

OMB SUPPORTING STATEMENT FOR FINAL RULE
10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150
PROTECTION OF SAFEGUARDS INFORMATION
(3150-AH57)

Description of the Information Collection

The Nuclear Regulatory Commission (NRC) is revising 10 CFR 73.21 and to add sections 73.22 and 73.23 to protect safeguards information (SGI) from inadvertent release and unauthorized distribution which might compromise the security of nuclear facilities and materials. The final rule will:

- revise the definition of “need to know” in 10 CFR § 73.2;
- implement expanded fingerprinting and criminal history records check procedures for broader categories of individuals who will have access to SGI unless exempt from those requirements;
- add a new designation, Safeguards Information-Modified Handling (SGI-M), to distinguish SGI needing modified protection from SGI for reactors and fuel cycle facilities that require a higher level of protection;
- implement a requirement for background checks demonstrating trustworthiness and reliability for individuals who will have access to SGI or SGI-M unless exempt from those requirements;
- codify the SGI and SGI-M requirements imposed by Orders issued following the terrorist attacks of September 11, 2001;
- expand the scope of 10 CFR Part 73 to include additional categories of licensees (e.g., source and byproduct material licensees, research and test reactors not previously covered, and fuel cycle facilities not previously covered);
- expand the types of security information covered by the definition of SGI in 73.2 and the information categories described in 73.22 and 73.23 to include detailed security measures for the physical protection of byproduct, source, and special nuclear material; emergency planning scenarios and implementing procedures; uncorrected vulnerabilities or weaknesses in a security system; and certain training and qualification information;
- clarify requirements for obtaining access to SGI in the context of adjudications and clarify the appeal procedures available;
- modify the final rule to align it with the final rule in 10 CFR § 73.59 granting relief from the fingerprinting, identification and criminal history records checks and background checks for designated categories of individuals;
- modify 10 CFR § 73.59 to make it consistent with the language and structure of the revised final SGI rule.

Changes in the threat environment since September 11, 2001, have revealed the need to protect additional types of security information held by a broader group of licensees and applicants for licenses than under the current regulations. Under the current regulations, some licensees and applicants are not required to have an SGI protection program. Other licensees, who already maintain an SGI protection program, are not required, under the current regulations, to protect certain types of information vital to the common defense and security. The unauthorized release of this information could result in harm to the public

health and safety and the nation's common defense and security, and could damage the nation's critical infrastructure, including nuclear power plants and other facilities.

The Commission has issued orders that have increased the number of licensees and applicants whose security measures will be protected as SGI and that have also added additional types of security information considered to be SGI. Some of the orders expanded the types of information to be protected by licensees who already have an SGI protection program, such as nuclear power reactor licensees. Other orders were issued to licensees that have not previously been subject to SGI requirements, and certain orders imposed a new designation detailing modified handling requirements for certain SGI: Safeguards Information-Modified Handling (SGI-M). The more precise term is "Safeguards Information designated as Safeguards Information-Modified Handling" to distinguish between "type of information" - SGI, and the two sets of handling requirements "SGI" and "SGI-M." The NRC is not seeking to create another type of information separate from SGI, and in fact, SGI-M is SGI. SGI-M refers to SGI with handling requirements that are modified somewhat due to the lower risk posed by unauthorized disclosure of the information. Although new SGI requirements could continue to be imposed via issuance of orders, the regulations would not reflect current Commission SGI policy and/or requirements.

On February 11, 2005, the NRC first published, in 70 FR 7196, proposed amendments to its rules in 10 CFR Part 73 governing the handling of SGI and the creation of the new SGI-M designation. Subsequently, Congress passed the Energy Policy Act of 2005 (EPAct). Section 652 of the EPAct amended section 149 of the Atomic Energy Act (AEA) to require fingerprinting, for criminal history records check purposes, of any individual permitted access to SGI. Previously, section 149 of the AEA only required fingerprinting and criminal history records checks of individuals seeking access to SGI from a power reactor licensee or license applicant. Under section 149, the Commission may, by rule, relieve individuals from the fingerprinting, identification, and criminal history records check requirements, "if the Commission finds, that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public." The Commission recently exercised that authority to relieve by rule categories of individuals from the fingerprinting requirements, including certain Federal, State, and local officials, and representatives of foreign governments and organizations (71 FR 33992, June 13, 2006).

The NRC published a revised proposed SGI rule on October 31, 2006 (71 FR 64004) to allow for public comment on changes to the proposed rule to reflect the new requirements under the EPAct, the comments on the original proposed rule, and the orders to licensees authorized to possess and transfer items containing certain quantities of radioactive material.

The Commission's orders imposing EPAct-required fingerprinting and SGI protection measures have already been issued to and implemented by a large number of NRC and Agreement State licensees. The burden increase associated with the orders at § 73.21 is included here in the information collection burden associated with the new §§ 73.22 and 73.23. In other words, the information collection burden described in this statement assumes that all burdens imposed by the rule have not been implemented by licensees when, in fact, licensees have already implemented many of these burdens. In both the prior and revised proposed rule, the requirements and burden associated with the current § 73.21 have been moved to §§ 73.22 and

73.23. Rule changes to the wording in 10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 76 and 150 are included in the description of changes because the changes to these sections expand the universe of affected licensees and applicants. However, no burden changes are attributable under these sections because the sections all point to 10 CFR Part 73 where the actual requirements, and therefore the burden increases, are located.

A. JUSTIFICATION

1. Need for and Practical Utility of the Collection of Information

Commission Orders

The Commission orders issued prior to this rulemaking also contained reporting requirements for licensees in addition to the recordkeeping requirements being codified in this rule. The requirements stated that within 20 days of the date of the order the licensees must submit to the Commission a schedule for completion of the requirements included in the orders. In addition, the licensees were to report to the Commission when they achieved full compliance with the order requirements. These orders were issued to both NRC and Agreement State licensees. OMB approved the reporting burden contained in these orders on December 15, 2003. Additional SGI-related orders issued during the development of this rule have included comparable requirements to comply with and answer the orders within 20 days.

Section 30.32, Application for specific licenses:

Paragraph (j) is added to require byproduct material license applicants to protect SGI-M against unauthorized disclosure in accordance with the requirements of §§ 73.21, 73.22 and/or 73.23, as applicable. This paragraph expands the universe of byproduct material applicants which must mark SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. Changes in the threat environment since September 11, 2001, have revealed the need to protect additional types of security information held by a broader group of licensees and applicants than under the current regulations.

Section 30.34, Terms and conditions of licenses:

Paragraph (j) is added to require byproduct material licensees that are subject to 10 CFR Part 73 to protect SGI-M against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.23. This paragraph expands the universe of byproduct material licensees which must mark SGI-M and complete paperwork associated with background and criminal history records checks.

Section 40.31, Application for specific licenses:

Paragraph (m) is added to require each applicant for a source material license to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. Paragraph (m) also requires applicants for a license to possess source material at a facility for the production or conversion of uranium hexafluoride

to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or 73.23, as applicable. This paragraph could expand the universe of source material applicants which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. However, there are no known applicants at this time or in the foreseeable future.

Section 40.41, Terms and conditions of licenses:

Paragraph (h) is added to require source material licensees that are subject to 10 CFR Part 73 to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. This paragraph expands the universe of source material licensees which must mark SGI and complete paperwork associated with background and criminal history records checks.

Section 50.34, Contents of applications; technical information:

Paragraph (e) is revised to require each applicant for a license to operate a production or utilization facility to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The protection of SGI against unauthorized disclosure was required of applicants for a license to operate a utilization facility under the prior § 73.21. However, the inclusion of § 73.23 and the additional requirements for access to SGI could expand the type of information that would be subject to this requirement as well as increase the amount of paperwork associated with background check, including fingerprinting for criminal history records checks. However, there are no known applicants at this time or in the foreseeable future.

Section 50.54, Conditions of licenses:

Paragraph (v) is revised to require each licensee subject to the requirements of 10 CFR 73 to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The protection of SGI against unauthorized disclosure was required of these licensees under the prior § 73.21. However, the inclusion of § 73.23 and the additional requirements for access to SGI could expand the type of information that would be subject to this requirement as well as increase the amount of paperwork associated with background check, including fingerprinting for criminal history records checks.

Section 52.17, Contents of applications

Paragraph (d) is added to require each applicant for an early site permit to protect SGI against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22. This paragraph expands the universe of applicants which must mark information with the designation of SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 52.47, Contents of applications:

Paragraph (c) is added to require each applicant for a standard design certification to protect SGI against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22. This paragraph could expand the universe of standard design certification applicants which must mark information as SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 52.79, Contents of application; technical information:

Paragraph (e) is added to require each applicant for a combined license to protect SGI against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22. This paragraph would not expand the universe of license applicants since the application is combined with a license for a nuclear power facility. Therefore, the paperwork burden under this Section is already covered under the burden for nuclear power facilities.

Section 60.21, Content of application:

Paragraph (d) is added to require applicants for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated according to the Nuclear Waste Policy Act of 1982 to protect SGI in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. This paragraph could expand the universe of applicants which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. However, at this time the NRC has no applicants under this section and knows of no future applicants.

Section 60.42, Conditions of license:

Paragraph (d) is added to require high-level radioactive waste licensees to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. This paragraph could expand the universe of high-level radioactive waste licensees which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. However, at this time the NRC has no licensees under this section.

Section 63.21, Content of application:

Paragraph (d) is added to require an applicant for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository at Yucca Mountain, Nevada, to protect Safeguards Information in accordance with the requirements in § 73.21, and the requirements in § 73.22, or § 73.23 of the chapter, as applicable, and to protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable. This paragraph could expand the universe of applicants for licenses to receive and possess source, special nuclear, and byproduct material which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. However, at this time, the NRC has not received an application under this section.

Section 63.42, Conditions of license:

Paragraph (e) is added to require a radioactive waste licensee at a geological repository at Yucca Mountain, Nevada to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable, and to protect classified information in accordance with the requirements of parts 25 and 95 of this chapter, as applicable. This paragraph could expand the universe of a licensee under Part 63 which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks. However, at this time the NRC has no licensee under this section.

Section 70.22, Contents of applications:

Paragraph (l) is revised to require each applicant for a license under 10 CFR Part 70 to protect SGI from unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The revision to Section 70.22 expands the universe of applicants which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 70.32, Conditions of licenses:

Paragraph (j) is revised to require each licensee who possesses special nuclear material, or who transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material, special nuclear material of moderate strategic significance, or special nuclear material of low strategic significance, or more than 100 grams of irradiated reactor fuel to protect SGI from unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The revision to Section 70.32 expands the universe of licensees which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 71.11, Protection of safeguards information:

Section 71.11 is added to require each licensee, certificate holder, or applicant for a Certificate of Compliance for a transportation package for transport of irradiated reactor fuel, strategic special nuclear material, a critical mass of special nuclear material, or byproduct material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security, to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. NRC staff estimates that 50 licensees may be subject to this section in the future. Because the licensees, certificate holders, and applicants for certificates will already be protecting SGI in accordance with the requirements in the rule or in response to previously issued orders, the recordkeeping requirements are included in Table 1, but the additional costs associated with this section (e.g. background checks, criminal history records checks, document stamps, etc.) have already been incurred.

Section 72.22, Contents of application: general and financial information:

Paragraph (f) is added to require each applicant for a license to receive, transfer, and possess spent power reactor fuel, power reactor-related Greater than Class C waste, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation to protect SGI against unauthorized disclosure in accordance with the

requirements of § 73.21 and § 73.22 or § 73.23, as applicable. At this time the NRC has no applicants under this section and knows of no future applicants.

Section 72.44, License conditions:

Paragraph (h) is added to require each licensee subject to 10 CFR Part 73 to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The addition of this paragraph would not expand the universe of licensees which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 72.212, Conditions of general license issued under § 72.210:

Paragraph (b)(5)(v) is added to require a licensee that receives and possesses spent power reactor fuel and other radioactive materials associated with spent fuel storage to protect SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The addition of this paragraph would not expand the universe of licensees which must mark SGI or SGI-M and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 72.236, Specific requirements for spent fuel storage cask approval and fabrication:

Paragraph (n) is added to require the protection of SGI against unauthorized disclosure in accordance with the requirements of § 73.21 and § 73.22 or § 73.23, as applicable. The addition of this paragraph would not expand the universe of licensees which must mark SGI and complete paperwork associated with background criminal history records checks because independent fuel storage facilities and others licensed under Part 72 already protect this information.

Section 73.21, Protection of Safeguards Information: Performance Requirements:

Section 73.21 is revised to expand the number of licensees, certificate holders, applicants, or other persons, as described above, required to protect Safeguards Information designated as SGI or SGI-M in accordance with the requirements of Sections 73.22 and 73.23. Paragraph 73.21(a)(1)(i) requires that an information protection system be established, implemented, and maintained in accordance with Section 73.22 to protect Safeguards Information related to power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production or conversion facilities; fuel fabrication facilities; uranium enrichment facilities; independent spent fuel storage installations; and geologic repository operations areas. Paragraph 73.21(a)(1)(ii) requires persons subject to that section to establish, implement, and maintain an information protection system in accordance with Section 73.23 for Safeguards Information specified in § 73.23 related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, or byproduct or special nuclear material in greater than or equal to Category 2 quantities of concern; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of source, byproduct, or special nuclear material in greater

than or equal to Category 1 quantities of concern. Other persons who produce, receive, or acquire SGI not described in (a)(1)(i) and (a)(1)(ii) must protect the SGI in accordance with 73.22. The information collection burden associated with the current § 73.21 has been moved to §§ 73.22 and 73.23.

Section 73.22. Protection of Safeguards Information: Specific Requirements:

This section provides for the protection of SGI in the hands of any person subject to the requirements of § 73.21(a)(1)(i) and related to power reactors; a formula quantity of strategic special nuclear material; transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel; uranium hexafluoride production or conversion facilities, fuel fabrication facilities, and uranium enrichment facilities; independent spent fuel storage installations; geologic repository operations areas and Safeguards Information in the hands of any person subject to the requirements of § 73.21(a)(1)(iii). The recordkeeping requirements associated with the final rule are:

Section 73.22(a). Information to be protected:

The types of information to be protected as SGI are expanded under Section 73.22(a) to add the information described below:

(a)(1) *Information to be protected at fixed sites:*

(xi) The Adversary Characteristics Document or other implementing guidance associated with the Design Basis Threat in Section 73.1(a)(1) and (a)(2); and

(xii) Engineering and safety analyses, emergency planning procedures or scenarios, and other information revealing site-specific details of the facility or materials if the unauthorized disclosure of such analyses, procedures, scenarios, and other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(a)(2) *Information to be protected in transit:*

(vii) Information concerning the tactics and capabilities required to defend against attempted sabotage or theft and diversion of formula quantities of special nuclear material or irradiated reactor fuel or related information; and

(viii) Engineering or safety analyses, emergency planning procedures or scenarios, and other information related to the protection of the transported material if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(a)(5) Other information within the scope of Section 147 of the Atomic Energy Act that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material or a facility.

Section 73.22(b)(1) and (b)(2), Conditions of access:

The recordkeeping requirement under this section of the final rule is the paperwork associated with conducting background checks, including fingerprinting for criminal history records checks. A trustworthiness and reliability determination based on a background check (or other means as approved by the Commission) must be made for each individual seeking access to SGI, except for the categories of individuals enumerated in § 73.59, “Relief from fingerprinting, identification and criminal history records checks and background checks for designated categories of individuals.”

Under the current § 73.21, power reactor licensees and applicants are required to obtain fingerprints for Federal Bureau of Investigation criminal history records checks in order to authorize individuals to have access to SGI, except for the categories of individuals as described in § 73.57(b)(2). This requirement would change under the final rule to cross-reference in § 73.57(b)(2)(ii) the categories of individuals exempt from the fingerprinting requirements as described in § 73.59. In addition, the requirement for other elements of a background check is new and includes employment history, education, and personal references.

Section 73.22(d), Preparation and marking of documents or other matter:

Under the requirements of the current Section 73.21, SGI must be marked “Safeguards Information” in a conspicuous manner. Paragraph 73.22(d)(1) of the final rule requires that each page of a document or other matter containing Safeguards Information as described in § 73.21(a)(1)(i) must be marked to indicate the presence of such information in a conspicuous manner on the top and bottom of each page. In addition, the first page of SGI documents must include (1) the name, title, and organization of the individual authorized to make a SGI determination, and who has determined that the document contains Safeguards Information; (2) the date the determination was made; and (3) an indication that unauthorized disclosure will be subject to civil and criminal sanctions.

Paragraph 73.22(d)(2) of the final rule requires that transmittal letters or memoranda to or from the NRC which do not in themselves contain Safeguards Information must be marked to indicate that attachments or enclosures contain Safeguards Information but that the transmittal does not.

In the current Section 73.21(e), portion marking is required for guard qualification and training plans and correspondence to and from the NRC. Paragraph 73.22(d)(3) of the final rule requires only that transmittal documents such as cover letters used in correspondence with the NRC must be portion marked to distinguish those sections of the document that contain Safeguards Information from those that do not. This represents a decreased burden from the current regulations.

Paragraph 73.22(d)(3) of the final rule also requires that a certification that a document or other media containing Safeguards Information must include the name and title of the certifying official and the date it was designated as SGI. This requirement is not included in the current Section 73.21, so the additional marking burden is included in Table 1.

Section 73.22(f), External transmission of documents and material:

Section 73.22(f) of the final rule requires that when documents or other matter containing Safeguards Information are transmitted outside an authorized place of use or storage, they must be packaged in two sealed envelopes or wrappers to preclude disclosure of the presence of Safeguards Information. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words "Safeguards Information." The outer envelope or wrapper must be opaque, addressed to the intended recipient, contain the address of the sender, and may not bear any markings or indication that the document contains Safeguards Information.

Section 73.23, Protection of Safeguards Information-Modified Handling: Specific Requirements:

This section contains specific requirements for Safeguards Information designated as Safeguards Information - Modified Handling in the hands of any person subject to the requirements of § 73.21(a)(1)(ii) and related to panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source material, or byproduct or special nuclear material in greater than or equal to Category 2 quantities of concern; transportation of more than 1000 Tq (27,000 Ci) but less than or equal to 100 grams of spent nuclear fuel; research and test reactors that possess special nuclear material of moderate strategic significance or special nuclear material of low strategic significance; and transportation of source, byproduct, or special nuclear material in greater than or equal to Category 1 quantities of concern. Both NRC and Agreement State licensees and applicants would be subject to this section. The recordkeeping requirements associated with this section of the final rule are:

Section 73.23(a), Information to be protected:

The types of information to be protected as Safeguards Information designated as SGI-M under Section 73.23(a) are described below.

(a)(1) *Information to be protected:*

- (i) The composite physical security plan for the facility or site;
- (ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system not easily discernible by members of the public;
- (iii) Alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources for security equipment, and duress alarms not easily discernable by members of the public;
- (iv) Physical security orders and procedures issued by the licensee for members of the security organization detailing duress codes, patrol routes and schedules, or responses to security contingency events;
- (v) Site-specific design features of plant security communication systems;
- (vi) Lock combinations, mechanical key design, or passwords integral to the physical security system;

(vii) The composite facility guard qualification and training plan/measures disclosing features of the physical security system or response procedures;

(viii) Descriptions of security activities which disclose features of the physical security system or response measures;

(ix) Information relating to onsite or offsite response forces, including size, armament of the response forces, and arrival times of such forces committed to respond to security contingency events; and

(x) Engineering and safety analyses, security-related procedures or scenarios, and other information revealing site-specific details of the facility or materials if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(a)(2) *Physical protection in transit:*

(i) Information regarding transportation security measures including physical security plans and procedures, immobilization devices, and escort requirements, more detailed than NRC regulations;

(ii) Certain scheduling and itinerary information for described shipments;

(iii) Arrangements with and capabilities of local police response forces and locations of safe havens;

(iv) Details of alarm and communication systems, communication procedures, and duress codes;

(v) Procedures for response to security contingency events; and

(vi) Engineering or safety analyses, security-related procedures or scenarios and other information related to the protection of the transported material if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material.

(a)(3) *Inspections, audits and evaluations.* Portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Disclosure of corrected defects, weaknesses, or vulnerabilities is subject to an assessment taking certain factors into account.

(a)(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information designated as SGI-M, including the information in paragraphs (a)(1) through (a)(3) above.

(a)(5) Other information within the scope of Section 147 of the Atomic Energy Act that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of source, byproduct, or special nuclear material or a facility.

Section 73.23(b), Conditions for access:

The recordkeeping requirement under this section of the final rule is the paperwork associated with conducting background checks, including fingerprinting for criminal history records checks. A trustworthiness and reliability determination based on a background check (or other means as approved by the Commission) must be made for each individual seeking access to Safeguards Information designated as SGI-M, except for the categories of individuals enumerated in § 73.59, "Relief from fingerprinting, identification and criminal history records checks and background checks for designated categories of individuals."

Under the current § 73.21, power reactor licensees and applicants are required to obtain fingerprints for Federal Bureau of Investigation criminal history records checks in order to authorize individuals to have access to SGI, except for the categories of individuals as described in § 73.57(b)(2). This requirement would change under the final rule to cross-reference in § 73.57(b)(2)(ii) the categories of individuals exempt from the fingerprinting requirements as described in § 73.59. In addition, a background check includes employment history, education, and personal references.

Section 73.23(d), Preparation and marking of documents or other matter:

The marking requirements for documents or other matter containing Safeguards Information designated as SGI-M are described below.

(d)(1) A document or other matter containing Safeguards Information designated as SGI-M must be marked in a conspicuous manner on the top and bottom of each page to indicate the presence of Safeguards Information designated as SGI-M. In addition, the first page of Safeguards Information designated as SGI-M documents must include (1) the name, title, and organization of the individual authorized to make a Safeguards Information designated as SGI-M determination, and who has determined that the document contains Safeguards Information designated as SGI-M; (2) the date the determination was made; and (3) an indication that unauthorized disclosure will be subject to civil and criminal sanctions.

(d)(2) Transmittal letters or memoranda to or from the NRC that do not contain Safeguards Information designated as SGI-M must be marked to indicate that attachments or enclosures contain Safeguards Information designated as SGI-M but that the transmittal does not.

(d)(3) Transmittal documents forwarding Safeguards Information designated as SGI-M must alert the recipient that Safeguards Information designated as SGI-M is enclosed. Certification that a document or other media contains Safeguards Information designated as SGI-M must include the name and title of the certifying official and the date designated. Portion marking showing which portions of the document contain Safeguards Information designated as SGI-M and which do not is required for transmittal documents to and from the

NRC. The burden associated with portion marking has decreased from the current rule to the final rule because only transmittal documents must be portion marked under the final rule.

(d)(4) Marking of documents containing or transmitting Safeguards Information designated as SGI-M must at a minimum include the words “Safeguards Information–Modified Handling.”

Section 73.23(f), External transmission of documents and material:

For documents or other matter containing Safeguards Information designated as SGI-M transmitted outside an authorized place of use or storage, the Safeguards Information designated as SGI-M must be packaged in two sealed envelopes or wrappers. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words “Safeguards Information--Modified Handling.” The outer envelope or wrapper must be opaque, addressed to the intended recipient, must include the address of the sender, and must not bear any markings or indication that the document contains Safeguards Information designated as SGI-M.

Section 73.37, Requirements for the physical protection of irradiated reactor fuel in transit:

Paragraphs (f)(2)(iv), (f)(3)(iii) and (iv), and (g) are revised to require the protection of SGI related to the physical protection of irradiated reactor fuel in transit against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22. This revision does not expand the universe of licensees which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks because these licensees were required to protect this information under the current § 73.21.

Section 73.57, Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information:

Paragraphs (a)(1) and (2) section 73.57 would be revised to implement section 652 of the EPAct amending section 149 of the AEA to require the Commission to ensure that “any individual” who is permitted access to SGI be fingerprinted and undergo a criminal history records check. Previously, AEA section 149 only required fingerprinting for a criminal history records check of individuals seeking access to SGI from a power reactor licensee or license applicant. Section 73.57(b)(2)(ii) would be revised to cross-reference § 73.59, which relieves certain categories of individuals by rule from the fingerprinting, identification, and criminal history records check requirements of section 149.

Section 76.113, Formula quantities of strategic special nuclear material–Category I:

Paragraph (c) is revised to require protection of SGI pertaining to formula quantities of strategic special nuclear material (Category I) under §§ 73.21 and 73.22. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected according to §§ 73.21 and 73.22. This revision does not expand the universe of licensees which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks because these licensees were required to protect this information under the current § 73.21.

Section 76.115, Special nuclear material of moderate strategic significance–Category II:

Paragraph (d) is added to require protection of SGI pertaining to quantities of special nuclear material of moderate strategic significance (Category II) under §§ 73.21 and 73.22. This paragraph expands the universe of licensees which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 76.117, Special nuclear material of low strategic significance–Category III:

Paragraph (c) is added to require protection of SGI pertaining to quantities of special nuclear material of low strategic significance (Category III) under §§ 73.21 and 73.22. This paragraph expands the universe of licensees which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

Section 150.15, Persons not exempt:

Paragraph (a)(9) is added to require Agreement State licensees to follow the requirements under §§ 73.21, 73.22, and 73.23, as applicable. This paragraph expands the universe of Agreement State licensees which must mark SGI and complete paperwork associated with background checks, including fingerprinting for criminal history records checks.

2. Agency Use of Information

NRC requires background checks, including fingerprinting for criminal history records checks, to support a trustworthiness and reliability determination so that the person granting access and the Commission have reasonable assurance that individuals provided access to SGI do not constitute an unreasonable risk to the public health and safety or the common defense and security. The unauthorized release of this information could result in harm to nuclear power plants and other facilities and materials licensed and regulated by the NRC or Agreement States.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use new automated information technology when it would be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58792), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. It is estimated that approximately 40% of the potential responses are filed electronically.

4. Efforts to Identify Duplication and Use Similar Information

In general, information required by the NRC concerning the transfer, receipt, possession, or use of certain radioactive material does not duplicate other Federal information collection requirements and is not available from any other source.

5. Effort to Reduce Small Business Burden

Based on the information the NRC has pertaining to its own licensees, the NRC believes that an insignificant portion of the entities affected by this rule are small entities or businesses as those terms are used in the Regulatory Flexibility Act. Because many of the entities that could be affected by the rule, including State contacts and Agreement State licensees, are not NRC licensees, the NRC sought public comment on the effect of this regulation on small entities. No comments related to small business burden were received.

6. Consequences to Federal Programs or Policy Activities if the Collection is Not Conducted or is Collected Less Frequently

The designation and protection of SGI and SGI-M and background checks for access to such information is necessary for the health and safety of the public and the common defense and security of the nation, which could be adversely affected if this information is not protected as specified.

7. Circumstances which Justify Variation from OMB Guidelines

There are no variations from OMB guidelines.

8. Consultations Outside the NRC

The opportunity for public comment on the information collection requirements was published in the Federal Register on February 11, 2005 (70 FR 7196), and two comment letters were received. Two comment letters, dated March 14, 2005, and May 13, 2005, were received from the Nuclear Energy Institute (NEI) regarding the information collection burden, focusing in particular on the annual hours needed to complete the information collection and on the burden associated with portion-marking of documents.

The NRC later published a revised proposed rule in which the NRC responded to comments on the initial proposed rule and made related revisions to the rule. These changes included a decrease in the portion-marking burden and a revision to the number of recordkeepers associated with power reactors. Also as suggested by NEI's comments, the NRC prepared a Regulatory Analysis and Backfit analysis for public comment.

The revised proposed rule was published on October 31, 2006 (71 FR 64004), and provided further opportunity for public comment on the information collection requirements. The NRC received public comments concerning the resource burdens associated with the revised proposed rule's "ten-year review requirement," which would require licensees to review their document collections every ten years to determine if documents no longer meet Safeguards Information criteria and should be decontrolled. After considering those comments and determining that the requirement's costs would not be commensurate with the benefits, the NRC has removed the requirement from the rule.

Prior to publication of the proposed rule, the NRC contacted several entities that could be affected by the rule, and they provided burden estimates associated with the rule.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Information identified as proprietary or confidential is protected in accordance with sections 10 CFR 9.17(a) and 10 CFR 2.390 of the NRC regulations.

11. Justification for Sensitive Questions

Not applicable.

12. Estimated Industry Burden and Burden Hour Cost

The estimated industry burden and burden hour cost resulting from the Commission's orders and the final rulemaking are shown in the table below. The estimated industry recordkeeping burden for §§ 73.22 and 73.23 is included in Table 1. The other sections included in Section A.1. above are captured in §§ 73.22 and 73.23.

Table 1: Annual Recordkeeping Requirements

Section	No. of Record-keepers	Burden Hours Per Recordkeeper	Total Annual Burden Hours	Cost @ \$258/Hr
30.32(j)	(Burden covered under §§ 73.21 & 73.23)			
30.34(j)	(Burden covered under §§ 73.21 & 73.23)			
40.31(m)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
40.41(h)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
50.34(e)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
50.54(v)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
52.17(d)	(Burden covered under §§ 73.21 & 73.22)			
52.47(c)	(Burden covered under §§ 73.21 & 73.22)			
52.79(e)	(Burden covered under §§ 73.21 & 73.22)			
60.21(d)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
60.42(d)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
63.21(d)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
63.42(e)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
70.22(l)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
70.32(j)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
71.11	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
72.22(f)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
72.44(h)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
72.212(b)(5)(v)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
72.236(n)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
73.21	(Burden covered under §§ 73.22 & 73.23, as applicable)			
Section	No. of Record-keepers	Burden Hours Per Recordkeeper	Total Annual Burden Hours	Cost @ \$258/Hr
73.22(a)(1), (2), and (5), (d)(1), (2), and (3), and (f) ¹⁷				
Power Reactor Sites:				
Implementation (annualized):	64	8.3 (50 docs X .5 hr / 3 yrs)	531	136,998
Ongoing:	64	17.5 (35 docs X .5 hr)	1,120	288,960
Research/Test Reactors (currently subject to 73.21):				
Implementation (annualized):	8	2.1 (25 docs X .25 hr / 3yrs)	17	4,386
Ongoing:	8	1.3 (5 docs X .25 hr)	10	2,580
Other Licensees and Applicants:				
Implementation (annualized):	12	2.1 (25 docs X .25 hr / 3 yrs)	25	6,450
Ongoing:	12	2.5 (10 docs X .25 hr)	30	7,740
Certificate Holders and Applicants ²¹ :				
Implementation (annualized):	25	.8 (10 docs X .25 hr / 3 yrs)	21	5,418
Ongoing:	25	.3 (4 docs X .25 hr / 3 yrs)	8	2,064

73.22(b)(1)(i)(B) ^{3f}				
Research/Test Reactors: Implementation (annualized): Ongoing:	8 8	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	66 40	17,028 10,320
Fuel Cycle Facilities: Implementation (annualized): Ongoing:	4 4	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	33 20	8,514 5,160
Source Material Licensee: Implementation (annualized): Ongoing:	1 1	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	8 5	2,064 1,290
ISFSI: Implementation (annualized): Ongoing:	3 3	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	25 15	6,450 3,870
Other Licensees and Applicants: Implementation (annualized): Ongoing:	12 12	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	100 60	25,800 15,480
Irradiators: Implementation (annualized): Ongoing:	3 3	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	25 15	6,450 3,870
Manufacturers and Distributors: Implementation (annualized): Ongoing:	3 3	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	25 15	6,450 3,870
LRAMQC: Implementation (annualized): Ongoing:	3 3	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	25 15	6,450 3,870
73.23(a), (d) ^{4f} , and (f)				
Research/Test Reactors: Implementation (annualized): Ongoing:	42 42	2.1 (25 docs X .25 hr / 3 yrs) 2.5 (10 docs X .25 hr)	88 105	22,704 27,090
Other Licensees and Applicants: Implementation (annualized): Ongoing:	142 142	.25 (3 docs X .25 hr / 3 yrs) .5 (2 docs X .25 hr)	36 71	9,288 18,318
Certificate Holders and Applicants ^{2f} : Implementation (annualized): Ongoing:	25 25	.17 (2 docs X .25 hr / 3 yrs) .25 (1 doc X .25 hr)	4 6	1,032 1,548
State Contacts: Implementation (annualized): Ongoing:	200 200	.4 (5 docs X .25 hr / 3 yrs) 6.25 (25 docs X .25 hr)	83 1,250	21,414 322,500
73.23(b)(1)(i)				
Research/Test Reactors: Implementation (annualized): Ongoing:	42 42	8.3 (25 bkgd chks X 1hr / 3 yrs) 5 (5 bkgd chks X 1 hr)	350 210	90,300 54,180
Other Licensees and Applicants: Implementation (annualized): Ongoing:	142 142	1 (3 bkgd chk X 1 hr / 3 yrs) 1 (1 bkgd chk X 1 hr)	142 142	36,636 36,636
73.37(f)(2)(iv)	(Burden covered under §§ 73.21 & 73.22)			
73.37(f)(3)(iii) & (iv)	(Burden covered under §§ 73.21 & 73.22)			

73.37(g)	(Burden covered under §§ 73.21 & 73.22)			
73.57(a)(1) & (a)(2)	(Burden covered under §§ 73.59)			
73.57(b)(2)(ii)	(Burden covered under §§ 73.59)			
76.113(c)	(Burden covered under §§ 73.21 & 73.22)			
76.115(d)	(Burden covered under §§ 73.21 & 73.22)			
76.117(c)	(Burden covered under §§ 73.21 & 73.22)			
150.15(a)(9)	(Burden covered under §§ 73.21 & 73.22, or §73.23, as applicable)			
TOTAL PART 73 RECORDKEEPING BURDEN	485		4,741	1,223,178

^{1/} The table includes the entire burden for the licensees which were not required to protect SGI under the current Part 73.21 but which would be required to protect SGI under Section 73.22 of the final rule. The burden associated with § 73.22(d) is calculated differently for the 64 power reactor sites and the 8 research and test reactors, compared to the other licensees and applicants. For example, under Part 73.21 the power reactors and the 8 research and test reactors subject to Part 73.21 were already required to protect SGI. The final rule expands the quantity of SGI and changes the way SGI is marked for these 72 licensees. However, power reactor licensees and applicants have more SGI documents and more pages per document than the research and test reactors so their incremental burden is greater. To implement the final rule, these 72 licensees would not be required to mark every SGI document they already have. They would only have to mark existing documents that would be required under the final rule but were not required to be marked under the current Part 73.21.

^{2/} "Certificate Holders & Applicants" refers to the licensees, certificate holders, and applicants associated with Section 71.11 of the final rule. To avoid double counting, they are not included in the total number of respondents because they are already included in the various categories counted in the total.

^{3/} Section 73.22(b)(1) requires entities subject to 73.22 that are not power reactors to conduct background checks and criminal history checks, including fingerprinting, on those individuals to be authorized access to SGI. Because power reactor licensees are required to conduct background checks under the current Part 73.21, the burden associated with Section 73.22(b)(1) only applies to licensees and applicants other than power reactors.

^{4/} [The burden associated with 73.23(d)(3) will decrease from the current rule because only transmittal documents must be portion marked under the final rule, but quantitative data is not available on the size of this burden decrease.]

13. Estimate of Other Additional Costs

(1) Background Checks and FBI Criminal History Records Check

In order to comply with Sections 73.22(b) and 73.23(b) of the final rule, it is likely that licensees and applicants will pay vendors fees for conducting background checks, which require, at a minimum, the criminal history check (including fingerprinting) and verification of identity, employment history, education, and personal references. It is estimated that the fee for the background check and criminal history records check, including fingerprinting, will be \$45 for the background check and \$36 for the fingerprinting per facility.

(A) Section 73.22(b)

(i) Research and Test Reactors

(a) Other costs for background checks, including fingerprinting for criminal history records checks with fingerprinting =
[(50 licensees X 25 history checks X \$45)] + [(50 X 45 X \$36)] = \$137,250

(B) Section 73.23(a)

(i) Applicants Subject to 73.23

(a) Other costs for background checks, including fingerprinting for criminal history records checks with fingerprinting =
[(25 licensees X 3 history checks each X \$45)] + [25 X 45 X \$36] = \$43,875

(2) Document Stamps

In order to comply with Sections 73.22(d) and 73.23(d) of the final rule, it is likely that applicants, licensees, and state contacts will purchase document stamps to mark SGI and SGI-M. To implement the rule, it is estimated that power reactor sites will purchase 10 document stamps each and all others will purchase 2 document stamps each at a cost of \$25 per stamp. The total cost for document stamps associated with implementing the final rule is estimated to be (64 power reactor sites X 10 stamps X \$25 per stamp) + (404 other licensees, applicants, and state contacts X 2 document stamps X \$25 per stamp) = \$36,200.

(3) Safes or Locking File Cabinets

In order to comply with the storage requirements in Section 73.22(c), it is likely that licensees and applicants will purchase safes. To store the expanded SGI, it is estimated that each of the 64 power reactor sites will purchase 2 additional safes at a price of \$500 each. This will be an implementation cost in the amount of \$64,000. The other 20 applicants and licensees that would be subject to Section 73.22(c) will purchase 1 safe each at a price of \$500. This will result in an implementation cost of \$10,000. The total cost of safes purchased under 73.22(c) is estimated to be \$74,000.

The applicants, licensees, and state contacts under Section 73.23(c) may each purchase 1 locking file cabinet to store SGI-M at a cost of \$250 per cabinet. This will result in an implementation cost = 384 applicants and licensees X 1 cabinet X \$250 = \$96,000.

Total estimated other costs associated with the final rule are \$356,950 (\$117,000 + \$33,750 + \$36,200 + \$74,000 + \$96,000).

14. Estimated Annualized Cost to the Government

The NRC has conducted training for state offices and plans to conduct training workshops for the licensees affected by the rule. In addition, the NRC plans to make training available on the internet. The estimated number of hours NRC staff has spent for training related to the Commission orders or will spend for training related to the final rule is 336 hours X \$258 per hour = \$86,688.

The NRC will spend approximately 3,000 hours preparing regulatory guidance documents related to the protection of Safeguards Information designated as SGI and SGI-M. This cost is 3,000 hours X \$258 per hour = \$774,000.

The NRC plans to conduct initial inspections of licensees to insure compliance with the final rule. This cost is estimated to be 353 hours X \$258 per hour = \$91,074.

The NRC reimbursed Agreement States for their hours spent at SGI and SGI-M training workshops and the expenses for traveling to these workshops. The estimated cost for this expense was \$25,088. The NRC also purchased computers and other equipment related to the protection of SGI and SGI-M for some of the Agreement States. This expense was approximately \$31,500.

The NRC will conduct approximately 25 background checks annually under 10 CFR §§ 2.336(f), 2.705(c)(2), 2.709(f), and 2.1010(b)(6). Each background check will require approximately 1 hour of staff time plus \$100 each paid to the Office of Personnel Management for the background check for a total annual cost of \$7,625.

Total NRC costs associated with the rule are estimated to be \$1,015,975.

15. Reasons for Changes in Burden or Cost

The burden for the initial proposed rule published 2/11/05 (70 FR 7196) was estimated to be 5,926 hours, and the revised proposed rule published 10/31/06 (71 FR 64031) was re-estimated to be 4,741 hours. Following receipt of comments for the proposed rule in 2005, the number of power reactor recordkeepers was decreased in response to NEI comments. The number of other licensees and applicants subject to § 73.23 was decreased as a result of more accurate information being available. After consideration of these comments and the requirement in section 652 of the EAct for licensees, applicants, certificate holders, and permittees to perform background checks (including fingerprinting for criminal history records checks) before an individual is permitted access to SGI, the burden associated with the revised proposed rule was estimated to be 4,741 hours. The total estimated burden for the final rule is 4,741 hours. This rule is only expected to impact 10 CFR 73 burden.

16. Publication for Statistical Use

The collected information is not published for statistical use.

17. Reason for not Displaying the Expiration Date

The requirement is contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods are not used in this collection of information.