



NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[Docket No. PRM-37-1; NRC-2014-0172]

Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI or the petitioner) dated June 12, 2014, requesting that the NRC amend its regulations to “remove unnecessary and burdensome requirements on licensees with established physical security programs.” The petition was docketed by the NRC on July 17, 2014, and has been assigned Docket No. PRM-37-1. The NRC is requesting public comments on this petition for rulemaking.

DATES: Submit comments by **[INSERT DATE THAT IS 75 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0172**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Merri L. Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-7000, e-mail: Merri.Horn@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2014-0172 when contacting the NRC about the availability of information for this petition for rulemaking. You may obtain publicly-available information related to this petition by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0172**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC-2014-0172 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information

before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. The Petitioner.

The petition states that “NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues.” The petition further states that “NEI’s members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry. NEI asserts that it is responsible for coordinating the combined efforts of licensed facilities on matters involving generic NRC regulatory policy issues and generic operational and technical regulatory issues.”

III. The Petition.

Anthony R. Pietrangelo, Senior Vice President and Chief Nuclear Officer, NEI, submitted a PRM dated June 12, 2014 (ADAMS Accession No. ML14199A570), requesting that the NRC amend its regulations regarding “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.” The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under § 2.802 of Title 10 of the *Code of Federal Regulations* (10 CFR), “Petition for rulemaking,” and the petition has been docketed as PRM-37-1. The NRC is requesting public comment on the petition for rulemaking.

IV. Discussion of the Petition.

The NRC's regulations at 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," require licensees that possess Category 1 and Category 2 quantities of radioactive material to secure and protect the materials from theft or diversion. Part 37 contains a provision, 10 CFR 37.11, which provides for "Specific Exemptions." The provision in 10 CFR 37.11(b), states that "[a]ny licensee's NRC-licensed activities are exempt from the requirements of subpart B ['Background Investigations and Access Authorization Program'] and subpart C ['Physical Protection Requirements During Use'] of this part to the extent that its activities are included in a security plan required by part 73 of this chapter." The provision in 10 CFR 37.11(c) allows for certain waste material to be subject to a different set of requirements as outlined in 10 CFR 37.11(c)(1)-(4).

The petitioner is requesting that the rule be amended to clarify and expand the exemptions in 10 CFR 37.11 in several ways. First, the petitioner is requesting that the exemptions provide for a more direct recognition of the extent to which facilities with robust 10 CFR part 73 security programs already meet the objectives set forth in part 37 and inherently protect byproduct material. Additionally, the petitioner requests NRC codify certain provisions contained in an Enforcement Guidance Memorandum (EGM) "Interim Guidance for Dispositioning 10 CFR Part 37 Violations with Respect to Large Components and Robust Structures Containing Category 1 or Category 2 Quantities of Material at Power Reactor Facilities Licensed Under 10 CFR Parts 50 and 52" issued by the NRC on March 13, 2014 (ML14056A151).

Specifically, the proposed amendments to part 37 would include adding definitions to 10 CFR 37.5 for *Large Component* and *Robust Structure*. The petitioner also proposes amendments to 10 CFR 37.11(b) that the petitioner claims will remove "undue regulatory burden on licensees by recognizing the extent to which facilities with robust 10 CFR Part 73

security programs already meet the objectives set forth in Part 37 and inherently protect byproduct material.” The petitioner further recommends revisions to 10 CFR 37.11(c) that the petitioner claims would help “to improve its clarity, provide greater regulatory certainty, and ensure licensees implement Part 37 consistent with NRC’s intent and expressed regulatory guidance.” Moreover, the petitioner recommends adding a new paragraph, 10 CFR 37.11(d), to codify key elements of the EGM. Specifically, the proposed 10 CFR 37.11(d) would exempt large components and material stored in robust structures from part 37’s requirements.

Dated at Rockville, Maryland, this 21st day of October, 2014.

For the Nuclear Regulatory Commission.

Richard J. Laufer, Acting,
Secretary of the Commission.

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