

FINAL SUPPORTING STATEMENT
FOR

10 CFR PARTS 30, 37, and 73
SAFEGUARDS INFORMATION – MODIFIED HANDING CATEGORIZATION

(3150-0002)

REVISION

Description of the Information Collection

The U.S. Nuclear Regulatory Commission is amending its regulations to remove the Safeguards Information – Modified Handling (SGI-M) designation of the security-related information for large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive material. The rulemaking will also result in the removal of the SGI-M designation of the security-related information for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The security-related information for these facilities and the transportation of certain materials will no longer be designated as SGI-M and will be protected under the information protection requirements that apply to other materials licensees that possess category 1 and category 2 quantities of radioactive material under the new 10 CFR Part 37, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.”

This rulemaking will revise the group of licensees that are subject to the information collections related to SGI-M requirements. The rule will remove recordkeeping requirements from 112 licensees that are currently required to implement the SGI-M provisions to mark documents containing Safeguards Information designated as SGI-M as specified in 10 CFR Part 73.23 (b), 73.23(d), and 73.23(f). These 112 licensees include panoramic and underwater irradiators that possess greater than 370 TBq of byproduct materials; 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; and transportation of source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of concern.

Section 73.23 requires that the security-related information for large irradiators, M&D licensees, and those licensees that transport category 1 quantities of radioactive material be designated as SGI-M and be protected accordingly.

A. Justification

1. Need for and Practical Utility of the Information

The NRC considers that this re-designation is in order based on the following: 1) large irradiators have a lower risk of theft, and M&D licensees have a similar risk of theft when compared to other licensees possessing category 1 and category 2 quantities of radioactive material; 2) the information protection requirements in Part 37 provide adequate protection of the security related information; 3) the security requirements under Part 37 are the same for all licensees; 4) information

security requirements should be consistent across all areas that are regulated under NRC authority for public health and safety; 5) under Part 73, the NRC will continue to inspect Agreement State licensee programs for the protection of SGI-M; and 6) ease of communication between regulator and licensee.

The security related information will be protected under the 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," (3150-0214) which was published in the Federal Register on March 19, 2013 (78 FR 16922). Licensees are required to comply by May 19, 2014. The change in the designation of these licensees' security related information does not result in public disclosure of the information as the information will still be protected under Part 37. If the NRC did not amend its regulations through this rulemaking, these licensees will be required to protect the information under both 10 CFR Part 37 and 10 CFR Part 73.

Note that no changes to information collections contained in 10 CFR Parts 30, 37, and 150 are being made in the final rule. These Parts are being amended to remove references to SGI requirements in 10 CFR Part 73.

The following sections of 10 CFR Part 73 will be amended by the final rule:

Section 73.23 The introductory text to 73.23 will be amended. The introductory text currently lists the licensees to which the SGI-M requirements apply. The final rule will amend this list to remove the following licensees from the list:

- 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; and
- transportation of source, byproduct, or special nuclear material in greater than or equal to Category 1 quantities of concern.

As a result of the change to the introductory text, the following sections of Part 73 will no longer apply to those licensees:

Section 73.23(b) requires that a trustworthiness and reliability determination based on a background check (or other means as approved by the Commission) 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 final rule, this section will no longer apply to large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive material.

Section 73.23(d) requires that a document or other matter containing Safeguards Information designated as SGI-M 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 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; the date the determination was made; and an indication that unauthorized disclosure will be subject to civil and criminal sanctions. 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 document does not. 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 matter 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 marking of documents containing or transmitting Safeguards Information designated as SGI-M must, at a minimum, include the words Safeguards Information—Modified Handling. Under the final rule, this section will no longer apply to large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive material.

Section 73.23(f) requires that 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 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. Under the final rule, this section will no longer apply to large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive material.

2. Agency Use of the Information

The information included in the applications, reports, and records for Part 73 is reviewed by the NRC staff to assess the adequacy of the applicant's physical plant, equipment, organization, training, experience, procedures, and plans for protection of public health and safety and the common defense and security. The NRC review and the findings form the basis for NRC licensing decisions.

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 information technology when

it will be beneficial to them. NRC issued a regulation on October 10, 2003 (68 FR 58791), 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 2% of the potential responses are submitted electronically. However, all (100%) of fingerprint submissions from the 64 power reactor licensees are submitted electronically. Other licensees continue to submit fingerprints through non-electronic means. The final rule will affect a recordkeeping requirement and therefore will not affect the overall percentage of electronic submissions under Part 73.

4. Effort to Identify Duplication and Use Similar Information

No sources of similar information are available. There is no duplication of requirements. NRC has in place an ongoing program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

5. Effort to Reduce Small Business Burden

Some of the licensees who use special nuclear material are small businesses. Since the consequences to the common defense and security or to the health and safety of the public of inadequate safeguards for special nuclear material are the same for large and small entities, it is not possible to reduce the burden on small businesses by less frequent or less complete reports, records, plans, and procedures.

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

If the information were not collected or were collected less frequently, Part 73 SGI-M requirements will continue apply to large irradiators, manufacturer and distributors, and for transport of category 1 quantities of radioactive materials. In addition, these licensees will comply with the requirements of 10 CFR Part 37, which the NRC has determined provides adequate protection of the security related information. Without this final rule, burden to these licensees will not be reduced.

In addition, if the security-related information for these facilities remains designated as SGI-M, the NRC will be responsible for inspection and enforcement of the SGI-M programs at those facilities regulated by an Agreement State. This can result in confusion for licensees. Results of many aspects of the security inspections will be SGI-M and could not be discussed in an open environment. Because only some security-related information at these facilities will be SGI-M, licensees will need to maintain two systems to protect security-related information, which needlessly increases the burden on the licensee.

7. Circumstances Which Justify Variation from OMB Guidelines

This final rulemaking will not have variations from the OMB Guidelines.

8. Consultations Outside the NRC

Opportunity for public comment on the information collection requirements was published in the Federal Register on September 30, 2014 (79 FR 58701). The NRC received one public comment from an anonymous commenter (ADAMS No. ML14302A494) on the direct final and companion proposed rule.

Comment

The commenter stated that the rule should be amended because it will require additional information protection requirement on the product. The commenter also stated that the additional requirement would be needed, so that the information relating to the product “would not get leaked.”

NRC's position:

The NRC staff reviewed this comment and concluded that this comment is not a significant adverse comment as defined in NUREG-BR-0053, Revision 6, “United States Nuclear Regulatory Commission Regulations Handbook” (ADAMS Accession No. ML052720461), because the comment does not present specific information that warrants a substantive response in this notice and comment process. The comment is not substantive enough to aid the NRC in understanding any concerns with the NRC’s decision to remove the SGI-M designations from some categories of information since information that merits protection now falls within the information protection provisions of 10 CFR Part 37.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Confidential and proprietary information is protected in accordance with NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

Certain information designated as Safeguards Information is prohibited from public disclosure in accordance with the provisions of the Atomic Energy Act of 1954, as amended, Chapter 12, Section 147, or designated as classified National Security Information, in accordance with Executive Order 12958.

The final rulemaking will remove the SGI-M designation of the security-related information for large irradiators, M&Ds, and transport of category 1 quantities of radioactive material. The rulemaking will also result in the removal of the SGI-M designation of the security-related information for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The security-related information will instead be protected under the new 10 CFR Part 37, “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.” Part 37 rulemaking (10 CFR Part 37) requires that a need-to-know

determination be made before an individual is allowed to have access to the security-related information. Part 37 rulemaking (10 CFR Part 37) requires licensees to limit access to and prevent unauthorized disclosure of their security plans and implementing procedures. When not in use, the security plan and implementing procedures must be stored in a manner that will prevent the unauthorized removal of those documents. Information stored in non-removable electronic form must be password-protected. These requirements are similar to the requirements for SGI-M.

The regulation in 10 CFR Part 37 also requires a background investigation to determine the trustworthiness and reliability of an individual seeking access to protected information. This determination must be conducted by a reviewing official who has also been determined to be trustworthy and reliable. The background investigation for access to information under 10 CFR Part 37 is similar to that required by 10 CFR 73.23, with the exception that fingerprints are not submitted and a Federal Bureau of Investigation (FBI) criminal history records check is not required. However, many of the individuals needing access to protected information will also require access to radioactive material. Unescorted access to radioactive material requires fingerprinting and an FBI criminal history records check as part of the background investigation required under 10 CFR Part 37. Therefore, the NRC anticipates that most individuals requiring access to security-related information will already have undergone fingerprinting and an FBI criminal history records check.

Part 37 does not have requirements for the transmission of information or for marking the material. However, with the exception of routing information, licensees do not routinely transmit security-related information and the routing information is not transmitted as SGI-M, but is protected as SGI-M once received. Licensees are not required to submit the security plan or implementing procedures to the NRC.

The NRC concludes that 10 CFR Part 37 provides adequate protection of the security-related information without unduly burdening licensees with the additional requirements for protection of SGI-M.

11. Justification for Sensitive Questions

The information collection does not include any sensitive questions.

12. Estimated Burden and Burden Hour Cost

There are a total of 112 licensees who will be affected by the final rule (large irradiators, manufacturer and distributors, and those who transport of category 1 quantities of radioactive material). These 112 licensees are currently protecting information under SGI-M requirements in 10 CFR 73.23(b),(d),&(f), but under the final rule will no longer be subject to 73.23(b),(d),&(f). The resulting reduction in burden is estimated to be 616 hours, as showing in Table 1.

Table 1

	Recordkeepers	Records per Recordkeeper	Records	Burden per Record	Burden	Cost @\$272/hr
73.23(b)	-112	2	-224	1	-224.0	\$ (60,928.00)
73.23(d) and (f)	-112	14	-1568	0.25	-392.0	\$ (106,624.00)
Total	112		-1,792		-616.0	\$ (167,552.00)

The overall estimated annual burden decrease is 616 hours at an estimated annual savings of \$167,552 (616 hours x \$272/hour).

13. Estimate of Other Additional Costs

The NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the records storage cost has been determined to be equal to 0.0004 times the recordkeeping burden cost. Therefore, the records storage savings for this clearance is estimated to be \$67 (616 recordkeeping hours x \$272 x 0.0004). The current cost for Part 73 is \$52,180. The revised cost, after the final rule, will be \$52,113 (\$52,180 - \$67).

14. Estimated Annualized Cost to Federal Government

The estimated cost to the government will be a reduction, because the government will no longer need to review required reports and records. The cost savings is approximately -\$57,800 (85 NRC licensees x 0.5 responses x 5 labor hours per response x \$272/hour) and is based on the materials fee recovery rate.

15. Reason for Change in Burden or Cost

The estimated burden for Part 73 has decreased by 616 hours from 557,145 to 556,529 (557,145 – 616). This rule reduces the number of respondents to Part 73 by 112 recordkeepers and 112 recordkeeping responses.

This rulemaking decreases the burden on recordkeepers to mark documents containing Safeguards Information designated as SGI-M as specified in 10 CFR 73.23 (b), 73.23(d) and 73.23(f). The rulemaking will remove the SGI-M designation of the security related information for large irradiators, M&D licensees, and for transport of category 1 quantities of radioactive material. The rulemaking will also result in the removal of the SGI-M designation of the security related information for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The security related information for these facilities and the transportation of the above mentioned materials will no longer be designated as SGI-M and will be protected under the information protection requirements that apply to other materials licensees that possess category 1 and category 2 quantities of radioactive material in 10 CFR 37 (3150-0214).

16. Publication for Statistical Use

None.

17. Reasons for Not Displaying the Expiration Date

The requirements are 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

Not applicable.