

Withdrawn

NRC Regulatory Issue Summary 2014-03, “Notice of 10 CFR Part 37 Implementation Deadline for NRC Licensees” dated March 13, 2014, has been withdrawn.

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See *Federal Register* notice dated April 18, 2017.

82 FR 18316

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF FEDERAL AND STATE MATERIALS AND
ENVIRONMENTAL MANAGEMENT PROGRAMS
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NEW REACTORS
WASHINGTON, DC 20555

March 13, 2014

**NRC REGULATORY ISSUE SUMMARY 2014-03
NOTICE OF 10 CFR PART 37 IMPLEMENTATION
DEADLINE FOR NRC LICENSEES**

ADDRESSEES

All holders of and applicants for U.S. Nuclear Regulatory Commission (NRC) licenses that possess Category 1 and Category 2 quantities of radioactive material, NRC Master Material Licensees (MMLs), Agreement State Radiation Control Program Directors, and State Liaison Officers.

INTENT

The NRC is issuing this regulatory issue summary (RIS) to remind licensees required to implement the new Part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material" that the compliance date of this rule is March 19, 2014, and to identify sources of reference information available to assist in compliance.

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

BACKGROUND

In a final rule published in the *Federal Register* on March 19, 2013, the NRC added a new Part 37 to its regulations in 10 CFR, and made conforming changes to other parts of NRC regulations regarding radioactive materials.

The new regulation, which became effective on May 20, 2013, establishes physical security requirements for the possession and use of Category 1 and Category 2 quantities of radioactive material. The NRC considers Category 1 and Category 2 quantities of radioactive material to be risk significant. Table 1 of Appendix A to 10 CFR Part 37 provides the thresholds for Category 1 and Category 2 quantities of radioactive material. These requirements are in addition to existing physical security requirements for special nuclear material in 10 CFR Part 73, "Physical Protection of Plants and Materials", and also apply to shipments of small amounts of irradiated reactor fuel.

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The new 10 CFR Part 37 and changes to other parts of 10 CFR contained in the final rule incorporate NRC's lessons learned in implementing the post-September 11, 2001 security measures, as well as stakeholder input during the rulemaking process. As a result, the NRC's regulations are generally applicable and enhance the consistency of implementation as well as, the transparency and predictability of NRC's oversight of radioactive material security.

The NRC staff's 10 CFR Part 37 Implementation Plan was submitted to the Commission on December 8, 2011, in Enclosure 2 of SECY-11-0170 "Final Rule: Physical Protection of Byproduct Material (RIN 3150-A112)." That document can be found at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2011/2011-0170scy.pdf>. Attachment 1 to the 10 CFR Part 37 Implementation Plan is a 10 CFR Part 37 Rule/Order comparison table (<http://pbadupws.nrc.gov/docs/ML1132/ML113290229.pdf>) which provides a comprehensive comparison of the requirements of the various security orders to the requirements of 10 CFR Part 37.

SUMMARY OF ISSUE

Title 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," imposes physical security requirements that supersede those imposed by license conditions or security orders (e.g., Compensatory Measures (CMs), Additional Security Measures (ASMs), "Order Imposing Increased Controls," and the "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Materials"). Licensees received either formal written orders or license conditions requiring increased controls for Category 1 and Category 2 quantities of radioactive materials. These increased controls were temporary measures instituted to ensure the security of Category 1 and Category 2 quantities of radioactive materials. 10 CFR Part 37 provides permanent measures to ensure the security of this material. Therefore, for NRC licensees, the increased controls license conditions and security orders will be superseded by 10 CFR Part 37 on March 19, 2014, when NRC licensees must be in compliance with the rule.

Licensees with an NRC-approved 10 CFR Part 73 security plan can choose to protect Category 1 and Category 2 quantities of radioactive material using their 10 CFR Part 73 plan or in a separate 10 CFR Part 37 plan. If a licensee chooses to protect the material using a 10 CFR Part 73 plan, then the licensee must revise the plan and procedures to include protection of Category 1 and Category 2 radioactive materials. For additional information on this issue as it applies to power reactors, Independent Spent Fuel Storage Installations (ISFSIs), or Category 1 special nuclear material facilities, see the "Part 37 Implementation Questions and Answers" (<http://www.nrc.gov/security/byproduct/nei-pt-37.pdf>) that were created to address these applications.

Any inspections of NRC licensees conducted on or after March 19, 2014, will be subject to inspection and enforcement under 10 CFR Part 37. By the compliance date, the NRC will begin rescinding the orders by formal correspondence to NRC licensees that were issued security orders. For those licensees that were issued increased controls via license condition, NRC will remove those license conditions from the affected NRC licenses through the license renewal process or as part of a future license amendment process, whichever occurs first. As licensing resources permit, NRC will administratively amend licenses that are not subject for renewal or that have not requested an amendment.

For Agreement State licensees that received an NRC security order issued under NRC's common defense and security authority, the order will remain in place until the effective date of compatible requirements issued by the Agreement State. All Agreement States are obligated to have 10 CFR Part 37 equivalent requirements issued by March 19, 2016. Each Agreement State will follow its own process for issuing these requirements, which will be reviewed by NRC for compatibility. Once the State has issued its requirements and they become effective, the NRC will concurrently rescind the NRC-issued orders through formal written correspondence. Agreement States will be responsible for rescinding Agreement State-issued orders, removing license conditions, or taking any other necessary action with respect to the Increased Controls and Fingerprinting security requirements they issued to their licensees on the effective dates of their compatible requirements. Once an Agreement State's compatible requirements are effective and security orders have been rescinded, Agreement State licensees should follow their respective State requirements. Additionally, beginning on March 19, 2014, Agreement State licensees that operate under reciprocity in areas of exclusive Federal jurisdiction must comply with the requirements of 10 CFR Part 37 for those activities in NRC jurisdiction and are subject to NRC inspection and enforcement under these requirements.

Enclosed with this RIS is a staff prepared summary of examples of the new requirements and some existing requirements that have been modified. The information in the enclosure only represents some examples of the new security requirements in 10 CFR Part 37, and does not include all of the requirements. It is recommended that licensees carefully review the new security requirements listed in 10 CFR Part 37 and the implementation guidance outlined in NUREG-2155, "Implementation Guidance for 10 CFR Part 37, 'Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,'" when developing their security programs.

The staff is also developing an enforcement guidance memorandum (EGM) to provide guidance to the NRC staff on how to disposition violations associated with 10 CFR Part 37 with respect to large components or Category 1 and 2 quantities of radioactive material stored in robust structures at power reactor facilities licensed under 10 CFR Parts 50 and 52. This EGM authorizes the NRC staff to exercise enforcement discretion and not cite violations associated with protection of this material if certain conditions, described in the EGM, are met. The EGM will be available on the NRC's public website at <http://www.nrc.gov/reading-rm/basic-ref/enf-man/app-a.html> upon its issuance.

The new rule is available on NRC's public website at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part037/>. Also, NRC has created a website for 10 CFR Part 37 that can be found at <http://www.nrc.gov/security/byproduct/10-cfr-part-37.html>. This site contains helpful information, such as hyperlinks to the final rule language as published in the *Federal Register* (<http://www.gpo.gov/fdsys/pkg/FR-2013-03-19/pdf/2013-05895.pdf>), types of licensees that may be subject to 10 CFR Part 37 requirements, the implementation guidance for the rule (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr2155/>), as well as some frequently asked questions that have been developed during the implementation process. This website is updated as needed, and it is recommended that licensees review this information periodically.

In addition to NUREG-2155, NRC staff is coordinating with representatives of State and Federal partners to develop a best practices document to provide NRC licensees or applicants guidance with specific emphasis on physical security best practices (e.g., access authorization, intrusion detection, alarms, cameras). The best practices document will provide practical guidance to be considered by licensees in developing and implementing an effective physical protection program. Currently, NRC staff is preparing the best practices document for publication and expects that it will be available by April 2014, as a NUREG entitled, "Physical Security Best Practices for the Protection of Risk-Significant Radioactive Material."

NRC has also established a dedicated email resource (Part37.Resource@nrc.gov) for stakeholders to ask questions and provide comments directly to the NRC staff members involved. Please use this resource to ask any questions regarding the new regulations and implementation of the new regulations. Questions regarding licensing, inspection, and/or compliance with the new regulations should be directed to the appropriate NRC office with responsibility for these programs.

BACKFIT DISCUSSION

This RIS reminds licensees that possess aggregated quantities of category 1 and 2 byproduct material that they are required to comply with 10 CFR Part 37 by March 19, 2014 (see 78 FR 16922: March 19, 2013, under the "Dates" caption); and to identify sources of reference information available to assist in compliance. This RIS requires no written action or written response. This RIS does not impose on the addressees in their status as applicants, licensees or holders of NRC regulatory approvals under 10 CFR Parts 50, 52, 70, 72, or 76 either backfitting (as defined in those parts) or actions which are inconsistent with the issue finality requirements in 10 CFR Part 52. This RIS reiterates information and requirements contained in the final rulemaking for Part 37 (78 FR 16922). Consequently, the NRC staff did not address the documentation requirements of the backfitting provisions or the issue finality provisions of those parts.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because this RIS is informational and does not represent a departure from current regulatory requirements.

CONGRESSIONAL REVIEW ACT

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

PAPERWORK REDUCTION ACT STATEMENT

This RIS references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collection requirements were approved by the Office of Management and Budget, approval number 3150-0214.

PUBLIC PROTECTION NOTIFICATION

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

CONTACT

This RIS requires no specific action or written response. Please direct any questions to the technical contact listed below or the appropriate NRC office.

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Enclosures:

1. Examples of Requirements in 10 CFR Part 37
2. List of FSME Generic Communications

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DATE	2/21/14	2/21/14	2/24/14	2/24/14	2/27/14
OFFICE	FSME/MSSA/DD	NSIR/MWSB	OIS	OE	NRR/DPR/PROB
NAME	JMoses	SWastler	KBenney	DFurst for NHilton	GBowman
DATE	/ /14	3/04/14	3/06/14	2/28/14	3/11/14
OFFICE	NRR/DPR/D	NMSS/SFST	NRO/DCIP	RI/DNMS	RI/DRS
NAME	LEKokojko	SCoffin for MLombard	MCheck	JClifford	ADimitriadis
DATE	3/13/14	2/28/14	3/10/14	3/11/14	3/04/14
OFFICE	RIII/DNMS	RIV/DNMS	RIV/DRS	OGC-NLO	OGC-CRA
NAME	PLouden	LHowell	GMiller for JClark	ACoggins	GKim
DATE	3/10/14	3/10/14	3/01/14	3/12/14	3/06/14
OFFICE	FSME/MSSA/D				
NAME	LDudes				
DATE	3/13/14				

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Examples of Requirements
In 10 CFR Part 37

The information listed below is a representative list of examples to highlight some of the 10 CFR Part 37 security requirements, and does not include all of the requirements. Some of the examples in this list may already be familiar to recipients of previously issued security orders. The examples shown are only intended to highlight some of the areas where Part 37 is different from previously issued security orders. Licensees should carefully review the new security requirements listed in 10 CFR Part 37 and the implementation guidance in NUREG-2155, when developing their security programs.

10 CFR Part 37: Physical Protection of Byproduct Material,
<http://www.nrc.gov/reading-rm/doc-collections/cfr/part037/>

AND

NUREG-2155: Implementation Guidance for 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material"
<http://www.nrc.gov/reading-rm/doc-collections/nureqs/staff/sr2155/>

Examples of Part 37 Requirements:

Subpart A - General Provisions

- Security Zone definition: Category 1 or category 2 material is used and stored in a permanent or temporary "security zone," which isolates material by the use of continuous physical barriers that allow access through only established access control points and/or through direct control of the security zone (§37.5 and §37.47).

Subpart B - Background Investigations and Access Authorization Programs

- Licensees must develop and maintain written procedures for implementing an access authorization program (§37.23(f)).
- Licensees must obtain informed and signed consent before initiating a background investigation (§37.23(c)). (Sample Consent Form can be obtained from NUREG 2155, Annex B, Page 111)
- Background investigation must verify an individual's true identity using official documentation and compare that information to personal information that was provided (§37.25(a)(2)).
- Licensees must document the type, expiration, and identification number of the identification document, or maintain a photocopy (§37.25(a)(2)).
- Licensees must certify in writing that identification documentation was properly reviewed and maintain records for review during inspection (§37.25(a)(2)).
- The verification of employment history, including military service, must include the most recent 7 years, or since 18th birthday, whichever is shorter (§37.25(a)(3)).
- Individuals who are currently determined to be trustworthy and reliable (T&R) for unescorted access, are grandfathered, but are subject to the reinvestigation requirement (§37.25(b)).

- Licensees must conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with §37.27. The reinvestigations must be completed within 10 years of the date on which these elements were last completed (§37.25(c)).
- Licensees must maintain a list of persons currently approved for unescorted access authorization (§37.23(e)(5)).
- Example of records required to grant unescorted access authorization (§ 37.23; 37.25):
 - Verification of applicant's true identify
 - Signed background investigation consent form
 - Background investigations verifications including employment history (7 years), education (claimed period), character and reputation determination including developed references
 - Fingerprint and criminal history record check
 - Documented basis
 - Security training
- Licensees must maintain a list of individuals approved for access to the security plan or implementing procedures (§37.43(d)(6)). The background review for access to this sensitive information includes all of the background screening elements with the exception of the fingerprint and criminal history records check (§37.43(d)(3)).
- Licensees need not subject service provider employees to background screening elements prior to granting unescorted access to category 1 or category 2 quantities of radioactive material, for any individual which the service provider licensee has conducted the background investigation and approved the individual for unescorted access. Written verification from the service provider must be provided to the licensee (§37.29(a)(13)).
- Licensees need not subject security service provider employees to background screening elements required for access to sensitive information, provided the security provider provides written verification that the employee has been determined to be trustworthy and reliable, using the background investigation criteria in §37.25(a)(2) through (a)(7), (§37.43(d)(4)).

Subpart C - Physical Protection Requirements During Use

- Licensees shall develop and maintain a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this subpart. The security plan must, at a minimum:
 - (i) Describe the measures and strategies used to implement the requirements of this subpart; and
 - (ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this subpart (§37.43(a)).
- Licensees shall develop and maintain written procedures that document how the requirements of 10 CFR 37, Subpart C (Physical Protection Requirements During Use) and the security plan will be met (§37.43(b)).

- Licensees must provide Local Law Enforcement Agency (LLEA) with: 1) A description of facility and security measures employed; 2) A description of category 1 or category 2 quantities of material possessed; and 3) Notification that the licensee will request a timely armed response in the event of an actual or attempted theft, sabotage, or diversion (§37.45).
- Licensees must coordinate with LLEA every 12 months, and maintain documentation of the efforts to coordinate for 3 years (§37.45(c) and (d)).
- Licensees must be able to detect breaches through barrier walls (§37.41(b)). (Further explained in NUREG-2155, Page 120, A-4)
- Licensees must be able to, among other things, detect unauthorized removal of category 1 materials immediately, and for category 2 materials through weekly verifications (e.g., physical checks, tamper indicating devices, etc.) (§37.49(a)(3)).
- Licensees must conduct, at least annually, a review of the access authorization and security programs (§37.33(a) and §37.55(a), respectively).
- Licensees must implement a testing and maintenance program for intrusion alarms and tests at the manufacturer's recommended frequency, or at least annually, not to exceed 12 months (§37.51).
- Licensees shall 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 (§37.43(c)(1)).
- Licensees shall maintain files and procedures for the protection of sensitive information including: their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access (§37.43(d)).

Subpart D - Physical Protection in Transit

- Prior to transfer of a category 1 or category 2 source, licensees must verify that the recipient is authorized to receive the material using the License Verification System (LVS) or the license issuing authority (§37.71(b)).
 - The LVS can be accessed at: <http://www.nrc.gov/security/byproduct/ismp/lvs.html>
- Licensees must coordinate shipment arrival and receiving times. Category 2 shipments must establish a "no later than" arrival time (date and time that the investigation will be initiated if package not received, and no later than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material) (§37.5, 37.75).
- Licensees shall preplan, coordinate, and provide advance notice for shipments containing a category 1 quantity of radioactive material with the receiving licensee and the governor or the governor's designated representative (§§ 37.75 and 37.77).
 - The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at <http://nrc-stp.ornl.gov/special/designee.pdf>. A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.
- Licensees shall provide advance notice to the governor or governor's designee for shipments containing a category 2 quantity of radioactive material that also meets the criteria in § 71.97(b), (§ 37.73(b)).

List of Recently Issued Office of Federal and State Materials and Environmental Management Programs Generic Communications			
Date	GC No.	Subject	Addressees
03/04/2014	IN-99-03, Rev. 1	Exothermic Reactions Involving Dried Uranium Oxide Powder (Yellowcake)	All operating uranium recovery facilities that produce uranium oxide powder (yellowcake). All Agreement States with the authority to regulate uranium mills (i.e., Utah, Colorado, Texas, Ohio, Illinois, and Washington).
01/10/2014	RIS-2014-01	Regulatory Requirements for Withholding of Proprietary Information from Public Disclosure	All distributors of general license devices submitting a request that information be withheld from public disclosure under the provisions of Title 10 of the <i>Code of Federal Regulations</i> Section 2.390, "Public Inspections, Exemptions, Requests for Withholding." All Agreement and Non-Agreement States, and State Liaison Officers.
11/15/2013	IN-2013-22	Recent Licensing Submittals Containing Personally Identifiable Information	All materials licensees, certificate holders, applicants, and other entities subject to regulation by the U.S. Nuclear Regulatory Commission for the use of source, byproduct, and special nuclear material. All Radiation Control Program Directors and State Liaison Officers.
10/17/2013	RIS-2013-17	Resuming Normal Interactions Between the NRC and NRC Stakeholders Following an Agency Shutdown	All U.S. Nuclear Regulatory Commission (NRC) licensees, certificate holders, permit holders, and applicants; all Agreement and Non-Agreement States, and State Liaison Officers; and other interested stakeholders.

List of Recently Issued Office of Federal and State Materials and Environmental Management Programs Generic Communications			
Date	GC No.	Subject	Addressees
10/01/2013	RIS-2013-16	Interactions Between the NRC and NRC Stakeholders During a Lapse of Agency Appropriations	All U.S. Nuclear Regulatory Commission (NRC) licensees, certificate holders, permit holders, and applicants; all Agreement and Non-Agreement States, and State Liaison Officers; and other interested stakeholders.
09/16/2013	IA-03-02	Criteria for Reporting Cybersecurity Incidents	All Radiation Control Program Directors and State Liaison Officers. All Increased Controls (IC) materials licensees. All licensees possessing Category 2 and higher materials.
<p>Note: This list contains the six most recently issued generic communications, issued by the Office of Federal and State Materials and Environmental Management Programs. A full listing of all generic communications may be viewed at the NRC public Web site at the following address: http://www.nrc.gov/reading-rm/doc-collections/gen-comm/index.html</p>			