

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NEW REACTORS
WASHINGTON, D.C. 20555

December 4, 2015

NRC REGULATORY ISSUE SUMMARY 2015-15
INFORMATION REGARDING A SPECIFIC EXEMPTION IN THE REQUIREMENTS FOR THE
PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF
RADIOACTIVE MATERIAL

ADDRESSEES

All holders of and applicants for a power reactor operating license or construction permit under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," including those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of and applicants for a power reactor early site permit, combined license, or manufacturing license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

All holders of and applicants for a license under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," that are required to have a security plan under 10 CFR Part 73, "Physical Protection of Plants and Materials," to include licensees authorized to possess formula quantities of special nuclear material (SNM), licensees authorized to possess SNM of moderate strategic significance, and licensees authorized to possess SNM of low strategic significance.

All holders of and applicants for a license under 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste."

All Agreement State Radiation Control Program Directors and State Liaison Officers.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) 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, which may be found on NRC's public website at <http://www.nrc.gov/security/byproduct/10-cfr-part-37.html>. Specifically, 10 CFR 37.11(b) states, "Any 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." This RIS is being issued to provide

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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.

No specific action or written response is required. The NRC is providing this RIS to the Agreement States for their information and for distribution to their licensees, as appropriate.

BACKGROUND INFORMATION

In a final rule published in the *Federal Register* on March 19, 2013 (78 FR 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 FR 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.

SUMMARY OF ISSUE

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 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. 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, licensees' security plan(s) and/or procedures should, at a minimum, describe the following:

- (1) 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;
- (2) The process used for maintaining accountability of category 1 and category 2 quantities of radioactive material and the location of the material; and
- (3) The training that will be provided to individuals who are responsible for protecting category 1 and category 2 quantities of radioactive material.

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. For example, 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, 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.

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. 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.

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, 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.

BACKFITTING AND ISSUE FINALITY

This RIS provides information to licensees regarding the specific licensed activities that should be described within the licensees' 10 CFR Part 73 security plans relative to the exemption from the requirements of subparts B and C of 10 CFR Part 37, pursuant to 10 CFR 37.11(b). This RIS requires no action or written response beyond that already required by NRC regulations. This RIS does not impose on the addressees in their status as applicants, licensees or holders of NRC regulatory approvals under 10 CFR Parts 50, 52, 70 or 72, either backfitting (as defined in those parts) or actions which are inconsistent with the issue finality requirements in 10 CFR Part 52. This RIS provides information regarding requirements contained in the final rulemaking for Part 37 (78 FR [16921](#)). Therefore, the NRC did not prepare a backfit analysis for this RIS or further address the issue finality criteria in Part 52.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational and pertains to a licensing matter that was open to public comment during its promulgation.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0214 and 3150-0002.

Public Protection Notification

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

CONTACTS

This RIS requires no specific action, or written response. If you have any questions about this summary, please contact the technical contact listed below or the appropriate regional office.

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Note: NRC generic communications may be found on the NRC public Web site,
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