

# LOW-LEVEL RADIOACTIVE WASTE FORUM, INC.

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## *U.S. Nuclear Regulatory Commission*

### **NRC Issues RIS 2015-15 re Specific Exemption in Requirements for Physical Protection of Category 1 and 2 Quantities of Radioactive Material**

On December 4, 2015, the U.S. Nuclear Regulatory Commission issued Regulatory Issue Summary (RIS) 2015-15 to provide information regarding the guidance in NUREG-2155, Rev. 1, Implementation Guidance for 10 CFR Part 37, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*, and in the questions and answers concerning the application of 10 CFR Part 37 to licensees with 10 CFR Part 73 security plans.

In particular, 10 CFR 37.11(b) states that “[a]ny licensee’s NRC-licensed activities are exempt from the requirements of subparts B and C of this part to the extent that its activities are included in a security plan required by part 73 of this chapter.” NRC issued RIS 2015-15 to provide information on the activities that should be included within the licensee’s security plan relative to this specific exemption from the requirements of subparts B and C of 10 CFR Part 37.

RIS 2015-15 does not require any specific action or written response. Instead, the NRC is providing RIS 2015-15 to the Agreement States for their information and for distribution to their licensees, as appropriate.

*Additional information may be found on NRC’s public website at <http://www.nrc.gov/security/byproduct/10-cfr-part-37.html>.*

#### **Overview**

Generally, if Category 1 or Category 2 quantities of radioactive material are located within a protected area (PA), as defined by 10 CFR Part 73, of a facility—such as a power reactor, Category I spent nuclear materials (SNM) facility, or an independent spent fuel storage installation—existing physical protection measures within a PA required by 10 CFR Part 73 are expected to provide a level of protection equivalent with the requirements of 10 CFR Part 37. In order to demonstrate that their 10 CFR Part 73 security plan or their 10 CFR Part 37 security plan adequately protects Category 1 or Category 2 quantities of radioactive material located within a PA from theft or diversion, NRC states in RIS 2015-15 that licensees’ security plan(s) and/or procedures should, at a minimum, describe the following:

- the existing physical protection measures that will be used to ensure Category 1 and Category 2 quantities of radioactive material will be protected from theft and diversion;
- the process used for maintaining accountability of Category 1 and Category 2 quantities of radioactive material and the location of the material; and,

- the training that will be provided to individuals who are responsible for protecting Category 1 and Category 2 quantities of radioactive material.

In RIS 2015-15, NRC states that if Category 1 and Category 2 quantities of radioactive material are not located inside of a PA, but are located in other areas of a facility covered under a 10 CFR Part 73 security plan (e.g., outside of a PA), the existing physical protection measures provided in these areas may not provide a level of protection for Category 1 or Category 2 quantities of radioactive material that is equivalent with the requirements of 10 CFR Part 37. As an example, NRC notes that these areas may not provide continuous monitoring and the ability to detect without delay all unauthorized entries into the area (i.e., security zone) where Category 1 and Category 2 quantities of radioactive material are stored. Therefore, for areas not within a PA, NRC requires that the 10 CFR Part 73 or 10 CFR Part 37 security plan must—as discussed in the questions and answers associated with 10 CFR Part 37 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13282A701)—either meet the 10 CFR Part 37 security requirements or, pursuant to 10 CFR 37.11(b), describe how the 10 CFR Part 73 security program provides a level of protection for Category 1 and Category 2 quantities of radioactive material that is equivalent with the requirements of 10 CFR Part 37, subparts B and C.

RIS 2015-15 points out that power reactor licensees should be aware that the NRC developed an enforcement guidance memorandum (EGM), EGM-14-001 (ADAMS Accession No. ML14056A151), which provides guidance to NRC staff on how to disposition potential violations associated with 10 CFR Part 37 requirements with respect to large components and robust structures containing Category 1 and Category 2 quantities of radioactive material or waste. This EGM authorizes the NRC staff to exercise enforcement discretion and not cite potential violations associated with protection of this material if certain conditions, described in the EGM, are met. RIS 2015-15 states that power reactor licensees that store large components and/or utilize robust structures containing Category 1 or Category 2 quantities of radioactive material or waste should review this EGM and ensure that they meet the conditions of the EGM.

In addition, NRC notes that licensees should also be aware that the requirements in 10 CFR 37.11(b) do not exempt them from complying with the requirements of 10 CFR Part 37 Subpart D, “Physical Protection in Transit.” Accordingly, RIS 2015-15 states that licensees with an NRC-approved 10 CFR Part 73 security plan can choose to protect Category 1 and Category 2 quantities of radioactive material from theft or diversion by using their 10 CFR Part 73 security plan, a separate 10 CFR Part 37 security plan, or use both their 10 CFR Part 73 security plan and a separate 10 CFR Part 37 security plan.

## **Background**

In a final rule published in the *Federal Register* on March 19, 2013 (78 *Federal Register* 16921), the NRC added a new 10 CFR Part 37 to its regulations and made conforming changes to other parts of NRC regulations regarding physical protection of radioactive materials. The new regulation, which NRC licensees were required to be in compliance with by March 19, 2014, establishes physical security requirements for the possession and use of Category 1 and Category 2 quantities of radioactive material. Power reactor licensees and other licensees who operate under a security plan required by 10 CFR Part 73 and who possess Category 1 or Category 2 quantities of radioactive material are subject to 10 CFR Part 37 requirements, in addition to existing physical security requirements for special nuclear material in 10 CFR Part 73. The new rule, 10 CFR Part 37, can be found at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part037/>.

The provisions of 10 CFR 37.11(b) are intended to allow licensees with an NRC-approved 10 CFR Part 73 security plan to rely on the physical protection measures described in that plan to meet the physical protection requirements of 10 CFR Part 37, subparts B and C to the extent that the 10 CFR Part 73 security program provides the equivalent level of protection for Category 1 and Category 2 quantities of radioactive material. Accordingly, licensees with an NRC-approved 10 CFR Part 73 security plan can choose to protect Category 1 and Category 2 quantities of radioactive material from theft or diversion by using their 10 CFR Part 73 security plan, a separate 10 CFR Part 37 security plan, or use both their 10 CFR Part 73 security plan and a separate 10 CFR Part 37 security plan. Whichever plan a licensee chooses to use, the licensee's security plan(s) must describe how Category 1 and Category 2 quantities of radioactive material will be protected from theft or diversion, pursuant to 10 CFR Part 37. In addition, the licensee's 10 CFR Part 73 or 10 CFR Part 37 security plan may take credit for and utilize existing physical protection measures established under the 10 CFR Part 73 security program to protect Category 1 and Category 2 quantities of radioactive material.

On June 12, 2014, the Nuclear Energy Institute (NEI) submitted a petition for rulemaking (PRM) requesting that the exemption requirements under 10 CFR 37.11 be amended. The NRC docketed NEI's petition as PRM-37-1 and published the notice of docketing and request for comment for the petition in the *Federal Register* on October 28, 2014 (79 *Federal Register* 64149). The NRC reviewed the petition, supporting rationale, and the associated comment letters and determined that the issues raised in the petition had merit and should be considered in the rulemaking process.

*For additional information, please contact Duane White of the NRC at (301) 287-3627 or at [Duane.White@nrc.gov](mailto:Duane.White@nrc.gov).*

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