

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 30, 31, 32, 40, and 70**

**[NRC-2022-0103]**

**RIN 3150-AK83**

**Radioactive Source Security and Accountability**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to further ensure validity of license applicants. This proposed rule also would enhance the requirement for a licensee transferring category 3 quantities of radioactive material to verify that the recipient (transferee) is licensed to receive the type, form, and quantity of radioactive material to be transferred. This proposed rule would require the transferor licensee to conduct the verification through the NRC's License Verification System or by contacting the license-issuing authority. The NRC also is proposing a more stringent follow-up verification method for licensees that process an emergency shipment for transfers that are below category 2 quantities of radioactive material and to remove an obsolete verification method. In addition, the proposed rule would require that generally licensed devices containing category 3 quantities of byproduct material can only be transferred to licensees possessing a specific NRC or Agreement State license. Finally, the proposed rule would make conforming and other clarifying changes of a corrective or of a minor or nonpolicy nature (e.g., inclusive language, plain

language, conforming and clarifying language, and reassignment and deletion of paragraphs). This rulemaking would affect applicants for a radioactive material license, as well as licensees who transfer category 3 quantities of radioactive material. The NRC will hold a public meeting during the comment period to promote full understanding of the proposed rule and facilitate public comments.

**DATES:** Submit comments by **[INSERT DATE 75 DAYS AFTER 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 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); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0103. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Email comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

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:** Anita Gray, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-7036, email: [Anita.Gray@nrc.gov](mailto:Anita.Gray@nrc.gov) and Andrew Carrera, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1078, email: [Andrew.Carrera@nrc.gov](mailto:Andrew.Carrera@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC-2022-0103 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 Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0103.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2022-0103 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 <https://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 its Agreement State<sup>1</sup> partners have implemented a robust regulatory framework that ensures the safety, security, and control of radioactive materials used for civilian purposes in the United States.<sup>2</sup> All licensed radioactive

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<sup>1</sup> Section 274 of the Atomic Energy Act of 1954, as amended, authorizes the NRC to relinquish or discontinue its regulatory authority over certain categories of radioactive material to a State following a duly executed agreement between the NRC and the governor of the State. 42 U.S.C. 2021. After the agreement is entered into, the State, now an "Agreement State," must issue or adopt regulations compatible to those NRC regulations that govern the subject matter areas relinquished to the Agreement State. A State that has not entered into a Section 274 agreement is referred to as a "non-Agreement State."

<sup>2</sup> For details regarding the types of materials regulated by the NRC, see Regulation of Radioactive Materials at <https://www.nrc.gov/about-nrc/radiation/protects-you/reg-matls.html>.

sources are subject to physical protection requirements appropriate to the relative risk they pose to safety and security. In addition, the NRC implements the International Atomic Energy Agency (IAEA) *Code of Conduct on the Safety and Security of Radioactive Sources* (Code of Conduct).<sup>3</sup> The Code of Conduct provides guidance for the safety and security for three categories of sources; the highest risk sources are those defined as category 1 and category 2.<sup>4</sup> As defined in the Code of Conduct, category 3 sources, if not safely managed or securely protected, could cause permanent injury to a person who handled them, or was otherwise in contact with them, for some hours. Category 3 sources are considered to be less dangerous than category 1 and category 2 sources.

The NRC has developed a suite of information technology tools that it uses to conduct materials licensing, oversight, and radioactive source accountability. The key systems used by the NRC and Agreement State materials programs are the National Source Tracking System (NSTS), the Web-Based Licensing (WBL) System, and the License Verification System (LVS). The NSTS is a secure online national registry used to track category 1 and category 2 radioactive sources. Category 3 radioactive sources are not included in the NSTS<sup>5</sup>. The WBL is a materials licensing system and provides a single platform for the NRC and participating Agreement States<sup>6</sup> to use to manage the licensing information of entities that are authorized to possess or use radioactive

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<sup>3</sup> <https://www.iaea.org/topics/codes-of-conduct>

<sup>4</sup> Category 1 and category 2 quantities of radioactive material are defined as those meeting the thresholds defined in both the IAEA *Code of Conduct on the Safety and Security of Radioactive Sources* and 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."

<sup>5</sup> In the staff requirements memorandum (SRM) SRM-SECY-17-0083, "Re-Evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001," dated December 21, 2021 (ADAMS Accession No. ML21355A290), the Commission approved the staff's recommendation not to amend the regulations to require inclusion of category 3 sources in the NSTS.

<sup>6</sup> Agreement States can elect to use WBL or their own system to manage their licensing information.

materials. The LVS enables licensees who have been credentialed for system access to verify certain information about licensees authorized to possess, use, or transport radioactive materials. The LVS allows licensees to confirm, prior to transferring radioactive material to another licensee, that the recipient's license 1) is valid and accurate and 2) authorizes the recipient to possess the type, form, and quantity of radioactive materials being requested.

In recent years, the NRC and Agreement States have considered whether the radioactive source security and accountability infrastructure could be strengthened for category 3 quantities of radioactive materials. On October 18, 2016, in the SRM for COMJMB-16-0001, "Proposed Staff Re-Evaluation of Category 3 Source Accountability" (ADAMS Accession No. ML16292A812), the Commission directed the NRC staff to take specific actions to evaluate whether it is necessary to revise the NRC regulations or processes governing source protection and accountability for category 3 sources to continue to ensure adequate protection of public health and safety. The NRC and Agreement States formed a joint working group and shared its recommendations with the Commission in SECY-17-0083, "Re-evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001" (ADAMS Accession No. ML17188A255). In SECY-17-0083, the NRC staff's recommendations included amending 10 CFR part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," 10 CFR part 40, "Domestic Licensing of Source Material," and 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," to address the concern that a person might obtain a valid license or radioactive materials by using a fictitious company or providing false information.

In SRM-SECY-17-0083, "Re-Evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001," dated December 21, 2021

(ADAMS Accession No. ML21355A290), the Commission approved the NRC staff's recommendations. Consistent with Commission direction, this proposed rule addresses four main topics: 1) amending 10 CFR parts 30, 40, and 70 to require applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use requested byproduct, source, or special nuclear material for the purposes stated in their license applications; 2) amending 10 CFR parts 30, 40, and 70 to require that licensees transferring category 3 quantities of radioactive material verify that the recipient licensee is authorized to possess and use the type, form, and quantity of the radioactive material being transferred through the LVS or by contacting the license-issuing authority; 3) clarifying verification procedures for transfers involving quantities of radioactive material that are below category 2 thresholds by requiring that the oral certification license verification for emergency shipments be confirmed by the use of one of the other acceptable verification methods; requiring that the oral certification be confirmed by the end of the next business day for category 3 quantities of radioactive material; and removing an obsolete reporting service license verification method; and 4) revising 10 CFR part 32, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material," to prohibit the distribution of devices containing category 3 radioactive material as generally licensed<sup>7</sup> devices.

This fourth change follows from Commission direction to conduct license verification for transfers of category 3 quantities of materials. There are generally

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<sup>7</sup> The NRC regulation at 10 CFR 30.31(b) describes a "general license" as one that is "provided by regulation, grants authority to a person for certain activities involving byproduct material and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person." Conversely, 10 CFR 30.31(a) describes a "specific license" as one issued "to a named person who has filed an application for the license under the provisions of this part and parts 32 through 36, and 39."

licensed devices<sup>8</sup> that contain category 3 quantities of radioactive material under the NRC and Agreement State jurisdiction. Because a general licensee does not receive a specific license from the NRC, there is no practical process for a transferor to perform a license verification for transferring devices containing category 3 quantities of radioactive material. Therefore, the NRC is proposing to license category 3 quantities of radioactive material only under specific licenses in the future.

This proposed rulemaking would also address recommendations made by the U.S. Government Accountability Office (GAO). Past investigations have demonstrated that a person posing as a legitimate applicant could set up a fictitious company or use false information to fraudulently obtain an NRC license to possess and use radioactive material. As described in GAO-16-330, “Nuclear Security: NRC Has Enhanced the Controls of Dangerous Radioactive Materials, but Vulnerabilities Remain,” dated July 2016, GAO set up fictitious companies in several different states and, through these companies, successfully obtained a license issued by an Agreement State to possess a single source with a category 3 quantity of radioactive material. The GAO then altered this license and used both the original license and the altered license to order two sources, each with a category 3 quantity of radioactive material, from two different vendors, thereby demonstrating that a potential bad actor could obtain more radioactive material than authorized by the license. As described in GAO-22-103441, “Preventing a Dirty Bomb: Vulnerabilities Persist in NRC’s Controls for Purchases of High-Risk Radioactive Materials,” dated July 2022, GAO also used fictitious companies to create counterfeit licenses for possession and use of category 3 quantities of radioactive

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<sup>8</sup> Such devices are typically used to detect, measure, gauge, or control the thickness, density, level, or chemical composition of various items or to produce light or an ionized atmosphere. Examples of such devices are gas chromatographs (detector cells), density gauges, fill-level gauges, static elimination devices, and self-luminous exit signs containing tritium.

material from images found on the internet. The GAO successfully used a counterfeit license to place orders at two different source vendors. This proposed rule would address both the concern regarding the validity of license applicants and the need for verification of licenses.

This proposed rule also would include conforming changes to recordkeeping requirements in §§ 30.51(a) and 40.61(a) to require the documentation of a transferor licensee's verification that the recipient licensee is authorized to receive the subject radioactive material being transferred. In affected sections, this proposed rule also would include changes that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations in 10 CFR parts 30, 31, 32, 40, and 70 (e.g., inclusive language, plain language, conforming and clarifying language, and reassignment and deletion of paragraphs).

### **III. Discussion**

#### **A. What action is the NRC taking?**

The proposed actions address four main topics.

1) The NRC is proposing to amend 10 CFR parts 30, 40, and 70 to require that applicants demonstrate that they will use the requested material for the purposes stated in their license applications.

2) The NRC is proposing to amend 10 CFR parts 30, 40, and 70 to require that licensees transferring category 3 quantities of radioactive material verify that the recipient is authorized under its license to receive the type, form, and quantity of the radioactive material to be transferred. Such verification would be made through the LVS or by contacting the license-issuing authority for the recipient licensee.

3) The NRC is proposing to revise 10 CFR parts 30, 40, and 70 to require that, for transfers involving quantities of radioactive material that are below category 2 thresholds, the oral certification license verification for emergency shipments must be confirmed either through the LVS or by contacting the license-issuing authority by the end of the next business day following the receipt of oral certification. The intent of this change is to provide additional security and accountability for category 3 quantities of radioactive material. This proposed rule also would remove the obsolete verification method of obtaining sources of information compiled by a reporting service, currently set forth in §§ 30.41(d)(4), 40.51(d)(4), and 70.42(d)(4).

4) The NRC is proposing to revise 10 CFR part 32 to require that devices containing category 3 quantities of byproduct material can only be transferred to licensees possessing a specific NRC or Agreement State license. These licensees would be required to follow the proposed license verification requirements in § 30.41(d)(1).

To support implementation of these provisions, the NRC is proposing to add a definition of “category 3 quantity of radioactive material” to the “Definitions” sections of 10 CFR parts 30, 32, and 70 and a new appendix F to 10 CFR part 30 that would provide thresholds for category 3 quantities of radioactive material. The materials and thresholds for category 3 quantities of radioactive materials proposed to be included in the new appendix F to 10 CFR part 30 are included in the following table. They refer to the same 16 radioactive materials (14 single radionuclides and 2 combinations) that make up category 1 and category 2 material, as defined in the NRC’s regulations in 10 CFR part 37. They are also consistent with the IAEA Code of Conduct, which guides domestic and international efforts for security of radioactive materials that are deemed to be attractive targets for malevolent use.

| Radioactive Material | Category 3 Threshold |       |
|----------------------|----------------------|-------|
|                      | TBq                  | Ci    |
| Americium-241        | 0.06                 | 1.6   |
| Americium-241/Be     | 0.06                 | 1.6   |
| Californium-252      | 0.02                 | 0.5   |
| Cobalt-60            | 0.03                 | 0.8   |
| Curium-244           | 0.05                 | 1.4   |
| Cesium-137           | 0.1                  | 2.7   |
| Gadolinium-153       | 1                    | 27    |
| Iridium-192          | 0.08                 | 2.2   |
| Plutonium-238        | 0.06                 | 1.6   |
| Plutonium-239/Be     | 0.06                 | 1.6   |
| Promethium-147       | 40                   | 1,080 |
| Radium-226           | 0.04                 | 1.1   |
| Selenium-75          | 0.20                 | 5.4   |
| Strontium-90         | 1                    | 27    |
| Thulium-170          | 20                   | 540   |
| Ytterbium-169        | 0.30                 | 8.1   |

This proposed rule also would make conforming and clarifying changes to various provisions in 10 CFR part 31, “General Domestic Licenses for Byproduct Materials,” and in 10 CFR part 32 relating to the transfers of devices containing category 3 quantities of radioactive material that are currently regulated as generally licensed devices. This proposed rule would include conforming changes to recordkeeping requirements in §§ 30.51(a), 40.61(a), and proposed 70.42(d)(3) to require the documentation of a transferor licensee’s verification that the recipient licensee is

authorized to receive the subject radioactive material being transferred. In affected sections, this proposed rule also would include changes that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations in 10 CFR parts 30, 31, 32, 40, and 70 (e.g., inclusive language, plain language, conforming and clarifying language, and reassignment and deletion of paragraphs).

## B. Why do the requirements need to be revised?

### I. Validity of License Applicants

The NRC is proposing to amend §§ 30.33(a)(3), 40.32(d), and 70.23(a)(5) to state that specific licenses for byproduct material, source material, and special nuclear material will only be issued if the applicant has demonstrated that it will use the requested material for the purposes stated in its license application. This provision would address the concern raised by the 2016 and 2022 GAO reports that a person could obtain a valid license using a fictitious company or by providing false information.

The NRC and Agreement States use pre-licensing guidance to inform their determination of whether the applicant will use the subject radioactive material as specified in the application. The NRC updated this guidance in 2019 to address GAO findings and it has been successfully used for numerous applications. The guidance is not publicly available because the detailed considerations constitute security-related information. To support understanding of this proposed requirement, the proposed regulatory text includes three examples of the types of actions (installing safety and security equipment, establishing facilities, or developing procedures) that the NRC can consider in determining that the subject radioactive material will be used as specified in the application and that the applicant can implement as a basis to support this determination prior to the issuance of the license. The level of information needed by

the NRC, and the type of action on the part of the applicant that the NRC may require, will depend on the proposed licensed activities and the type, quantity, and form of the proposed radioactive material to be possessed and used under the license. For example, certain persons can be readily determined to be valid applicants (i.e., persons who will use the subject radioactive material for the purposes stated in the application). In other cases, site visits to verify the appropriateness of the equipment, facilities, procedures, and proposed activities may be necessary. In other cases, the NRC may require the applicant to have appropriate safety and security equipment in place before it issues the license.

## II. License Verification for Transfer of Category 3 Quantities of Radioactive Material

The NRC is proposing to add new requirements to §§ 30.41(d)(1)(i), 40.51(d)(2), and 70.42(d)(1)(i) that would require a licensee transferring category 3 quantities of radioactive material to verify that the recipient licensee is authorized under its license to receive the type, form, and quantity of the radioactive material to be transferred. Such verification would be made through the LVS or the license-issuing authority for the recipient licensee. The verification must occur before the transferor licensee can initiate the transfer of radioactive material to the recipient licensee and further, the verification must be conducted no earlier than 7 days prior to the transfer. The purpose of these revisions is to enhance license verification methods for transfers involving category 3 quantities of radioactive material. The proposed requirements would address the concern related to a person altering a valid license to obtain more or different radioactive material than authorized or using a counterfeit license to obtain category 3 quantities of radioactive materials. Requiring that the transferor licensee conduct the verification no

earlier than 7 days prior to the transfer would ensure that the verification is contemporaneous with the transfer (i.e., that the verification will be of a license likely to be in effect at the time of transfer and not one that has been suspended or revoked, or otherwise modified by the license-issuing authority).

In addition to amending §§ 30.41(d)(1)(i), 40.51(d)(2), and 70.42(d)(1)(i), the proposed rule would add a definition for “category 3 quantity of radioactive material” in §§ 30.4, 32.2, and 70.4; and a new appendix, “Appendix F to Part 30—Category 3 Radioactive Materials,” that provides the thresholds for category 3 quantities of radioactive materials.

### III. Clarification of Verification Methods

The proposed amendments also would include new provisions in §§ 30.41(d)(1)(ii), 40.51(d)(3), and 70.42(d)(1)(ii) for a more stringent follow-up verification method for licensees that process an emergency shipment for transfers that are below category 2 quantities of radioactive material. This proposed rule also would remove the obsolete verification method of obtaining sources of information from a reporting service, currently set forth in §§ 30.41(d)(4), 40.51(d)(4), and 70.42(d)(4).

### IV. Prohibition of Transfers of Category 3 Generally Licensed Devices

The NRC is proposing to revise 10 CFR parts 31 and 32 to require that devices containing category 3 quantities of radioactive material may only be distributed to licensees that possess a specific NRC or Agreement State license; general licensees would no longer be permitted to obtain devices that contain category 3 quantities of radioactive material. With respect to 10 CFR part 31, the NRC would amend § 31.5(c)(8)(i) to require that a general licensee seeking to transfer a category 3 quantity

of radioactive material may only transfer such material to a specific licensee of the NRC or an Agreement State. This transfer must follow the proposed license verification requirements in § 30.41(d). The revised provision would remove the current ability to transfer to another general licensee under the provisions of § 31.5(c)(9), because license verification could not be conducted. With respect to 10 CFR part 32, the NRC would similarly amend § 32.51 by adding a new paragraph (a)(3) that would exclude the transfer of category 3 sources to general licensees.

These proposed changes would enhance control and license verification of devices containing category 3 quantities of radioactive materials by requiring that the transfers of all newly manufactured devices and those currently existing as of the effective date of the rule be only to those licensees holding a specific NRC or Agreement State license. The proposed revision would enhance consistency in the regulation of devices containing category 3 quantities of radioactive materials in the National Materials Program<sup>9</sup> by requiring all users to obtain a specific license to use and possess devices containing category 3 quantities of radioactive materials.

Current general licensees with devices containing category 3 quantities of radioactive material would continue to be authorized to possess and use these devices under their general licenses after the effective date of the rule, as clarified in proposed § 31.5(f), "Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere." Under the proposed rule, general licensees would no longer be permitted to obtain devices that contain category 3 quantities of radioactive material. These existing devices are being excluded from the proposed regulations because these devices have been in use under general licenses

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<sup>9</sup> The National Materials Program is the broad collective framework within which both the NRC and the Agreement States function in carrying out their respective regulatory programs for radioactive material.

and the NRC is aware of no security issues based on current operating experience. The proposed rule would also require that future transfers or disposals of devices with category 3 quantities of radioactive material, currently authorized under a general license, be subject to license verification under the new provisions. In addition, general licensees who are in possession of devices in the quantities listed in § 31.5(c)(13)(i) must continue to complete an annual registration designed to verify that they are still in possession of these devices.

**C. Who would this action affect?**

The regulatory changes proposed in this rule would affect all applicants applying for a radioactive materials license (specifically, for the validity of license applicants provisions) and all licensees who transfer category 3 quantities of radioactive material (for the remaining provisions).

**D. When would this action take effect?**

The requirements proposed in this rule would take effect 30 days from the date of publication of the final rule. Licensees would be required to comply with the requirements within 30 days from the effective date of the final rule.

#### **IV. Specific Requests for Comments**

The NRC is seeking advice and recommendations from the public on the proposed rule. We are particularly interested in comments and their supporting rationales on the following:

- The NRC is proposing a new requirement that a licensee transferring a category 3 quantity of radioactive material verify, before transfer, that the recipient licensee is authorized under the terms and conditions of its license to receive, possess, and use the type, form, and quantity of the radioactive material being transferred, with such verification to occur no earlier than 7 calendar days before the transfer. Is the proposed timeframe of no earlier than 7 calendar days before transfer a suitable requirement, given that the purpose of the change is to assure the validity of license verifications? If not, how close to the date of transfer should a license be verified?

Provide a rationale for the response, including impacts on manufacturers or vendors that conduct significant numbers of transfers of category 3 quantities of radioactive material or Agreement States who process license verification requests from licensees that use the NRC Form 749, "Manual License Verification Report."

- With respect to the proposed enhanced license verification requirement that a licensee transferring a category 3 quantity of radioactive material must confirm with the license-issuing authority or with the NRC's LVS that the recipient licensee has a valid license to receive, possess, and use the type, form, and quantity of the radioactive material being transferred, is there any subset of routine transactions involving transfers of category 3 quantities of radioactive material between current licensees to which the enhanced license verification requirement should not apply, or should apply but with reduced frequency? Provide a rationale for the response.

- What impact would there be on manufacturers, distributors, and future users of generally licensed devices if devices containing category 3 quantities of radioactive material were only authorized as specifically licensed devices after the effective date of this rule? Provide a rationale for the response.

- The NRC is seeking feedback on the proposed implementation timeline for NRC licensees. Specifically, is 30 days after the effective date of the rule appropriate for licensees to implement the proposed requirements or is additional time necessary?

Provide a rationale for your response, including: 1) implementation concerns for either license application or license verification requirements; 2) actions (e.g., equipment procurement, infrastructure updates) that may not be achievable within the proposed 30-day implementation period; and 3) appropriate implementation timelines for each requirement (if not 30 days).

- The NRC is seeking feedback from Agreement States and other interested parties on the proposed compatibility category for the proposed provisions in §§ 30.33(a)(3), 40.32(d), and 70.23(a)(5), which would be designated as Compatibility Category H&S.<sup>10</sup> Specifically, is there a need for Agreement States to adopt essentially identical requirements (i.e., Compatibility Category B) or, at least, should the Agreement States adopt requirements that meet the essential objective of the proposed NRC requirements (i.e., Compatibility Category C) to ensure a more uniform regulatory approach across the National Materials Program of these provisions? Provide a rationale for the response.

## **V. Section-by-Section Analysis**

The following paragraphs describe the specific changes proposed by this rulemaking.

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<sup>10</sup> See "Agreement State Program Policy Statement" approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535).

#### **Section 30.4, Definitions**

This proposed rule would add a definition for the term *category 3 quantity of radioactive material*.

#### **Section 30.33, General requirements for issuance of specific licenses**

This proposed rule would redesignate paragraphs (a)(3) through (5) as paragraphs (a)(4) through (6), respectively, and add a new paragraph (a)(3) to require all applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. This proposed rule also would amend newly redesignated paragraph (a)(6) to make minor editorial changes for plain language and to use inclusive language.

#### **Section 30.41, Transfer of byproduct material**

This proposed rule would revise paragraph (c) by adding a sentence that clarifies that for transfers within the same organization, the licensee does not need to verify the transfer. In addition, this paragraph would be revised to make minor editorial changes for plain language.

This proposed rule would revise paragraph (d) for emergency shipments of category 3 material to remove the 10-day confirmation requirement, add the requirement to use the LVS or contact the license-issuing authority for confirmation by the end of the next business day, and to make minor editorial changes for plain language and to use inclusive language.

This proposed rule also would add a new paragraph (e) that would reference the requirements in 10 CFR part 37 for the transfer of category 1 and category 2 quantities of radioactive material.

#### **Section 30.51, Records**

This proposed rule would revise paragraph (a) to add the requirement for each person who transfers byproduct material to keep records showing the verification of the recipient's license. In addition, this paragraph would be revised to make minor editorial and conforming changes for plain language.

#### **Appendix F to Part 30, Category 3 Radioactive Materials**

This proposed rule would add a new appendix F to include a table of thresholds for category 3 radioactive materials.

#### **Section 31.5, Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere**

This proposed rule would revise paragraphs (c)(7) and (8) by moving language concerning the transfer and disposal of devices containing byproduct material through export from paragraph (c)(8) to paragraph (c)(7). This change is intended to improve the readability of both provisions such that the revised paragraph (c)(7) would concern matters of exporting devices containing byproduct material, in accordance with 10 CFR part 110, and the revised paragraph (c)(8) would concern domestic transfers of devices containing byproduct material.

This proposed rule would further revise paragraph (c)(8)(i) to require that future transfers or disposal of existing devices containing category 3 quantities of radioactive

material follow the transfer requirements in § 30.41(d). This proposed rule would revise the introductory text of paragraph (c)(8)(ii) to extend the reporting requirement for devices exported in accordance with paragraph (c)(7).

This proposed rule would revise the introductory text of paragraph (c)(9)(i) to prohibit the transfer of existing devices containing category 3 quantities of radioactive material to general licensees.

This proposed rule would remove footnote 2 and add its text as new paragraph (e) and would add new paragraph (f) to clarify that existing general licensees with devices containing category 3 quantities of radioactive material would continue to be able to legally possess and use these devices under their general licenses after the effective date of this rule.

In addition, this section would be revised to make minor editorial and conforming changes for plain language.

## **Section 32.2, Definitions**

This proposed rule would add a definition for *category 3 quantity of radioactive material*.

## **Section 32.51, Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer**

This proposed rule would redesignate paragraphs (a)(3) through (6) as paragraphs (a)(4) through (7), respectively, and add a new paragraph (a)(3) to prohibit manufacturers or distributors from transferring any devices containing category 3 quantities of byproduct material to persons generally licensed under § 31.5. After the effective date of the final rule, the transfer of devices containing category 3 quantities of

byproduct material would only be allowed to licensees who possess a specific license issued by the NRC or an Agreement State and the transferor licensee would be required to follow the license verification requirements in § 30.41(d)(1).

This proposed rule also would revise newly redesignated paragraph (a)(4)(iii) to remove footnote 2. The text of footnote 2 would become new paragraph (a)(4)(iv).

In addition, this paragraph would be revised to make minor editorial and changes for plain language.

#### **Section 40.32, General requirements for issuance of specific licenses**

This proposed rule would redesignate paragraphs (d) through (g) as paragraphs (e) through (h), respectively, and add a new paragraph (d) to require applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. This proposed rule also would amend newly redesignated paragraph (f) to make minor editorial changes for plain language and to use inclusive language.

#### **Section 40.51, Transfer of source or byproduct material**

This proposed rule would revise paragraph (d) for emergency shipments of category 3 quantities of radioactive material to remove the 10-day confirmation requirement, add the requirement to use the LVS or contact the license-issuing authority for confirmation by the end of the next business day for such emergency shipments, and make a minor editorial change to use inclusive language.

#### **Section 40.61, Records**

This proposed rule would revise paragraph (a) to add the requirement for each person who transfers byproduct material to keep records documenting the verification of the recipient's license. In addition, this paragraph would be revised to make minor editorial changes for plain language.

#### **Section 70.4, Definitions**

This proposed rule would add a definition for *category 3 quantity of radioactive material*.

#### **Section 70.23, Requirements for the approval of applications**

This proposed rule would redesignate paragraphs (a)(5) through (12) as paragraphs (a)(6) through (13), respectively, and add a new paragraph (a)(5) to require applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. This proposed rule also would amend paragraphs (a)(7) through (11) to make minor editorial changes for plain language and to use inclusive language.

#### **Section 70.42, Transfer of special nuclear material**

This proposed rule would revise paragraph (c) by adding a sentence that clarifies that for transfers within the same organization, the licensee does not need to verify the transfer. In addition, this paragraph would be revised to make a minor editorial and plain language change.

This proposed rule would revise paragraph (d) for emergency shipments of category 3 quantities of radioactive material to remove the 10-day confirmation

requirement for such emergency shipments, add the requirement to use the LVS or contact the license-issuing authority for confirmation by the end of the next business day, and make a minor editorial change to use inclusive language. This proposed rule also would consolidate the recordkeeping requirements for paragraph (d) in a new paragraph (d)(3).

This proposed rule also would add a new paragraph (e) that would reference the requirements in 10 CFR part 37 for the transfer of category 1 and category 2 quantities of radioactive material.

## **VI. Regulatory Flexibility Certification**

This proposed rule would affect 315 NRC licensees, 4,311 Agreement State licensees, an estimated 10 new category 3 license applicants per year, and an estimated 129 applicants who would be applying for a materials license for the first time. This includes a wide range of licensees in industry, medicine, and research. Typical uses of category 3 quantities of radioactive material are in some fixed industrial gauges, such as density gauges, thickness gauges, and fill-level gauges; some licensees performing radiography operations; and licensees who conduct well logging using americium-241/beryllium sources. In medical fields, high-dose-rate brachytherapy sources fall into this category. In addition, category 3 quantities of radioactive material are used by governmental agencies in security screening at ports and cargo terminals. The majority of these licensees, excluding the governmental agencies engaged in security screening at ports and cargo terminals, would be considered small entities as defined by § 2.810.

A recent review of the NRC database identified that approximately 26 percent of the NRC materials licensees (707 of 2,741) qualify for reduced annual fees as small entities under § 171.16, “Annual fees: Materials licensees, holders of certificates of

compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.”

Therefore, using this existing data, approximately 26 percent of the category 3 quantities of radioactive material licensees that would be impacted by the rule are small entities.

The NRC has determined that this proposed rule, of the alternatives analyzed, is the least burdensome and most flexible alternative to accomplish the NRC’s regulatory objective of improving radioactive source security and accountability. The draft regulatory flexibility analysis is included within the draft regulatory analysis, which is available as indicated in the “Availability of Documents” section of this document.

The NRC is seeking public comment on the potential impact of this proposed rule on small entities. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation would affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss:

- a) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

- b) How the proposed regulation could be further modified to take into account the business’s differing needs or capabilities;

- c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

d) How the proposed regulation, as modified, would more closely equalize the impact of the NRC regulations as opposed to providing special advantages to any individuals or groups; and

e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Comments should be submitted as indicated under the ADDRESSES caption of this document.

## **VII. Regulatory Analysis**

The NRC has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available as indicated in the “Availability of Documents” section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

The NRC’s analysis demonstrates that the proposed requirements, if issued by final rule, would result in net (i.e., accounting for both costs and benefits) costs to industry of approximately \$12.4 million. Relative to the regulatory baseline, the net costs to the Agreement States would be \$7.59 million and to the NRC would be approximately \$3.12 million, with quantified costs due to rulemaking. The proposed rule would result in net costs to industry, Agreement States, and the NRC of approximately \$23.1 million over a 15-year analysis horizon. Each of these totals represent the net present values calculated using a 7-percent discount rate.

The NRC is proceeding with rulemaking based on qualitative factors because, if implemented, the rulemaking would address the concern that a person could obtain a valid license or radioactive materials by using a fictitious company or providing false information, and it would prevent individuals without valid licenses from receiving category 3 quantities of radioactive material.

### **VIII. Backfitting and Issue Finality**

The NRC has determined that the backfitting provisions in §§ 50.109, 70.76, and 72.62, each entitled “Backfitting,” and the issue finality provisions in 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” would not apply to the changes proposed in 10 CFR parts 30, 31, 32, 40, and 70 of this proposed rule.

The primary class of licensees subject to this proposed rule, if ultimately issued, would be those specific licensees authorized to possess category 3 quantities of radioactive material who seek to transfer such material to another licensee. In addition, the proposed recordkeeping changes and the removal of the verification method of obtaining other sources of information compiled by a reporting service would apply to all licensees seeking to transfer radioactive material to another licensee. These classes of licensee would be regulated in accordance with 10 CFR parts 30, 31, 32, 40, and 70. For those licensees subject to 10 CFR parts 30, 31, 32, and 40 that conduct activities authorized under only those parts of the NRC’s regulations, this proposed rule would not be within the scope of the NRC’s backfitting and issue finality provisions because 10 CFR parts 30, 31, 32, and 40 do not contain backfitting or issue finality provisions.

For licensees authorized to conduct activities under one or more of 10 CFR parts 30, 31, 32, and 40, as well as 10 CFR part 50, 52, or 72, this proposed rule would not be

within the scope of the NRC's backfitting and issue finality provisions. The rule would affect the activities regulated under 10 CFR parts 30, 31, 32, and 40 and would not affect activities that are an inextricable part of activities regulated under 10 CFR part 50, 52, or 72. Without an inextricable effect on activities regulated under 10 CFR part 50, 52, or 72, the proposed changes would not be subject to the backfitting or issue finality provisions in those parts.

Although 10 CFR part 70 contains a backfitting provision, in § 70.76, which applies to those 10 CFR part 70 licensees subject to subpart H of 10 CFR part 70, the proposed rule would not constitute backfitting under § 70.76. The proposed changes would not meet the definition of "backfitting" in § 70.76 because they would not be a modification of, or addition to, systems, structures, or components of a facility, or to the procedures or organization required to operate a facility. The proposed changes would not require a 10 CFR part 70 licensee to transfer radioactive material to another licensee. The proposed changes, if ultimately promulgated, would only become applicable if a licensee voluntarily chooses to transfer such material.

Finally, the proposed rule also would require applicants for 10 CFR parts 30, 40, and 70 licenses to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. For applicants under 10 CFR parts 30 and 40, these proposed changes would not be within the scope of the NRC's backfitting and issue finality provisions. For applicants under 10 CFR part 70, these changes would not constitute backfitting because the proposed changes concern applicants, not current licensees. Applicants under 10 CFR part 70 would not already have systems, structures, or components of a facility, or the procedures or organizations

required to operate a facility, that could be modified by the proposed rule, so the proposed rule would not meet the definition of “backfitting” in § 70.76.

## **IX. Cumulative Effects of Regulation**

The NRC seeks to minimize any potential negative consequences resulting from the cumulative effects of regulation (CER). The CER refers to the challenges that licensees or other impacted entities such as State partners may face while implementing new regulatory positions, programs, or requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that may result from a licensee or impacted entity implementing a number of complex regulatory actions, programs, or requirements with limited available resources.

The NRC is following its CER process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Opportunity for public comment is provided to the public at this proposed rule stage.

To better understand the potential CER implications incurred due to this proposed rule, the NRC is requesting comment on the following questions. Responding to these questions is voluntary, and the NRC will respond to any comments received in the final rule.

1. In light of any current or projected CER challenges, does the NRC’s proposed effective date, 30 days from the date of publication of the final rule, provide sufficient time to implement the new proposed requirements, including changes to programs, procedures, and the facility? Please provide a rationale for your response.

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new

requirements, what period of time is sufficient? Please provide a rationale for your response.

3. Do other regulatory actions (of either the NRC or other agencies, e.g., orders, generic communications, license amendment requests, or inspection findings of a generic nature) influence the implementation of the proposed rule's requirements? Please provide a rationale for your response.

4. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed? Please provide a rationale for your response.

5. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports the proposed rule.

## **X. 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 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## **XI. Draft Environmental Assessment and Draft Finding of No Significant Environmental Impact**

The NRC has determined that the proposed changes in §§ 30.4, 30.33(a)(4), 30.33(a)(5), 30.33(a)(6), 30.41(d)(2) introductory text, 30.41(d)(2)(i), 30.41(d)(2)(ii), 30.41(d)(2)(iv), 31.5, 31.5(c), 31.5(c)(1), 31.5(c)(2) introductory text, 31.5(c)(2)(i), 31.5(c)(2)(ii), 31.5(c)(3) introductory text, 31.5(c)(4) introductory text, 31.5(c)(4)(i), 31.5(c)(4)(ii), 31.5(c)(4)(iii), 31.5(c)(5), 31.5(c)(6), 31.5(c)(7), 31.5(c)(8)(ii), 31.5(c)(8)(iii), 31.5(c)(9), 31.5(c)(9)(i), 31.5(c)(10), 31.5(c)(11), 31.5(c)(12), 31.5(c)(13)(i), 31.5(c)(13)(ii), 31.5(c)(13)(iii) introductory text, 31.5(c)(14), 31.5(e), 31.5(f), 32.2, 32.51(a)(2)(iii), 32.51(a)(4), 32.51(a)(4)(iii), 32.51(a)(4)(iv), 32.51(a)(5), 32.51(a)(6), 32.51(a)(7), 40.32(a), 40.32(b), 40.32(e), 40.32(f), 40.32(g), 40.32(h), 40.51(d)(1), 40.51(d)(4), 70.4, 70.23(a)(1), 70.23(a)(6), 70.23(a)(7), 70.23(a)(8), 70.23(a)(9), 70.23(a)(10), 70.23(a)(11), 70.23(a)(12), 70.23(a)(13), 70.4(d)(2)(i), 70.42(d)(2)(ii), and 70.42(d)(2)(iv) of this rule are the types of actions that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations (i.e., inclusive language, plain language, clarifying language, and the reassignment and deletion of paragraphs) and, therefore, the NRC has determined that these changes meet the criteria of the categorical exclusion listed in § 51.22(c)(2), and that no further analysis under the National Environmental Policy Act of 1969 (NEPA), as amended, is required.

The NRC also has determined that the proposed changes in §§ 30.51(a) introductory text, 30.51(a)(1), 30.51(a)(2), 30.51(a)(3), 40.61(a)(1), 40.61(a)(2), 40.61(a)(3), 40.61(a)(4), and 70.42(d)(3) of this rule are to recordkeeping requirements (i.e., the documentation of a transferor licensee's verification that the recipient licensee is authorized, under the recipient's license, to receive the type, form, and quantity of the subject radioactive material being transferred) and, therefore, meet the criteria of the categorical exclusion listed in § 51.22(c)(3)(ii) and that no further analysis under NEPA is required.

A draft environmental assessment has been prepared for the proposed changes that are not covered by the categorical exclusions listed in § 51.22(c)(2) and (3)(ii). This draft environmental assessment has been made available to the public for comment together with the proposed rule, as indicated under the “Availability of Documents” section of this document. The Commission has preliminarily determined under NEPA and the Commission’s regulations in subpart A of 10 CFR part 51, that the proposed amendments would not be a major Federal action significantly affecting the quality of the human environment, and therefore, the preparation of an environmental impact statement is not required. Specifically, the NRC is proposing to amend its regulations in 10 CFR parts 30, 40, and 70 to require applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. The proposed changes would reduce the likelihood that an individual could obtain a valid license by using a fictitious company or by providing false information (e.g., ensure the legitimacy of applicants and their intent to use radioactive materials as stated on the license application). Additionally, this rulemaking would require a more stringent follow-up license verification method for licensees that process an emergency shipment for transfers that are below category 2 quantities of radioactive material; for all shipments of category 3 quantities, require the transferor licensees to seek verification through the LVS or from the license-issuing authority that the recipient is authorized to receive the type, form, and quantity of radioactive material to be transferred; and remove an obsolete verification method. This rulemaking would also require that generally licensed devices containing category 3 quantities of byproduct material can only be transferred to licensees possessing a specific NRC or Agreement State license. Finally, this rulemaking would add a definition for “category 3 quantity of radioactive material” to the

“Definitions” sections of 10 CFR parts 30, 32, and 70, and make clarifying and other minor, nonpolicy changes to various provisions in 10 CFR parts 31 and 32.

The preliminary determination of this environmental assessment is that there would be no significant impact on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the ADDRESSES caption of this document. After consideration of public comments on the draft environmental assessment, the NRC will either finalize the environmental assessment and issue a finding of no significant impact and thus complete its NEPA process for this proposed rulemaking action, or the NRC will prepare a draft environmental impact statement, which will be issued for public comment.

The NRC has sent a copy of the draft environmental assessment and this proposed rule to every State Liaison Officer for their comment.

## **XII. Paperwork Reduction Act Statement**

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-21). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collections.

*Type of submission, new or revision:* Revised.

*The title of the information collection:* Radioactive Source Security and Accountability, Proposed Rule.

*The form number if applicable:* NRC Form 749, “Manual License Verification Report,” and NRC Form 313, “Application for Materials License.”

*How often the collection is required or requested:* On occasion.

*Who will be required or asked to respond:* NRC and Agreement States licensees who possess, use, and transfer of category 3 quantities of radioactive materials.

*An estimate of the number of annual responses:* 8,548 (8,415 responses for NRC Form 749 and 133 responses for NRC Form 313).

*The estimated number of annual respondents:* 4,766 (4,633 respondents for NRC Form 749 and 133 respondents for NRC Form 313).

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1,274 (702 hours for NRC Form 749 and 572 hours for NRC Form 313).

*Abstract:* This proposed rule would result in changes in recordkeeping and reporting burden relative to existing rules by requiring the increased use of NRC Form 313 and NRC Form 749 by licensees to comply with the proposed rule. The proposed rule would require applicants to demonstrate (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that they will use the requested material for the purposes stated in their license applications. The proposed provisions would help address the concern that a person could obtain a valid license or

radioactive materials by using a fictitious company or providing false information. This proposed rule also would require a licensee transferring category 3 quantities of radioactive material to verify that the recipient (transferee) is licensed to receive the type, form, and quantity of radioactive material to be transferred. The NRC is proposing a more stringent follow-up license verification method for licensees that process an emergency shipment for transfers that are below category 2 quantities of radioactive material and to remove an obsolete verification method. Lastly, this proposed rule would require devices containing category 3 radioactive material to only be distributed to licensees that possess a specific NRC or Agreement State license.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden of the proposed information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML22321A274 or can be obtained free of charge by contacting the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). You may obtain information and comment

submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC-2022-0103.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by the following methods:

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0103.

- **Mail comments to:** FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0120 and 3150-0223), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17<sup>th</sup> Street, NW, Washington, DC 20503; email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Submit comments by **[INSERT DATE 30 DAYS AFTER 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 staff is able to ensure consideration only for comments received on or before this date.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

### **XIII. Criminal Penalties**

For the purposes of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the NRC is issuing this proposed rule that would amend 10 CFR parts 30, 31, 32, 40, and 70 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement. Criminal penalties as they apply to regulations in 10 CFR parts 30, 31, 32, 40, and 70 are discussed in §§ 30.64, 31.23, 32.303, 40.82, and 70.92, respectively.

#### **XIV. Coordination with NRC Agreement States**

The rulemaking working group that prepared this proposed rule included a representative from the Organization of Agreement States. Comments from Agreement States were taken into consideration during the development of this proposed rule.

#### **XV. Coordination with the Advisory Committee on the Medical Uses of Isotopes**

This proposed rule also would impact some medical licensees. The NRC consulted with selected members of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) and provided an opportunity for those members to share their individual views on the impacts of the proposed rule on the medical community. This feedback was considered during the development of this proposed rule.

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

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those that are designated as Categories A, B, C, D, NRC, and H&S; and those required for compatibility include those regulations and other legally binding requirements designated as Compatibility Categories A, B, C, and D. Compatibility Category A are those program elements that include 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 in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B pertains to a limited number of program elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. The Agreement State program element should be essentially identical to that of NRC. 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 national 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, above, and, therefore, are not required to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of title 10 of the *Code of Federal*

*Regulations.* These program elements should not be adopted by the Agreement States. Category H&S program elements are not required for purposes of compatibility; however, they have particular health and safety significance. The Agreement States should adopt the essential objectives of such program elements to maintain an adequate program.

Proposed new definition for “category 3 quantity of radioactive material” in §§ 30.4, 32.2, and 70.4, and new appendix, “Appendix F to Part 30—Category 3 Radioactive Materials” would be designated as Compatibility Category B. The NRC has determined that these definitions need to be adopted to ensure a consistent regulatory approach across the National Materials Program and inconsistent definitions of this term would have direct and significant transboundary implications.

Proposed new requirements related to validity of license applicants in §§ 30.33(a)(3), 40.32(d), and 70.23(a)(5) would be designated as Compatibility Category H&S because the essential objectives of these provisions have health and safety significance and need to be adopted by the Agreement States.

Proposed new requirements for license verification in §§ 30.41(d)(1), 30.41(d)(1)(i), 30.41(d)(1)(ii), 30.41(d)(2), 30.41(e), 40.51(d)(2), 40.51(d)(3), 70.42(d)(1), 70.42(d)(1)(i), 70.42(d)(1)(ii), 70.42(d)(2), 70.42(d)(3), and 70.42(e) would be designated as Compatibility Category C because the NRC has determined that the essential objectives of these provisions need to be adopted by the Agreement States. Early feedback from some Agreement States representatives indicated that no changes regarding license verification should be proposed for § 40.51(d)(2) and (3), and the related recordkeeping requirements in § 40.61(a), since there are no source materials listed in the proposed “Table 1 – Category 3 Thresholds” in the new appendix F to 10 CFR part 30 that are subject to the proposed license verification requirements.

However, licensees who are the subject of 10 CFR part 40 also may possess category 3 quantities of radioactive material (e.g., specifically licensed devices). Accordingly, the proposed regulatory change in § 40.51(d) is needed to provide a helpful pointer to the license verification requirements in §30.41(d), with which these licensees must comply when transferring category 3 quantities of radioactive material.

The NRC also notes that the proposed revisions to § 40.51(d)(2) and (3), and § 40.61(a), would be designated as Compatibility Category C because the NRC has determined that the essential objectives of these provisions need to be adopted by the Agreement States. The Agreement States can be more restrictive in their compatible regulations. The proposed new requirement in § 31.5(f) for excluding existing devices containing category 3 quantities of radioactive material from the proposed license verification requirements would be designated as Compatibility Category C because the NRC has determined that the essential objectives of these provisions need to be adopted by the Agreement States. The proposed new requirements for prohibiting licensees from manufacturing or initially transferring generally licensed devices with category 3 quantities of radioactive materials in § 32.51(a)(3) would be designated as Compatibility Category B. The NRC has determined that the program elements of this provision need to be adopted to ensure a consistent regulatory approach across the National Materials Program and inconsistent applications of these provisions would have direct and significant transboundary implications.

Compatibility categories for other provisions that are subject to amendment or reassignment would remain unchanged.

The final rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table:

| Compatibility Table     |          |                                                         |               |     |
|-------------------------|----------|---------------------------------------------------------|---------------|-----|
| Section                 | Change   | Subject                                                 | Compatibility |     |
|                         |          |                                                         | Existing      | New |
| 10 CFR 30.4             | New      | Definition: Category 3 quantity of radioactive material | -             | B   |
| 10 CFR 30.33(a)(3)      | New      | General requirements for issuance of specific licenses  | -             | H&S |
| 10 CFR 30.33(a)(4)      | Reassign | General requirements for issuance of specific licenses  | D             | D   |
| 10 CFR 30.33(a)(5)      | Reassign | General requirements for issuance of specific licenses  | D             | D   |
| 10 CFR 30.33(a)(6)      | Amend    | General requirements for issuance of specific licenses  | D             | D   |
| 10 CFR 30.41(c)         | Amend    | Transfer of byproduct material                          | C             | C   |
| 10 CFR 30.41(d)         | Amend    | Transfer of byproduct material                          | C             | C   |
| 10 CFR 30.41(d)(1)      | New      | Transfer of byproduct material                          | -             | C   |
| 10 CFR 30.41(d)(1)(i)   | New      | Transfer of byproduct material                          | -             | C   |
| 10 CFR 30.41(d)(1)(ii)  | New      | Transfer of byproduct material                          | -             | C   |
| 10 CFR 30.41(d)(2)      | New      | Transfer of byproduct material                          | -             | C   |
| 10 CFR 30.41(d)(2)(i)   | Amend    | Transfer of byproduct material                          | C             | C   |
| 10 CFR 30.41(d)(2)(ii)  | Amend    | Transfer of byproduct material                          | C             | C   |
| 10 CFR 30.41(d)(2)(iii) | Amend    | Transfer of byproduct material                          | C             | C   |
| 10 CFR 30.41(d)(2)(iv)  | Amend    | Transfer of byproduct material                          | C             | C   |

|                            |       |                                                                                                                                |   |   |
|----------------------------|-------|--------------------------------------------------------------------------------------------------------------------------------|---|---|
| 10 CFR 30.41(e)            | New   | Transfer of byproduct material                                                                                                 | - | C |
| 10 CFR 30.51(a)            | Amend | Records                                                                                                                        | C | C |
| 10 CFR 30.51(a)(1)         | Amend | Records                                                                                                                        | C | C |
| 10 CFR 30.51(a)(2)         | Amend | Records                                                                                                                        | C | C |
| 10 CFR 30.51(a)(3)         | Amend | Records                                                                                                                        | C | C |
| 10 CFR Part 30, Appendix F | New   | Category 3 Radioactive Materials                                                                                               | - | B |
| 10 CFR 31.5                | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)             | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(1)          | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(2)          | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(2)(i)       | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for                                          | C | C |

|                        |       |                                                                                                                                |   |   |
|------------------------|-------|--------------------------------------------------------------------------------------------------------------------------------|---|---|
|                        |       | producing light or an ionized atmosphere                                                                                       |   |   |
| 10 CFR 31.5(c)(2)(ii)  | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(3)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(4)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(4)(i)   | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(4)(ii)  | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(4)(iii) | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(5)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain                                                      | C | C |

|                        |       |                                                                                                                                |   |   |
|------------------------|-------|--------------------------------------------------------------------------------------------------------------------------------|---|---|
|                        |       | devices for producing light or an ionized atmosphere                                                                           |   |   |
| 10 CFR 31.5(c)(6)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(7)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(8)(i)   | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(8)(ii)  | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(8)(iii) | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(9)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(9)(i)   | Amend | Certain detecting, measuring, gauging, or controlling                                                                          | C | C |

|                         |       |                                                                                                                                |   |   |
|-------------------------|-------|--------------------------------------------------------------------------------------------------------------------------------|---|---|
|                         |       | devices and certain devices for producing light or an ionized atmosphere                                                       |   |   |
| 10 CFR 31.5(c)(10)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(11)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(12)      | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(13)(i)   | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(13)(ii)  | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(13)(iii) | Amend | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere | C | C |
| 10 CFR 31.5(c)(14)      | Amend | Certain detecting, measuring, gauging,                                                                                         | C | C |

|                         |          |                                                                                                                                                      |   |   |
|-------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
|                         |          | or controlling devices and certain devices for producing light or an ionized atmosphere                                                              |   |   |
| 10 CFR 31.5(e)          | Amend    | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere                       | C | C |
| 10 CFR 31.5(f)          | New      | Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere                       | - | C |
| 10 CFR 32.2             | New      | Definition: Category 3 quantity of radioactive material                                                                                              | - | B |
| 10 CFR 32.51(a)(2)(iii) | Amend    | Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer: Conditions of licenses | B | B |
| 10 CFR 32.51(a)(3)      | New      | Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer: Conditions of licenses | - | B |
| 10 CFR 32.51(a)(4)      | Reassign | Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or                                            | B | B |

|                            |          |                                                                                                                                                                              |   |   |
|----------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|
|                            |          | initially transfer:<br>Conditions of<br>licenses                                                                                                                             |   |   |
| 10 CFR<br>32.51(a)(4)(iii) | Amend    | Byproduct material<br>contained in devices<br>for use under § 31.5;<br>requirements for<br>license to<br>manufacture or<br>initially transfer:<br>Conditions of<br>licenses  | B | B |
| 10 CFR<br>32.51(a)(4)(iv)  | Reassign | Byproduct material<br>contained in devices<br>for use under § 31.5;<br>requirements for<br>license to<br>manufacture, or<br>initially transfer:<br>Conditions of<br>licenses | B | B |
| 10 CFR<br>32.51(a)(5)      | Reassign | Byproduct material<br>contained in devices<br>for use under § 31.5;<br>requirements for<br>license to<br>manufacture, or<br>initially transfer:<br>Conditions of<br>licenses | B | B |
| 10 CFR<br>32.51(a)(6)      | Amend    | Byproduct material<br>contained in devices<br>for use under § 31.5;<br>requirements for<br>license to<br>manufacture, or<br>initially transfer:<br>Conditions of<br>licenses | B | B |
| 10 CFR<br>32.51(a)(7)      | Reassign | Byproduct material<br>contained in devices<br>for use under § 31.5;<br>requirements for<br>license to                                                                        | B | B |

|                    |          |                                                               |     |     |
|--------------------|----------|---------------------------------------------------------------|-----|-----|
|                    |          | manufacture, or initially transfer:<br>Conditions of licenses |     |     |
| 10 CFR 40.32(a)    | Amend    | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.32(b)    | Amend    | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.32(d)    | New      | General requirements for issuance of specific licenses        | -   | H&S |
| 10 CFR 40.32(e)    | Reassign | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.32(f)    | Amend    | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.32(g)    | Reassign | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.32(h)    | Reassign | General requirements for issuance of specific licenses        | H&S | H&S |
| 10 CFR 40.51(d)(1) | Amend    | Transfer of source or byproduct material                      | C   | C   |
| 10 CFR 40.51(d)(2) | Amend    | Transfer of source or byproduct material                      | C   | C   |
| 10 CFR 40.51(d)(3) | Amend    | Transfer of source or byproduct material                      | C   | C   |
| 10 CFR 40.51(d)(4) | Amend    | Transfer of source or byproduct material                      | C   | C   |
| 10 CFR 40.61(a)    | Amend    | Records                                                       | C   | C   |

|                        |          |                                                         |     |     |
|------------------------|----------|---------------------------------------------------------|-----|-----|
| 10 CFR 40.61(a)(1)     | Amend    | Records                                                 | C   | C   |
| 10 CFR 40.61(a)(2)     | Amend    | Records                                                 | C   | C   |
| 10 CFR 40.61(a)(3)     | Amend    | Records                                                 | C   | C   |
| 10 CFR 40.61(a)(4)     | Amend    | Records                                                 | C   | C   |
| 10 CFR 70.4            | New      | Definition: Category 3 quantity of radioactive material | -   | B   |
| 10 CFR 70.23(a)(1)     | Amend    | Requirements for the approval of applications           | D   | D   |
| 10 CFR 70.23(a)(5)     | New      | Requirements for the approval of applications           | -   | H&S |
| 10 CFR 70.23(a)(7)     | Reassign | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(8)     | Amend    | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(9)     | Amend    | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(10)    | Amend    | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(11)    | Amend    | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(12)    | Reassign | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.23(a)(13)    | Reassign | Requirements for the approval of applications           | NRC | NRC |
| 10 CFR 70.42 (c)       | Amend    | Transfer of special nuclear material                    | C   | C   |
| 10 CFR 70.42 (d)       | Amend    | Transfer of special nuclear material                    | C   | C   |
| 10 CFR 70.42 (d)(1)    | New      | Transfer of special nuclear material                    | -   | C   |
| 10 CFR 70.42 (d)(1)(i) | New      | Transfer of special nuclear material                    | -   | C   |

|                          |       |                                      |   |   |
|--------------------------|-------|--------------------------------------|---|---|
| 10 CFR 70.42 (d)(1)(ii)  | New   | Transfer of special nuclear material | - | C |
| 10 CFR 70.42 (d)(2)      | New   | Transfer of special nuclear material | - | C |
| 10 CFR 70.42 (d)(2)(i)   | Amend | Transfer of special nuclear material | C | C |
| 10 CFR 70.42 (d)(2)(ii)  | Amend | Transfer of special nuclear material | C | C |
| 10 CFR 70.42 (d)(2)(iii) | Amend | Transfer of special nuclear material | C | C |
| 10 CFR 70.42 (d)(2)(iv)  | Amend | Transfer of special nuclear material | C | C |
| 10 CFR 70.42 (d)(3)      | New   | Transfer of special nuclear material | - | C |
| 10 CFR 70.42 (e)         | New   | Transfer of special nuclear material | - | C |

## **XVII. 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 proposed rule, the NRC would revise the regulations associated with radioactive source security and accountability. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## **XVIII. Availability of Guidance**

The NRC expects to update NUREG-1556 series “Consolidated Guidance About Materials Licenses” to make changes to conform with this rulemaking effort. To support an accelerated development schedule for this proposed rule, the updates will be made in

a future revision of the guidance, rather than concurrently with this rulemaking. Interim guidance, in the form of frequently asked questions (FAQs), will be added to the NRC's public website. The draft FAQs are available in ADAMS under Accession No. ML22334A029 and in the docket for the proposed rule (NRC-2022-0103). You may submit comments on the draft FAQs by the methods outlined in the ADDRESSES section of this document.

### **XIX. Public Meeting**

The NRC will publish a notice of the location, time, and agenda of a public meeting on the NRC's public meeting website within at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>.

### **XX. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| <b>DOCUMENT</b>                                                                                                                                   | <b>ADAMS ACCESSION NO. / WEB LINK</b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| SRM- COMJMB-16-0001, "Staff Requirements—COMJMB-16-0001—Proposed Staff Re-Evaluation of Category 3 Source Accountability," dated October 18, 2016 | ML16292A812                           |

|                                                                                                                                                                                                 |                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| SECY-17-0083, "Re-evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001," dated August 18, 2017                                                         | ML17188A255                                                                                         |
| SRM-SECY-17-0083, "Staff Requirements—SECY-17-0083—Re-evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001," dated December 21, 2021                   | ML21355A290                                                                                         |
| SECY-22-0065, "Evaluation of the U.S. Nuclear Regulatory Commission's General License Program for Devices Containing Radioactive Materials in Response to SRM-SECY-17-0083," dated July 8, 2022 | ML22103A249                                                                                         |
| GAO-16-330, "Nuclear Security: NRC Has Enhanced the Controls of Dangerous Radioactive Materials, but Vulnerabilities Remain," dated July 2016                                                   | <a href="https://www.gao.gov/assets/gao-16-330.pdf">https://www.gao.gov/assets/gao-16-330.pdf</a>   |
| GAO-22-103441, "Preventing a Dirty Bomb: Vulnerabilities Persist in NRC's Controls for Purchases of High-Risk Radioactive Materials," dated July 2022                                           | <a href="https://www.gao.gov/products/gao-22-103441">https://www.gao.gov/products/gao-22-103441</a> |
| Draft Regulatory Analysis                                                                                                                                                                       | ML22278A201                                                                                         |
| Draft Environmental Assessment                                                                                                                                                                  | ML22278A119                                                                                         |
| Draft FAQs                                                                                                                                                                                      | ML22334A209                                                                                         |

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2022-0103. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2022-0103); 2) click the "Subscribe" link; and 3) enter an email address and click on the "Subscribe" link.

### **List of Subjects**

#### **10 CFR Part 30**

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

#### **10 CFR Part 31**

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

#### **10 CFR Part 32**

Byproduct material, Criminal penalties, Labeling, Nuclear energy, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

#### **10 CFR Part 40**

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

#### **10 CFR Part 70**

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

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 proposing to amend 10 CFR parts 30, 31, 32, 40, and 70 as follows:

## **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 of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

2. In § 30.4, add the definition for *category 3 quantity of radioactive material* in alphabetical order to read as follows:

### **§ 30.4 Definitions.**

\* \* \* \* \*

*Category 3 quantity of radioactive material* means a quantity of radioactive material meeting or exceeding the category 3 threshold in table 1 of appendix F to this part but less than the category 2 threshold in table 1 of appendix A to part 37 of this chapter. This is determined by calculating the ratio of the total activity of each radionuclide to the category 3 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a

category 3 quantity. Category 3 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

\* \* \* \* \*

3. In § 30.33:

a. Redesignate paragraphs (a)(3) through (5) as paragraphs (a)(4) through (6), respectively;

b. Add a new paragraph (a)(3); and

c. Revise newly redesignated paragraph (a)(6).

The addition and revision read as follows:

**§ 30.33 General requirements for issuance of specific licenses.**

(a) \* \* \*

(3) The applicant has demonstrated (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that it will use the requested byproduct material for the purposes stated in its application;

\* \* \* \* \*

(6) In the case of an application for a license to receive and possess byproduct material for the conduct of any activity that the NRC determines will significantly affect the quality of the environment, the Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made under subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is

the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion must be grounds for denial of a license to receive and possess byproduct material in such plant or facility. Commencement of construction as defined in § 30.4 may include non-construction activities if the activity has a reasonable nexus to radiological safety and security.

\* \* \* \* \*

4. In § 30.41, revise paragraphs (c) and (d) and add a new paragraph (e) to read as follows:

**§ 30.41 Transfer of byproduct material.**

\* \* \* \* \*

(c) Before transferring byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the byproduct material, the licensee transferring the material must verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. For transfers within the same organization, the licensee does not need to verify the transfer.

(d) For transfers of byproduct material other than category 1 or 2 quantities of radioactive material, as defined in § 37.5 of this chapter, the following methods for the verification required by paragraph (c) of this section are acceptable:

(1) For transfers of category 3 quantities of radioactive material, as defined in § 30.4:

(i) The transferor must verify with the NRC's License Verification System or the license-issuing authority, prior to conducting such transfer, that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license-issuing authority, the transferor must document the verification. This verification must be conducted no earlier than 7 days prior to the transfer.

(ii) In an emergency where the licensee cannot reach the license-issuing authority and the license cannot be verified through the NRC's License Verification System, the transferor may accept an oral certification by the transferee that the transferee is authorized by license to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed by use of the NRC's License Verification System or by contacting the license-issuing authority by the end of the next business day.

(2) For all other transfers of radioactive material:

(i) The transferor may receive and review a current copy of the transferee's specific license or registration certificate;

(ii) The transferor may receive and review a written certification prepared by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(iii) For emergency shipments the transferor may accept an oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date,

provided that the oral certification is confirmed in writing within 10 days by using the methods in paragraph (d)(2)(i) of this section or paragraph (d)(2)(ii) of this section, except for transfers subject to the requirements in paragraph (d)(1) of this section, where the oral certification must be confirmed by the end of the next business day; or

(iv) When none of the methods of verification described in paragraphs (d)(2)(i) through (iii) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the byproduct material.

(e) For transfers of category 1 and 2 quantities of radioactive material, as defined in § 37.5 of this chapter, the requirements set forth in part 37 of this chapter apply.

5. In § 30.51, revise paragraph (a) to read as follows:

**§ 30.51 Records.**

(a) Each person who receives byproduct material pursuant to a license issued under the regulations in this part and parts 31 through 36 of this chapter must keep records showing the receipt, transfer, and disposal of the byproduct material, and each person who transfers byproduct material must keep records showing the verification of the transferee's license, as follows:

(1) The transferee licensee must retain each record of receipt of byproduct material as long as the material is possessed and for 3 years following transfer to another licensee or disposal of the material.

(2) The licensee who transferred the material must retain each record of transfer, including the record showing the verification of the transferee's license, for 3 years after each transfer unless a specific requirement in another part of the regulations in this chapter dictates otherwise.

(3) The licensee who disposed of the material must retain each record of disposal of byproduct material until the Commission terminates each license that authorizes disposal of the material.

\* \* \* \* \*

6. Add appendix F to part 30 to read as follows:

#### **Appendix F to Part 30 – Category 3 Radioactive Materials**

**Table 1 – Category 3 Thresholds**

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only.

| Radioactive Material | Category 3 Threshold |     |
|----------------------|----------------------|-----|
|                      | TBq                  | Ci  |
| Americium-241        | 0.06                 | 1.6 |
| Americium-241 /Be    | 0.06                 | 1.6 |
| Californium-252      | 0.02                 | 0.5 |
| Cobalt-60            | 0.03                 | 0.8 |
| Curium-244           | 0.05                 | 1.4 |
| Cesium-137           | 0.1                  | 2.7 |
| Gadolinium-153       | 1                    | 27  |

|                      |      |       |
|----------------------|------|-------|
| Iridium-192          | 0.08 | 2.2   |
| Plutonium-238        | 0.06 | 1.6   |
| Plutonium-239<br>/Be | 0.06 | 1.6   |
| Promethium-147       | 40   | 1,080 |
| Radium-226           | 0.04 | 1.1   |
| Selenium-75          | 0.20 | 5.4   |
| Strontium-90         | 1    | 27    |
| Thulium-170          | 20   | 540   |
| Ytterbium-169        | 0.30 | 8.1   |

**Note:** *Calculations Concerning Multiple Sources or Multiple Radionuclides*

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a quantity of radioactive material meets or exceeds the threshold and is thus subject to the license verification requirements of this part.

- I. If multiple sources of the same radionuclide and/or multiple radionuclides are included in the same transfer, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity in the transfer is less than the category 3 thresholds of table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable license verification requirements for category 3 quantities of radioactive material of this part apply.
- II. First determine the total activity for each radionuclide from table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk

material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from table 1 in the numerator of the equation and the corresponding threshold activity from table 1 in the denominator of the equation.

Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

$R_1$  = total activity for radionuclide 1

$R_2$  = total activity for radionuclide 2

$R_N$  = total activity for radionuclide n

$AR_1$  = activity threshold for radionuclide 1

$AR_2$  = activity threshold for radionuclide 2

$AR_N$  = activity threshold for radionuclide n

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \cdots + \frac{R_n}{AR_n} \geq 1.0$$

## PART 31 – GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

7. The authority citation for part 31 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 81, 161, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); 44 U.S.C. 3504 note.

8. Amend § 31.5 by:

a. In paragraph (c) introductory text, removing the words “pursuant to” and adding in their place the word “under”;

b. In paragraph (c)(1), removing the word “Shall” and adding in its place the word “Must”, removing the word “shall” and adding in its place the word “must”, and removing the word “thereon” and adding in its place the words “on the device”;

c. In paragraph (c)(2) introductory text, removing the word “Shall” and adding in its place the word “Must” and removing the text “six-month” and adding in its place the text “6-month”;

d. In paragraph (c)(2)(i), removing the comma and adding in its place a semicolon;

e. In paragraph (c)(2)(ii), removing the semicolon and adding in its place a period;

f. In paragraph (c)(3) introductory text, removing the word “Shall” and adding in its place the word “Must”;

g. In paragraph (c)(4) introductory text, removing the word “Shall” and adding in its place the word “Must”, removing the text “(c)(2) and (c)(3)” and adding in its place the text “(c)(2) and (3)”, and removing the word “shall” and adding in its place the word “must”;

h. In paragraph (c)(4)(i), removing the text “three” and adding in its place the text “3”, and removing the period and adding in its place a semicolon;

i. In paragraph (c)(4)(ii), removing the text “three” and adding in its place the text “3”, and removing the period and adding in its place the text “; and”;

j. In paragraph (c)(4)(iii), removing the text “three” and adding in its place the text “3”;

k. In paragraph (c)(5), removing the word “Shall” and adding in its place the word “Must”, removing the text “bequeral” and adding in its place the word “becquerel”, and removing the text “GLTS” and adding in its place the text “Document Control Desk/GLTS”;

l. In paragraph (c)(6), removing the word “Shall” and adding in its place the word “Must”;

- m. Revising paragraphs (c)(7), (8)(i), and (8)(ii) introductory text;
- n. In paragraphs (c)(8)(iii) introductory text and (c)(9) introductory text, removing the word “Shall” and adding in its place the word “Must”;
- o. Revising paragraph (c)(9)(i) introductory text;
- p. In paragraph (c)(10), removing the word “Shall” from the beginning of the paragraph and adding in its place the word “Must”, and removing the word “shall” from the middle of the paragraph and adding in its place the word “will”;
- q. In paragraphs (c)(11) through (13)(i), removing the word “Shall” and adding in its place the word “Must” and removing the word “shall” and adding in its place the word “must”;
- r. In paragraph (c)(13)(ii), removing the word “shall”, wherever it appears, and adding in its place the word “must” and removing the text “Sec.” and adding in its place “§”;
- s. In paragraph (c)(13)(iii) introductory text, removing the word “shall” and adding in its place the word “must”;
- t. In paragraph (c)(14), removing the word “Shall” and adding in its place the word “Must” and removing the text “GLTS” and adding in its place the text “Document Control Desk/GLTS”;
- u. Adding paragraphs (e) and (f); and
- v. Removing footnote 2.

The revisions and additions read as follows:

**§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.**

\* \* \* \* \*

(c) \* \* \*

(7) Must not export the device containing byproduct material, including for purposes of transfer and disposal, except in accordance with part 110 of this chapter;

(8)(i) If transferring a device containing a category 3 quantity of radioactive material, as defined in § 30.4 of this chapter, the transfer must be made to a specific licensee of the NRC or Agreement States and follow the transfer requirements in § 30.41(d) of this chapter. For all other generally licensed devices, the transfer must be made to either another general licensee as authorized in paragraph (c)(9) of this section, or to a person authorized to receive the device by a specific license issued under parts 30 and 32 of this chapter, or part 30 of this chapter that authorizes waste collection, or equivalent regulations of an Agreement State, or as otherwise approved under paragraph (c)(8)(iii) of this section.

(ii) Must, within 30 days after the transfer of a device to a specific licensee or the export of a device in accordance with paragraph (c)(7) of this section, furnish a report to the Director, Office of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk/GLTS, using an appropriate method listed in § 30.6(a) of this chapter. The report must contain—

\* \* \* \* \*

(9) \* \* \*

(i) The device remains in use at a particular location and does not contain a category 3 quantity of radioactive material, as defined in § 30.4 of this chapter. In this case, the transferor must give the transferee a copy of this section, a copy of §§ 31.2, 30.51, 20.2201, and 20.2202 of this chapter, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor must report to the

Director, Office of Nuclear Material Safety and Safeguards, ATTN: Document Control Desk/GLTS, using an appropriate method listed in § 30.6(a) of this chapter—

\* \* \* \* \*

(e) Persons possessing byproduct material in devices under a general license in this section before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of this section in effect on January 14, 1975.

(f) Persons possessing devices containing byproduct material greater than the category 3 thresholds listed in table 1 of appendix F to part 30 of this chapter under a general license in this section before **[DATE 30 DAYS AFTER PUBLICATION OF FINAL RULE]**, may continue to possess or use that material under a general license.

## **PART 32 – SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL**

9. The authority citation for part 32 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 81, 161, 170H, 181, 182, 183, 223, 234, 274 (42 U.S.C. 2111, 2201, 2210h, 2231, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note.

10. In § 32.2, add a definition for *category 3 quantity of radioactive material* in alphabetical order to read as follows:

### **§ 32.2 Definitions.**

\* \* \* \* \*

*Category 3 quantity of radioactive material* means a category 3 quantity of radioactive material as defined in § 30.4 of this chapter.

\* \* \* \* \*

11. In § 32.51:

- a. In paragraph (a)(2)(iii), remove the word “Column” and add in its place the word “column”;
- b. Redesignate paragraphs (a)(3) through (6) as paragraphs (a)(4) through (7);
- c. Add new paragraph (a)(3);
- d. Revise newly redesignated paragraph (a)(4)(iii); and
- e. Add paragraph (a)(4)(iv).

The additions and revision read as follows:

**§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.**

(a) \* \* \*

(3) The device contains less than the category 3 thresholds of the radionuclides listed in table 1 of appendix F to part 30 of this chapter.

(4) \* \* \*

(iii) The information called for in the following statement in the same or substantially similar form:<sup>1</sup>

The receipt, possession, use, and transfer of this device Model \_\_\_\_, Serial No. \_\_\_\_, are subject to a general license or the equivalent and the regulations of the U.S. NRC or of a State with which the NRC has entered into an agreement for the exercise of regulatory

authority. This label must be maintained on the device in a legible condition. Removal of this label is prohibited.

### **CAUTION - RADIOACTIVE MATERIAL**

(Name of manufacturer, or initial transferor)

(iv) The model, serial number, and the name of the manufacturer, or initial transferor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

\* \* \* \* \*

<sup>1</sup> Devices licensed under § 32.51 prior to January 19, 1975, may bear labels authorized by the regulations in effect on January 1, 1975.

## **PART 40 – DOMESTIC LICENSING OF SOURCE MATERIAL**

12. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

13. In § 40.32:

- a. Remove the word “and” from the end of paragraphs (a) and (b);
- b. Redesignate paragraphs (d) through (g) as paragraphs (e) through (h), respectively;
- c. Add new paragraph (d); and
- d. Revise newly redesignated paragraph (f).

The addition and revision read as follows:

**§ 40.32 General requirements for issuance of specific licenses.**

\* \* \* \* \*

(d) The applicant has demonstrated (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that it will use the requested source material for the purposes stated in its application;

\* \* \* \* \*

(f) In the case of an application for a license for a uranium enrichment facility, or for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, or for the conduct of any other activity which the NRC determines will significantly affect the quality of the environment, the Director, Office of Nuclear Material Safety and Safeguards, or the Director's designee, before commencement of construction, on the basis of information filed and evaluations made under subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to this conclusion is grounds for denial of a license to possess and use source and byproduct material in the plant or facility. Commencement of construction as defined in § 40.4 may include non-construction activities if the activity has a reasonable nexus to radiological safety and security.

\* \* \* \* \*

14. In § 40.51, revise paragraph (d) to read as follows:

**§ 40.51 Transfer of source or byproduct material.**

\* \* \* \* \*

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may receive and review a current copy of the transferee's specific license or registration certificate;

(2) The transferor may receive and review a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certification number, issuing agency and expiration date. For transfers that include or consist of a category 3 quantity of radioactive material, as defined in § 30.4 of this chapter, the transferor must comply with the verification requirements of § 30.41(d)(1) of this chapter;

(3) For emergency shipments, the transferor may accept an oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date, provided that the oral certification is confirmed in writing within 10 days by using the methods in § 30.41(d)(2)(i) of this chapter or § 30.41(d)(2)(ii) of this chapter, except for transfers subject to the requirements in § 30.41(d)(1) of this chapter, where the oral certification must be confirmed by the end of the next business day; or

(4) When none of the methods of verification described in paragraphs (d)(1) through (3) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source or byproduct

material.

15. Amend § 40.61 by:

a. Revising paragraphs (a) introductory text and (a)(1);

b. In paragraphs (a)(2) and (3), removing the word “shall” and adding in its place the word “must”; and

c. In paragraph (a)(4), removing the word “Part” and adding in its place the word “part”.

The revisions read as follows:

**§ 40.61 Records.**

(a) Each person who receives source or byproduct material under a license issued in accordance with the regulations in this part must keep records showing the receipt, transfer, and disposal of this source or byproduct material, and each person who transfers byproduct material must keep records showing the verification of the transferee’s license, as follows:

(1) The transferee licensee must retain each record of receipt of source or byproduct material as long as the material is possessed and for 3 years following transfer to another licensee or disposition of the source or byproduct material.

\* \* \* \* \*

**PART 70 – DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

16. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

17. In § 70.4, add the definition for *category 3 quantity of radioactive material* in alphabetical order to read as follows:

**§ 70.4 Definitions.**

\* \* \* \* \*

*Category 3 quantity of radioactive material* means a category 3 quantity of radioactive material as defined in § 30.4 of this chapter.

\* \* \* \* \*

18. Amend § 70.23 by:

a. In paragraph (a)(1), removing the word “section” and adding in its place the word “Section”;

b. Redesignating paragraphs (a)(5) through (12) as paragraphs (a)(6) through (13), respectively;

c. Adding a new paragraph (a)(5);

d. Revising newly redesignated paragraphs (a)(7) and (8);

c. In newly redesignated paragraph (a)(9), removing the text “pursuant to” and adding in its place the text “under”; and

d. In newly redesignated paragraph (a)(10), removing the text “pursuant to” and adding in its place the text “under” and removing the text “of this chapter,”; and

e. In newly redesignated paragraph (a)(11), removing the text “pursuant to” and adding in its place the text “under”.

The addition and revisions read as follows:

**§ 70.23 Requirements for the approval of applications.**

(a) \* \* \*

(5) The applicant has demonstrated (e.g., through installing safety and security equipment, establishing facilities, or developing procedures) that it will use the requested special nuclear material for the purposes stated in its application;

\* \* \* \* \*

(7) Where the applicant is required to submit a summary description of the fundamental material controls provided in the applicant’s procedures for the control of and accounting for special nuclear material under § 70.22(b), the applicant’s proposed controls are adequate;

(8) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, uranium enrichment facility construction and operation, or any other activity which the NRC determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards, or the Director’s designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made under subpart A of part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values.

Commencement of construction prior to this conclusion is grounds for denial to possess

and use special nuclear material in the plant or facility. Commencement of construction as defined in § 70.4 may include non-construction activities if the activity has a reasonable nexus to radiological safety and security.

\* \* \* \* \*

19. In § 70.42, revise paragraphs (c) and (d) and add paragraph (e) to read as follows:

**§ 70.42 Transfer of special nuclear material.**

\* \* \* \* \*

(c) Before transferring special nuclear material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the special nuclear material, the licensee transferring the material must verify that the transferee's license authorizes receipt of the type, form, and quantity of special nuclear material to be transferred. For transfers within the same organization, the licensee does not need to verify the transfer.

(d) For transfers of special nuclear material other than category 1 or 2 quantities of radioactive material, as defined in § 37.5 of this chapter, the following methods for the verification required by paragraph (c) of this section are acceptable:

(1) For transfers of category 3 quantities of radioactive material, as defined in § 30.4 of this chapter:

(i) The transferor must verify with the NRC's License Verification System or the license-issuing authority, prior to conducting such transfer, that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be

transferred. If the verification is conducted by contacting the license-issuing authority, the transferor must document the verification. This verification must be conducted no earlier than 7 days prior to the transfer.

(ii) In an emergency where the licensee cannot reach the license-issuing authority and the license cannot be verified through the NRC's License Verification System, the transferor may accept an oral certification by the transferee that the transferee is authorized by license to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, license number, current revision number, issuing agency, and expiration date, provided that the oral certification is confirmed by use of the NRC's License Verification System or by contacting the license-issuing authority by the end of the next business day.

(2) For all other transfers of radioactive material:

(i) The transferor may receive and review a current copy of the transferee's specific license or registration certificate.

(ii) The transferor may receive and review a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date.

(iii) For emergency shipments, the transferor may accept an oral certification by the transferee that the transferee is authorized by license or registration certification to receive the type, form, and quantity of special nuclear material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within 10 days by using the methods in paragraph (d)(2)(i) of this section or paragraph (d)(2)(ii) of this section,

except for transfers subject to the requirements in paragraph (d)(1) of this section, where the oral certification must be confirmed by the end of the next business day; or

(iv) When none of the methods of verification described in paragraphs (d)(2)(i) through (iii) of this section are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the special nuclear material. The transferor must retain the record of confirmation for 3 years from the date the record is made.

(3) The transferor must keep a copy of the verification documentation as a record for 3 years.

(e) For transfers of category 1 and 2 quantities of radioactive material, as defined in § 37.5 of this chapter, the requirements set forth in part 37 of this chapter apply.

Dated: <Month XX, 20XX>.

For the Nuclear Regulatory Commission.

Brooke P. Clark,  
Secretary of the Commission.