FOR FURTHER INFORMATION CONTACT: George Smith, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7201, e-mail: George.Smith@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2015-0109 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2015-0109.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection 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 (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **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-2015-0109 in your comment submission.

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 will post 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 into ADAMS.

II. Background

The NRC and Agreement States ensure the safety and security of approximately 80,000 category 1 and category 2 radioactive sources used in medical, commercial, and research activities. The NRC considers category 1 and category 2 quantities of radioactive material to be risk significant, and these quantities refer specifically to 16 radioactive materials listed in Appendix A to 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 NRC and its partners in 37 Agreement States took steps to strengthen the security of risk-significant radioactive materials immediately after the terrorist attacks of September 11, 2001. Since that

time, the NRC issued various orders imposing increased controls, implemented requirements for fingerprinting and criminal background checks for people with access to certain radioactive materials, and established the National Source Tracking System. The NRC cooperates with the U.S. Departments of Homeland Security and Energy as well as other Federal, State, and local agencies on security matters, and chairs the inter-agency Radiation Source Protection and Security Task Force (Task Force).

The Task Force was established by the Energy Policy Act of 2005, which directed this Task Force to evaluate and provide recommendations relating to the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device or a radiation exposure device. The Task Force is comprised of experts from 13 Federal agencies and one State organization. The Task Force members represent agencies with broad authority over all aspects of radioactive source control, including regulatory security, intelligence, and international activities. This Task Force concluded in its 2006, 2010, and 2014 reports to Congress and the President that the risk-significant radioactive sources were being protected and found no significant gaps in security that were not already being addressed. These reports can be found on the NRC's public Web site at <http://www.nrc.gov/security/byproduct/task-force.html>.

On June 15, 2010 (75 FR 33902), the NRC published a proposed rule to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material, which the NRC considers to be risk-significant and, therefore, to warrant additional protection. The NRC received and addressed over 1,500 comments on the proposed rule from licensees, State agencies, industry organizations, individuals, and a Federal agency.

On March 19, 2013 (78 FR 16922), the NRC published a final rule amending its regulations to establish security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. The category 1 and category 2 thresholds are based on the quantities established by the International Atomic Energy Agency in its Code of Conduct on the Safety and Security of Radioactive Sources, which the NRC endorses (<http://www-ns.iaea.org/tech-areas/radiation-safety/code-of-conduct.asp>.) The objective of this final rule is to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material. The regulations also include security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The final rule incorporated lessons learned by the NRC and the Agreement States in implementing security measures resulting from the events on September 11, 2001, as well as stakeholder input on the proposed rule.

The final rule became effective on May 20, 2013, and NRC licensees were required to comply by March 19, 2014. Agreement States licensees were issued NRC orders that provided for the same level of physical protection as NRC licensees, pending Agreement States issuing compatible requirements. Agreement States will have until March 19, 2016, to issue compatible requirements for their licensees.

In February 2013, the NRC published a guidance document, NUREG-2155, "Implementation Guidance for 10 CFR Part 37, 'Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material'" (ADAMS Accession No. ML13053A061). Subsequently, in January 2015, the NRC published Revision 1 to NUREG-2155 (ADAMS Accession No. ML15016A172).

The guidance document is intended for use by applicants, licensees, and NRC and Agreement State staff, and describes optional approaches and methods acceptable for

implementing the requirements of the regulations. As a guidance document, NUREG-2155 does not establish additional requirements, and licensees are able to propose alternative ways for demonstrating compliance with the requirements in 10 CFR part 37.

In May 2014, the NRC published NUREG-2166, “Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material” (ADAMS Accession No. ML14150A382). This NUREG provides guidance to NRC licensees and applicants on developing and implementing a physical protection program for the protection of risk-significant radioactive material (e.g., category 1 and category 2 quantities of radioactive material). The intent of NUREG-2166 is to provide NRC licensees or applicants guidance with specific emphasis on physical security best practices. The approaches and methods in this document are not requirements; however, the NRC considers them to be acceptable for demonstrating compliance with the requirements in 10 CFR part 37.

On December 16, 2014, the President of the United States signed Public Law 113-235, “Consolidated and Further Continuing Appropriations Act, 2015.” The statute provides annual funding for Federal agencies, including the NRC. Section 403 of the legislation requires “...the Nuclear Regulatory Commission (NRC) shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate that evaluates the effectiveness of the requirements of 10 CFR part 37 and determines whether such requirements are adequate to protect high-risk radiological material.”

As part of the NRC’s commitment to the principles of good regulation—independence, openness, efficiency, clarity, and reliability—, and consistent with the direction in the Public Law 113-235, the NRC is now conducting a review and assessment of the requirements in 10 CFR part 37, and is requesting input from members of the public.

The information received from this request will provide insights for this process and will be used by the NRC to develop a report to Congress.

III. Specific Considerations

The NRC is requesting general and specific comments on the overall effectiveness and clarity of the requirements for security measures to protect category 1 and category 2 sources of radioactive material as defined in Appendix A to 10 CFR part 37, as presented by the questions in this section. For example, the NRC would like to gain insight on different regulatory requirements in 10 CFR part 37 that may conflict or need to be modified to maximize effectiveness and provide greater clarification. The NRC is also requesting comments on the usefulness of the guidance documents associated with its regulations in 10 CFR part 37.

To facilitate comments, the questions are categorized by the specific subparts of 10 CFR part 37: Subpart A—General Provisions; Subpart B—Background Investigations and Access Control Program; Subpart C—Physical Protection Requirements During Use; and Subpart D—Physical Protection in Transit.

Please be cautious in providing comments that contain specific examples and do not provide any specific official-use-only, safeguards, and/or classified information related to the security at a specific facility.

Subpart A—General Provisions:

1. Are the definitions (in 10 CFR 37.5, “Definitions”) clear, unambiguous, and consistent with their usage in other parts of the regulations?

2. Is the rule clear as to when a licensee can use physical barriers to render aggregated sources below the category 2 aggregated quantity?

Subpart B—Background Investigations and Access Control Program:

3. Are the requirements of subpart B clear for use in determining individuals to be trustworthy and reliable?

4. While the regulations provide the type of information that must be gathered before making a Trustworthiness and Reliability (T&R) determination, NUREG-2155 provides additional guidance on determining whether someone is T&R. Is the information in Annex A to NUREG-2155 adequate in helping a Reviewing Official make a T&R determination?

Subpart C— Physical Protection Requirements During Use:

5. Do the requirements of subpart C clearly define what is needed to support the physical protection of licensed category 1 and category 2 quantities of radioactive material during use?

6. Which requirements in 10 CFR 37.45, “LLEA [local law enforcement agency] coordination,” have you found to be instrumental in ensuring an adequate LLEA response, should an LLEA response be needed? Is there other information you think should be required to be shared with an LLEA?

7. Isolation of category 1 and category 2 quantities of radioactive material by the use of continuous physical barriers that allow access to the security zone only through established access control points is required in 10 CFR 37.37, “Security zones.” Is the rule clear as to what qualifies as an adequate physical barrier?

8. Do the requirements in 10 CFR 37.57, "Reporting of events," clearly define a licensee's responsibility to notify the LLEA and the NRC's Operations Center?

Subpart D—Physical Protection in Transit:

9. Do the requirements of subpart D clearly define what is needed to support the physical protection of licensed category 1 and category 2 quantities of radioactive material in transit?

10. Are the requirements in 10 CFR 37.81, "Reporting of events," clear in defining the licensee's responsibility to notify LLEA and the NRC's Operations Center within 1 hour when a determination is made that a shipment of a category 1 quantity of radioactive material is lost or missing?

Implementation Guidance Documents:

Please specify the sections of NUREG-2155 and NUREG-2166 in your responses to the extent practicable.

11. How have you utilized NUREG-2155 to implement the 10 CFR part 37 regulatory requirements in order to protect your licensed category 1 and category 2 quantities of radioactive material? If utilized, are there certain areas of NUREG-2155 that you have found to be particularly useful? Are there areas of NUREG-2155 that you think could be clarified or supplemented to make it a more useful tool?

12. How have you utilized NUREG-2166 to implement the 10 CFR part 37 regulatory requirements in order to protect your licensed category 1 and category 2 quantities of radioactive material? If utilized, are there certain areas of NUREG-2166 that you have found to be particularly useful?

Are there areas of NUREG-2166 that you think could be clarified or supplemented to make it a more useful tool?

IV. Public Comments Process

The NRC is committed to keeping the public informed and values public involvement in its assessment effort. Responses to this solicitation will be considered by NRC in preparing a report to the Committees on Appropriations of the House of Representatives and the Senate, pursuant to Public Law 113-235, Section 403. The NRC, however, does not intend to provide specific responses to comments or other information submitted in response to this request.

V. Public Meetings

The NRC plans to hold a series of licensee-specific webinars, and one in-person meeting, during the public comment period for this action. The public meetings will provide forums for the NRC staff to discuss the issues and questions with members of the public. The information received will be used by NRC to develop a report to the Committees on Appropriations of the House of Representatives and the Senate. The NRC does not intend to provide detailed responses to information or other comments submitted during the public meetings. Each public meeting will be noticed on the NRC's public meeting Web site at least 10 calendar days before the meeting. Members of the public should monitor the NRC's public meeting Web site for additional information about the public meetings at <http://www.nrc.gov/public-involve/public-meetings/index.cfm>. The NRC will post the notices for the public meetings and may post additional material related to this action to the Federal

rulemaking Web site at www.regulations.gov under Docket ID NRC-2015-0109. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC-2015-0109); (2) click the "Sign up for E-mail Alerts" link; and (3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this.....day of March, 2016.

For the Nuclear Regulatory Commission.

Daniel S. Collins, Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards