

FINAL SUPPORTING STATEMENT FOR
10 CFR PART 37
PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF
RADIOACTIVE MATERIAL

(OMB CLEARANCE NO. 3150-0214)

EXTENSION

Description of the Information Collection

In March 2013, the U.S. Nuclear Regulatory Commission (NRC) established a new Part 37 in Title 10 of the Code of Federal Regulations (CFR), which specified the physical protection requirements for certain byproduct material (category 1 and category 2 quantities of radioactive material) (78 FR 16922). The NRC considers these quantities to be risk significant and, therefore, to warrant additional protection.

The NRC has long participated in efforts to address radioactive source protection and security. The terrorist attacks of September 11, 2001, however, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. Such an attack is of particular concern because of the widespread use of radioactive materials in the United States by industrial, medical, and academic institutions. The theft or diversion of risk-significant radioactive materials could lead to their unauthorized use in a radiological dispersal device (RDD) or a radiological exposure device (RED).

10 CFR Part 37 was implemented to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material. The regulations also include security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. Part 37 affects any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material, any licensee that transports these materials using ground transportation, and any licensee that transports small quantities of irradiated reactor fuel.

10 CFR Part 37 requires licensees to (1) develop procedures for implementation of the security provisions; (2) develop a security plan that describes how security is being implemented; (3) conduct training on the procedures and security plan; (4) conduct background investigations for those individuals permitted access to category 1 or category 2 quantities of radioactive material; (5) coordinate with local law enforcement agencies (LLEAs) so the LLEAs would be better prepared to respond in an emergency; (6) conduct preplanning and coordination activities before shipping radioactive material; and (7) implement security measures for the protection of the radioactive material. Licensees are required to promptly report any attempted or actual theft or diversion of the radioactive material, as well as suspicious activities relating to the radioactive material. In addition, licensees must retain copies of the security plan, procedures, background investigation records, training records, and documentation that certain activities have occurred.

A. Justification

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

In general, the reports and records are necessary for one or more of the following reasons:

- Information describing the content and planned operation of the licensee's physical protection system. The information is essential to permit NRC to make a determination as to the adequacy of the licensee's planned system in meeting regulatory requirements.
- Information describing the normal operation of the physical protection system (e.g., access authorizations, equipment performance logs). The information is needed to permit NRC to make a determination as to reasonable assurance that the physical protection system operates in accordance with the regulatory requirements.
- Information notifying NRC of the occurrence of and circumstances concerning abnormal events (e.g., report of theft, sabotage, or overdue shipment). The information is needed to enable NRC to fulfill its responsibilities to respond to, investigate, and correct situations which could adversely affect public health and safety or the common defense and security.
- The NRC recognized the potential risk from insiders (persons having unescorted access to radioactive material), because a deliberate malevolent act by such an individual has the potential to result in significant adverse impacts. Accordingly, Part 37 requires background investigations, including the collection of fingerprints and criminal history records check. The NRC uses the Federal Bureau of Investigation (FBI) form FD-258, "Applicant Fingerprint Card" for the submission of fingerprints under this requirement. The NRC has included the hours associated with completing this form in the current Part 37 submission, because the FBI has not yet converted the FD-258 to a common form.

Specific requirements for reports and records in Part 37 are as follows.

Section 37.11(a) allows licensees to apply for an exemption from the requirements of the regulations in 10 CFR Part 37.

Section 37.11(c)(4) requires licensees to immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an

actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

Section 37.23(b)(2) each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide finger printing services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The NRC estimates each licensee will initially submit 3 reviewing officials for a one-time burden, and thereafter will have an annual 5% attrition rate for reviewing officials.

Section 37.23(c) stipulates that the licensee may not initiate a background investigation without the informed and signed consent of the subject individual.

Section 37.23(d) requires any individual who is applying for unescorted access authorization to disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability.

Section 37.23(e)(3) requires the licensee to document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

Section 37.23(e)(5) requires the licensee to maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days.

Section 37.23(g)(1) requires that, prior to an adverse determination, the licensee provide each individual the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. In addition, the licensee must maintain a record of this notification for 1 year.

Section 37.23(h)(1) requires the licensee to retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access.

Section 37.23(h)(2) requires the licensee to retain a copy of the current procedures for 3 years after it is no longer needed or until the NRC terminates the license.

Section 37.23(h)(3) requires the licensee to retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

Section 37.25(a)(2) requires licensees to verify the true identity of an individual who is applying for unescorted access

Section 37.25(a)(7) requires licensee to document the refusal to provide information of a previous employer, educational institution, or any other entity with which the individual claims to have been engaged.

Section 37.25(a)(9) requires the licensees to document in the record of the investigation the refusal, unwillingness, or inability of an individual's previous employer, educational instruction or other entity to provide information.

Section 37.25(b)(2) allows for individuals who have been determined to be trustworthy and reliable under the provisions of Part 73 or the security orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation.

Section 37.25(c) requires a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation consists of fingerprinting and an FBI identification and criminal history records check.

Section 37.27(a)(1) requires each licensee to fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material and transmit them to NRC.

Section 37.27(a)(2) requires the licensee to notify affected individual that his or her fingerprints will be used to secure a review of their criminal history record, and inform him or her of the procedures for revising the record or adding explanations to the record.

Section 37.27(c) requires the licensee to develop procedures for the fingerprinting process.

Section 37.29(a)(12) & (13) require the licensee to maintain records for any individual for which the licensee is relying on a previously approved clearance, favorable adjudicated criminal record check, or records transferred from another licensee.

Section 37.29(b) outlines for the licensee when the requirements for fingerprinting, and the identification and criminal history records checks are not required for individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials.

Section 37.31(a) requires each licensee who obtains background information on an individual to establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

Section 37.31(e) requires the licensee to retain all fingerprint and criminal history records received from the FBI.

Section 37.33(b) & (c) requires each licensee to document the results of a program review to ensure the continuing effectiveness of the access authorization program.

Section 37.41(a)(3) requires any licensee that has not previously implemented the Security Orders or been subject to the provisions of subpart C shall provide written notification to the NRC regional office at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

Section 37.43(a)(1) requires the licensee to develop a written security plan specific to its facilities and operations.

Section 37.43(a)(4) requires the licensee to retain a copy of the current security plan as a record until the NRC terminates the license and, if any portion of the plan is superseded, retain the superseded material for 3 years after the record is superseded.

Section 37.43(b)(3) requires the licensee to retain a copy of the current procedure as a record for 3 years after the procedure is no longer needed. Superseded portions of the procedure must be retained for 3 years after the record is superseded.

Section 37.43(c) requires each licensee to conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively

Section 37.43(c)(4) requires the licensee to maintain records of the initial and refresher training on the security plan for 3 years from the date of the training.

Section 37.43(d)(3)(ii) requires the licensee to complete a background investigation to determine the individual's trustworthiness and reliability before granting an individual access to the security plan or implementing procedures.

Section 37.43(d)(5) requires the licensee to document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

Section 37.43(d)(6) requires the licensee to maintain a record of the list of individuals approved for access to the security plan or implementing procedures.

Section 37.43(d)(8) requires the licensee to retain a copy of the information protection procedures and the list of individuals approved for access to the security plan or implementing procedures, as a record, for 3 years after the document is no longer needed.

Section 37.45(a) requires a licensee subject to this subpart to coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include: (1) A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with this subpart; and (2) A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

Section 37.45(b)(1) requires the licensee to notify the appropriate NRC regional office after becoming aware of any applicable state or local agency requirement that an initial response to an emergency involving radioactive material must be provided by other than armed LLEA personnel. The NRC does not anticipate any notifications under this requirement due to an unarmed response as LLEA personnel are generally armed.

Section 37.45(b)(2) requires the licensee to notify the appropriate NRC regional office if the LLEA notifies the licensee that the LLEA is not interested in

coordination activities with the licensee. The NRC does not anticipate any notifications as a result of lack of LLEA coordination.

Section 37.45(c) requires the licensee to document its efforts to coordinate with the LLEA to provide a response to threats to the licensee's facility.

Section 37.49(d) requires that licensees immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

Section 37.51(b) requires the licensee to maintain records on the maintenance and testing activities for 3 years.

Section 37.55(c) requires licensees to maintain documentation of the review of their security program for 3 years.

Section 37.57(a) requires the licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the NRC Operations Center. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the NRC Operations Center.

Section 37.57(b) requires the licensee to assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the NRC Operations Center.

Section 37.57(c) requires that licensees submit a written report to the NRC within 30 days following the initial telephonic notifications of actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material.

Section 37.71 requires that, before transferring category 1 and category 2 quantities of radioactive material, the licensee transferring the material shall verify with the license issuing authority that the transferee's license authorizes

the receipt of the type, form, and quantity of radioactive material to be transferred and verify that the delivery address of the transferee is valid.

Section 37.71(d) requires the transferor keep a copy of the verification documentation as a record for 3 years.

Section 37.75(a)(1) requires that each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material preplan and coordinate shipment arrival, including the no-later-than arrival time, and departure times with the receiving licensee.

Section 37.75(a)(2) requires that each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material preplan and coordinate shipment information with the governor or the governor's designee of the States through which the shipment will pass through.

Section 37.75(a)(3) requires the licensee to document the preplanning and coordination activities.

Section 37.75(b) requires that each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall verify and document the shipment no-later-than arrival time and the actual shipment arrival with the receiving licensee.

Section 37.75(c) requires that each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

Section 37.75(d) requires that a licensee who finds that the shipment information previously provided to the receiving licensee will not be met, shall promptly notify the receiving licensee of the new no-later-than arrival time.

Section 37.75(e) requires that the licensee shall retain a copy of the documentation for preplanning and any revision as a record for 3 years.

Section 37.77(a) & (b) requires that the advance notification of category 1 shipments be made in writing to the office of each appropriate governor or governor's designee and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response. Notifications must be postmarked at

least 7 days before shipment, and received at least 4 days before transport. The notification must include information about the shipper, carrier, and receiver, including license numbers; a description of the material; estimated times and dates for shipment commencement, State entries, and arrival at its destination; and a point of contact.

Section 37.77(c) requires that the licensee provide any information not previously available at the time of the initial notification of shipment of category 1 material, as soon as the information becomes available, to a responsible individual in the office of the governor of the State, and to the NRC.

Section 37.77(d) requires each licensee who cancels a shipment of category 1 material to send a cancellation notice to the governor of each State and to the NRC.

Section 37.77(e) requires the licensee to retain a copy of the advance notification, and any revision and cancellation notices for shipment of category 1 material as a record for 3 years.

Section 37.79(a)(1)(iii) & (v) requires each licensee who makes arrangements for the road shipment of category 1 quantities of radioactive material to develop written normal and contingency procedures for notifications, communication protocols, loss of communication, and response to suspicious activities.

Section 37.79(b)(1)(i) requires licensee to document procedures for rail shipments.

Section 37.79(b)(1)(ii) requires that licensees who transport, or deliver to a carrier for transport, a category 1 quantity of radioactive material ensure that periodic reports to the communications center are made at preset intervals. The NRC does not estimate there will be rail shipments of byproduct material.

Section 37.81(a) requires the shipping licensee to notify the appropriate LLEA and the NRC Operations within 1 hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing.

Section 37.81(b) requires the shipping licensees to immediately notify the NRC Operations Center within 4 hours when it is determined that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of investigating, the location of the licensed material still cannot be determined, the radioactive material is deemed missing and the licensee shall immediately notify the NRC Operations Center.

Section 37.81(c) requires the shipping licensee, as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material, to notify the designated LLEA along the shipment route. As soon as possible after notifying the LLEA, the licensee shall notify the NRC Operations Center upon discovery of any actual or attempted theft or diversion, or suspicious activities related to the theft or diversion of a shipment of category 1 radioactive material.

Section 37.81(d) requires the shipping licensee, as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 2 quantity of radioactive material, to notify the NRC Operations Center.

Section 37.81 (e) requires the shipping licensees to notify the NRC Operations Center and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

Section 37.81 (f) requires the shipping licensees to notify the NRC Operations Center as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

Section 37.81(g) requires licensees who initially notified the NRC via telephone of lost or missing category 1 or 2 materials to submit a written report to the NRC within 30 days.

Section 37.81(h) requires that, subsequent to filing an initial written report, licensees also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

2. Agency Use of the Information

The NRC uses the information required by 10 CFR Part 37, including the records that 10 CFR Part 37 requires licensees to maintain, during the application process, inspections, license renewals, and license amendment reviews to assure that licensees are complying with NRC security requirements for possession and use of risk-significant radioactive material. This enables the NRC to fulfill its responsibilities to respond to, investigate, and correct situations that adversely affect public health and safety or the common defense and security.

3. Reduction of Burden through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection through the use of information technology. In fact, the

NRC encourages licensees to use 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 interfaces, or other means. It is estimated that approximately 25% of the potential responses will be filed electronically.

4. Effort to Identify Duplication and Use Similar Information

Under section 149.b. of the Atomic Energy Act (AEA), the NRC may, by rule, relieve individuals from the fingerprinting, identification, and criminal history records check requirements if it 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 NRC issued a final rule, 10 CFR 73.61, relieving certain individuals who are permitted unescorted access to radioactive materials from the fingerprinting, identification, and criminal history records checks required by section 149.a. of the AEA (72 FR 4945; February 2, 2007). The individuals relieved from fingerprinting, identification, and criminal history records checks under that rule include Federal, State, and local officials involved in security planning; Agreement State employees who conduct security inspections on behalf of the NRC pursuant to 274.i. of the AEA; and other government officials who may need unescorted access to radioactive materials or other property subject to regulation by the Commission as part of their oversight function. The categories of individuals relieved by the rule included the same individuals as those relieved in an earlier rulemaking from fingerprinting and criminal history records check requirements applicable to safeguards information (71 FR 33989; June 13, 2006).

Under 10 CFR Part 37, the Commission uses the same listing of categories of individuals with the following modifications. Emergency response personnel who are responding to an emergency are relieved from the requirements because it is impossible to predict when emergency access might be necessary. The need to provide an escort for those responding to an emergency could impede the response function. Employees of carriers that transport category 2 quantities of radioactive material and package handlers at transportation facilities are also relieved. These individuals would typically be outside the control of the licensee and the licensee would have no way of knowing or influencing who those individuals might be. The NRC relies on the U.S. Department of Transportation (DOT) and the Transportation Security Administration (TSA) programs for background investigations of these personnel.

Many of the individuals that are relieved from the background investigation requirements are considered trustworthy and reliable by virtue of their occupational status and have either already undergone a background investigation as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions.

Certain persons, as part of the duties of their specific occupation, may be separately or previously subject to background investigations, either as a result of NRC requirements (such as under other requirements for access to SGI or SGI-M) or as a result of requirements of other agencies. These persons are not subject to separate background investigation requirements under Part 37; individuals who have undergone a background investigation, including fingerprinting, and found acceptable for unescorted access under provisions of other such requirements, do not need to undergo another background investigation nor would a separate determination of their trustworthiness and reliability need to be made. Individuals that have undergone fingerprinting and an FBI criminal history records check under other agency programs do not need to be fingerprinted again, but would be subject to the other elements of the background investigation. These programs include the National Agency Check, Transportation Worker Identification Credentials (TWIC) under 49 CFR 1572, Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR 555, Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR 1572, and Customs and Border Patrol's Free and Secure Trade (FAST) Program. The individual must make available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee.

5. Effort to Reduce Small Business Burden

While some licensees who possess byproduct material are small businesses, the concerns associated with the safe and secure use of the radioactive 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 recordkeeping or reporting

while maintaining the required level of public health and safety and common defense and security. The NRC estimates that 35% of the impacted licensees are small businesses.

6. Consequences to Federal Program or Policy Activities if the Collection is not conducted or is conducted less frequently

If the information collection was not collected, or was collected less frequently, NRC would not have the information needed to assure that licensees are using category 1 and category 2 quantities of radioactive material in a manner that will assure adequate protection of the public health and safety and common defense and security.

7. Circumstances Which Justify Variation from OMB Guidelines

Sections 37.23, 37.45, 37.57, 37.77, 37.79, and 37.81 of Part 37 vary from the OMB Guidelines in 5 CFR 1320.5(d) by requiring that licensees submit reports to the NRC in less than 30 days. These notification requirements are needed to permit response forces, NRC, law enforcement authorities, shippers, and consignees to confirm the integrity of shipments or to determine whether there has been a loss or diversion of radioactive material and to initiate prompt action for recovery of such material.

8. Consultations outside the NRC

Opportunity for public comment on the information collection requirements for this clearance package was published in the Federal Register on June 23, 2015 (80 FR 35995). In addition, as part of the public consultation process, nine licensees were contacted by email and invited to respond. The group contacted included medical, research, and industrial licensees. One response was received from the National Institutes of Health (NIH), of the Department of Health and Human Services. Following is a summary of comments received and NRC responses:

Comment #1: NIH suggested that reliance on fingerprinting to determine the trustworthiness of an individual can provide a false sense of security and may not stop an insider threat.

NRC Staff Response: The NRC recognizes that while fingerprinting can provide valuable information about an individual, this requirement alone does not prevent the malicious use of radioactive materials. For this reason, there are additional requirements and checks in place, that when coupled with the fingerprinting requirement, provide greater assurance of the employee's trustworthiness and reliability and that lessen the likelihood of an insider threat.

Comment #2: NIH believes the burden of other-than-fingerprinting information collection requirements is not great. However, the commenter indicated she could not respond to whether the burden of the information collection is accurate

for each specific portion since the notice provided general annual hourly estimates to comply with the information collection requirements rather than specific hours for each type of collection of information (e.g. fingerprinting, RAMQC shipments, reporting suspicious activities, requests for license verification).

NRC Staff Response: In response to this comment, the NRC staff provided the commenter with a link to a burden table with a breakdown of the burden for each information collection requirement under 10 CFR Part 37 at the following publically available link:
<http://www.regulations.gov/#!documentDetail;D=NRC-2015-0033-0005>.

Comment #3: In order to enhance the quality, utility, and clarity of the information collected, the NRC could expand NRC guidance on the expectation regarding the reporting of suspicious events. NIH included two specific examples of scenarios for which they believe that the existing guidance could be improved.

NRC Staff Response: The NRC recently provided additional guidance for the reporting of suspicious events. The answers generally applicable to the scenarios NIH described are provided in Regulatory Issue Summary (RIS) 2015-03, "Identifying and Reporting Security Incidents Under 10 CFR Part 37" (Published February 24, 2015). The RIS can be viewed at the following link:
<http://pbadupws.nrc.gov/docs/ML1425/ML14255A037.pdf>.

Comment #4: The NRC is very progressive in the acceptance of electronic submission of information and the NIH does not have further suggestions to lessen the information collection burden on respondents.

NRC Staff Response: The NRC strives to minimize the information collection burden for respondents through automated collection techniques and other forms of information technology. The NRC appreciates this acknowledgement.

9. Payment or Gifts 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).

The regulations in 10 CFR Part 37 require the licensee to conduct a background investigation that includes the collection of fingerprints and an FBI criminal history records check. The information is used by the licensee to determine that an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling. Licensees are required to have procedures for protection of the personal information from unauthorized disclosure. Licensees can use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2

quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling. The rule also limits who the licensee can share information with: those approved by the individual and those that need the information to do their job. The licensee is required to obtain written consent from the individual before beginning the background investigation.

The NRC only collects the fingerprints, either cards or electronically. The NRC digitizes fingerprints captured via card and passes the fingerprints electronically to the FBI. The FBI runs the fingerprints and provides the criminal history report to the NRC. The NRC then passes the report on to the licensee, but does not retain a copy of this report. The NRC practice is to destroy the fingerprint cards after approximately a month. The cards are destroyed in accordance with federal guidelines. The NRC system keeps a record of all the submissions, but can only produce a copy of that record for a year; after a year, NRC cannot print out a copy. NRC personnel in the Division of Facilities and Security (DFS) handle the fingerprint cards. DFS personnel also handle NRC's clearance information for NRC employees. These individuals are trained and know how to process and protect privacy information. This information collection is listed in the NRC's annual Republication of Privacy Act Systems of Records Notice under the heading of NRC-39, Personnel Security Files and Associated Records (75 FR 57334). The NRC does not disclose or share the information with anyone (except the initial submittal of fingerprints to the FBI and passing on the FBI report to the licensee).

11. Justification for Sensitive Questions

The regulations in 10 CFR Part 37 require a background investigation which includes several components: fingerprinting and an FBI identification and criminal history records check; verification of true identity; employment history evaluation; verification of education; credit history evaluation; and character and reputation determination. It is the licensee's responsibility to make a trustworthiness and reliability determination of an employee, contractor, or other individual who would be granted unescorted access to category 1 or category 2 quantities of radioactive material. It is expected that licensees will use their best efforts to obtain the information required to conduct a background investigation to determine individuals' trustworthiness and reliability. Fingerprinting an individual for a FBI criminal history records check is an important element of the background investigation for determining the trustworthiness and reliability of an individual. It can provide comprehensive information regarding an individual's recorded criminal activities within the U.S. and its territories and the individual's known affiliations with violent gangs or terrorist organizations. The background investigation is a tool to determine that individuals are trustworthy and reliable and could be permitted unescorted access to category 1 or category 2 quantities of radioactive material. It is essential to ensure that individuals seeking unescorted access to radioactive material be considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or common defense and security.

Before beginning the background investigation on an individual, licensees are required to obtain the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees are required to have a system in place for protection of the record and the personal information from unauthorized disclosure and are only allowed to provide the information to authorized individuals with a need-to-know.

12. Estimated Burden and Burden Hour Cost

The NRC estimates that 1,500 licensees will have possession of category 1 and category 2 materials and will be affected annually. These include a wide range of licensees, including pool-type irradiator licensees; manufacturer and distributor licensees; medical facilities with stereotactic radiosurgery devices; self-shielded irradiator licensees (including blood irradiators); teletherapy unit licensees; radiographers; well loggers; broad scope users; radioisotope thermoelectric generator licensees; and licensees that ship or prepare for shipment category 1 or category 2 quantities of radioactive material. Licensees can select different methods for many of the security measures. Many of the licensees may be small businesses. Of these 1,500 licensees, it is estimated that 300 are NRC licensees and 1,200 are Agreement State licensees. The licensees are combined on the burden tables as the requirements will apply equally to both NRC and Agreement State licensees.

The 300 NRC licensees have already implemented Part 37 requirements; therefore, all one-time implementation requirements are assumed to be completed for these licensees. 1,200 Agreement State licensees will implement Part 37 requirements during the clearance period; therefore, all one-time implementation burdens are still included for these licensees.

The total annual burden for this information collection renewal is 138,570.2 (300.3 one-time reporting hours[annualized] + 1,632.1 annual reporting hours + 60,000 one-time recordkeeping hours[annualized] + 25,644.2 recordkeeping hours + 866.7 one-time third party hours[annualized]+ 50,126.91 third party hours). The burden details by section are reflected in attached Excel tables to this supporting statement.

2015 Renewal Summary: Part 37 Totals		
	Hours	Responses
Reporting	1,932.4	6,204.4
Recordkeeping	85,644.2	1,200.0
Third-Party Disclosure	50,993.6	96,578.5
Total	138,570.2	103,982.9

13. Estimate of Other Additional Costs

NRC has determined that the records storage cost is roughly proportional to the recordkeeping burden cost. Based on a typical clearance, the recordkeeping storage cost has been estimated to be equal to .0004 percent of the recordkeeping burden. Therefore, the additional recordkeeping storage cost for 10 CFR Part 37 is estimated to be \$9,558 (25,644 recordkeeping hours + 60,000 one-time recordkeeping hours [annualized] x \$279 x .0004).

In addition, the NRC has also determined each of the licensees who have not already implemented the requirements, (1,200 Agreement State licensees and new licensees) will incur a one-time cost to purchase a file cabinet at a cost of \$500, for a one-time cost of \$600,000 (annualized to \$200,000 over the three year clearance period).

Each licensee will incur an annual fingerprinting cost of \$26 per fingerprint submission, payable to the NRC. For 4,500 annual fingerprint submissions, this is a \$117,000 annualized cost.

Therefore, the annualized total additional costs are \$326,558 (\$9,558 + \$200,000 \$117,000) for the clearance period. After the implementation period for Agreement States, the annualized costs will be reduced to \$126,558.

14. Estimated Annualized Cost to the Federal Government

This section calculates the estimated annualized cost to the government over the three-year period covered by the analysis, including both one-time costs and annual costs. Calculated at NRC's fee rate of \$279/hr, the estimated one-time cost to the government for review of required reports and records is \$251,150 (annualized to \$83,700). The NRC estimates the annual cost to the NRC to be \$320,108. The total annual costs to the NRC for one-time and annual costs is \$403,808 (\$83,700 + \$320,108).

Note that the NRC charges \$26 per fingerprint to recover the government cost for fingerprint processing.

The following tables provide details for these costs.

One time Cost

Item	No. Of Rspndts	Rsp. Per Rspndt	Total Annual Responses	Burden per Response	Total Annual Burden Hours	Cost @ \$279/Hr
Processing of fingerprints	1,200	3	3,600	0.25	900	\$251,100
Total one-time cost						\$251,100
ANNUALIZED one-time cost						\$83,700

Annual Cost

Item	No. Of Rspndts	Rsp. Per Respndt	Total Annual Responses	Burden per Response	Total Annual Burden Hours	Cost @ \$279/Hr
Processing of fingerprints for new employees ¹	1,500	3	4,500	0.25	1,125	\$313,875
Event notifications	3	1	3	0.08	0.24	\$67
Review of 30-day reports	3	1	3	1.00	3	\$837
Handling advance, cancels and revisions notifications of shipments	382	1	382	0.05	19.1	\$5,329
Total Annual Cost					1,147.34	\$320,108

15. Reasons for Change in Burden

The previous burden for this collection was 139,109.1 hours and 83,796 responses. The burden is expected to change to 138,570.2 hours and 103,983 responses (a decrease of 539 hours and an increase of 20,187 responses). The estimated burden has changed for the following reasons:

- The number of overall licensees required to comply with Part 37 requirements has increased from the previous estimate (from 1,400 licensees to 1,500 licensees). This reflects the current estimate of licensees and takes into account licensees with aggregated material that is comparable to category 1 and category 2 quantities. With a greater number of licensees, there are a greater number of annual responses than the previous estimate. In particular, the number of responses associated with pre-planning and coordination of Category 2 shipping with receiving licensee (37.75(b)) and notification of shipping licensee upon receipt on Category 2 shipments (37.75(c)) increased by a total of 19,500 responses due to the increase in the number of estimated respondents.
- Now that NRC licensees have implemented the one-time reporting and record keeping requirements, this burden no longer applies to NRC licensees. However, one-time reporting and record keeping requirements still apply to Agreement State licensees with later implementation periods, for Part 37 compatible regulations, as well as to new licensees that have not previously met this requirement (total estimate around 1,200 licensees). Because a large pool of licensees have completed some of the more time consuming one-time reporting requirements, the total burden for Part 37 has decreased.
- In addition, the fee rate has increased from \$273 to \$279 per hour.

¹ Government costs to process fingerprint submissions will increase starting in the year 2017, when fingerprints for reinvestigations are submitted by licensees. No licensees will submit fingerprints for reinvestigations during the current clearance period, based on the date of the issuance of orders.

16. Publication for Statistical Use

The information requested will not be published for statistical use.

17. Reason for Not Displaying the Expiration Date

The recordkeeping and reporting requirement for this information collection are associated with regulations and are not submitted on instruments such as forms or surveys. For this reason, there are no data instruments on which to display an OMB expiration date. Further, amending the regulatory text of the CFR 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. Collection of Information Employing Statistical Methods

Not applicable.