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[7590-01-P]

## **NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 37**

**[NRC-2025-1238]**

**RIN 3150-AL51**

### **Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is conducting a review and wholesale revision of its regulations. As part of this initiative, the NRC is proposing to revise its regulations relating to physical protection and security of category 1 and category 2 quantities of radioactive material.

**DATES:** Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration of only comments received before this date.

**ADDRESSES:** Submit your comments, identified by Docket ID NRC-2025-1238, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly

disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously. Follow the search instructions on <https://www.regulations.gov> to view public comments. You can read a plain language description of this proposed rule at <https://www.regulations.gov/docket/NRC-2025-1238>. 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:** Anita Gray, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-7036, email: [anita.gray@nrc.gov](mailto:anita.gray@nrc.gov) and Andrew Carrera, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1078, email: [andrew.carrera@nrc.gov](mailto:andrew.carrera@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

Please refer to Docket ID NRC-2025-1238 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-1238.
- **NRC's Agencywide Documents Access and Management System (ADAMS):**  
You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2025-1238 in your comment submission.

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 <https://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 into ADAMS.

## **II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission**

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission." Section 5, "Reforming and Modernizing the NRC's Regulations," requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in Section 2 of the E.O. 14300.

## **III. Background**

The NRC and the 40 Agreement States are responsible for ensuring the safety and security of approximately 80,000 category 1 and category 2 quantities of radioactive material used in medical, commercial, and research applications. The Agreement States are U.S. states that have entered into a formal agreement with the NRC under Section 274b of the Atomic Energy Act of 1954, as amended, to assume regulatory authority from the NRC over certain radioactive materials and activities within their states. The NRC considers category 1 and category 2 quantities of radioactive material to be risk-significant quantities of radioactive material. These quantities pertain to 16 specific radioactive materials listed in Appendix A to title 10 of the *Code of Federal Regulations* (10 CFR) part 37, "Physical Protection of Category 1 and Category 2 Quantities of

Radioactive Materials.” The regulations in 10 CFR part 37 govern the physical protection and security requirements for these category 1 and category 2 quantities of radioactive material.

In response to E.O. 14300, the NRC initiated a review of the 10 CFR part 37 requirements and identified several proposed revisions to enhance the efficiency of the materials licensing and inspection process and reduce unnecessary regulatory burden on licensees related to the physical protection of category 1 and category 2 quantities of radioactive material while maintaining safety and security. In undertaking this review, the NRC was mindful of the current threat environment and the importance of security regulations being commensurate with that threat environment. These proposed changes are detailed in Section IV, “Discussion” of this document.

## **IV. Discussion**

### **A. What action is the NRC taking?**

The NRC is proposing to revise the 10 CFR part 37 regulations by removing or modifying physical protection requirements for category 1 and category 2 quantities of radioactive material. The proposed changes would include:

1. Removing the requirement in § 37.23(b)(2) that a licensee must transmit its trustworthiness and reliability determination certifications for reviewing officials to the NRC:

The NRC is proposing to remove the requirement in § 37.23(b)(2) that after completing the background investigation on the reviewing official, the licensee must submit a certification to the NRC affirming that the designated reviewing official is deemed trustworthy and reliable. Reviewing officials are the only individuals within a licensee’s organization authorized to make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive material. Under this proposed rule, licensees would still be required to

designate reviewing officials as trustworthy and reliable under oath or affirmation, but they would no longer be required to transmit those certifications to the NRC. The NRC would continue to verify compliance through routine inspections, thereby ensuring that the effectiveness of licensees' access authorization programs is maintained.

2. Removing the 10-year reinvestigation and grandfathered reinvestigation requirements in § 37.25(b)(1) and (c):

The NRC is proposing to remove the outdated grandfathering provision in § 37.25(b)(1). Currently, § 37.25(b)(1) allows certain individuals who were determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders, as defined in § 37.5, to continue to have access to this material without further investigation. The Fingerprint Orders, which were issued primarily in the mid-2000s in response to the events of September 11, 2001, expired on March 19, 2014 and are no longer applicable. The Fingerprint Orders were orders issued by the NRC or legally binding requirements issued by Agreement States that required certain licensees and applicants to submit fingerprints for background checks on individuals who have unescorted access to risk-significant quantities of radioactive material. The NRC allowed these previously approved determinations under the Fingerprint Orders to be grandfathered in because the agency recognized that many individuals had already been fingerprinted and approved under earlier security orders. Under the 10-year reinvestigation requirement in § 37.25(c), all individuals who were grandfathered in have already undergone at least one subsequent reinvestigation by licensees that includes fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with § 37.27. Thus, the continued application of the grandfathering provision is no longer necessary, nor would its removal adversely affect the effectiveness of licensees' access authorization programs.

Also, under § 37.25(c), licensees are currently required to conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The NRC is proposing to remove this 10-year reinvestigation requirement because it is unnecessary for the effectiveness of licensees' access authorization programs. Since the reinvestigation requirement in § 37.25(c) became effective on March 19, 2013, the reinvestigation process has not produced information leading to a licensee making a trustworthiness and reliability determination to revoke unescorted access from an individual based on results from a reinvestigation. In accordance with the existing § 37.23(e)(5), a licensee is required to remove unescorted access when a person no longer meets access authorization requirements.

In addition, § 37.23(e)(4) allows the reviewing official to terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the initial background investigation has been completed (i.e., without waiting for the 10-year reinvestigation). Therefore, the NRC believes that the removal of this requirement would not adversely affect the effectiveness of licensees' access authorization programs.

### 3. Reducing the required frequency of refresher security training in § 37.43(c)(3):

The NRC is proposing to revise the refresher training requirement in § 37.43(c)(3), extending the frequency interval from not to exceed 12 months to at least every 3 years, and when significant changes are made to the security program. Currently, § 37.43(c)(3) requires each licensee to provide refresher training to all individuals implementing the security program at a frequency not to exceed 12 months and when significant changes have been made to the security program. Examples of significant changes include relocation of security zones, changes to physical security systems, and updates to response procedures. This revision would reduce unnecessary regulatory burden on licensees. In addition, because each licensee would still be

required to provide refresher training to responsible individuals when significant changes are made to the security program, the effectiveness of the security program would be maintained.

4. Reducing the required frequency of coordination with local law enforcement agencies (LLEA) in § 37.45(d):

The NRC is proposing to revise the requirement in § 37.45(d) for licensees to coordinate with LLEAs, changing the frequency requirement from at least every 12 months to at least every 3 years, or when changes are made to the facility design or operation that adversely affect the potential vulnerability of the licensee's material to theft, sabotage or diversion. Currently, § 37.45(d) requires licensees to coordinate with LLEAs at least every 12 months, or when changes to facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion. Examples of such changes include relocation of a security zone, changes to access control points or physical barriers, and modifications to alarm systems. The purpose of LLEA coordination is to ensure that law enforcement understands the facility's layout, confirm response expectations and timelines, and facilitate effective communication during emergencies. Once those efforts are documented as is required under § 37.45(c), requiring licensees to coordinate with LLEAs annually is unnecessary unless conditions change. Moreover, licensees are still required to coordinate with LLEAs more frequently than every 3 years if changes are made that may affect the potential vulnerability of the material to theft, sabotage, or diversion. Therefore, this revision would reduce regulatory burden while ensuring that licensees maintain effective coordination with LLEAs.

5. Removing requirements for weekly verification of category 2 quantities of radioactive materials and for security communications capability in § 37.49(a)(3)(ii) and (c):

The NRC is proposing to remove the requirement in § 37.49(a)(3)(ii) that requires licensees that possess category 2 quantities of radioactive material to verify the presence of the material through physical checks, tamper indicating devices, use, or other means on a weekly basis. Originally, weekly verification by licensees was intended to mitigate insider threats by minimizing the time during which misuse or diversion of material could go undetected. However, many category 2 quantity of radioactive material sources—such as radiography devices—are routinely used in daily operations, resulting in frequent observation and handling of the source that effectively ensures that licensees can promptly detect and respond to attempted misuse or diversion of materials, thereby serving the same purpose as weekly verification. Given the low likelihood of inadvertent loss and the existing requirements under § 37.49 to monitor, detect, assess, and respond to unauthorized access or removal, the NRC considers the weekly verification requirement unnecessary to provide reasonable assurance of the security of category 2 quantities of radioactive material from theft or diversion. For category 1 quantities of radioactive material, licensees would continue to be required to immediately detect any attempted unauthorized removal of the radioactive material from the security zone in accordance with § 37.49(a)(3)(i).

The NRC is also proposing to remove the requirement in § 37.49(c) for continuous and alternative communication capabilities for personnel communication and electronic data transmission and processing. Currently, § 37.49(c)(1) requires licensees to maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems. In addition, under § 37.49(c)(2), licensees must also provide alternative personnel communication and data transmission capabilities and processing, in case the primary means is lost. Licensees are already required under § 37.49 to maintain the ability to monitor, detect, assess, and respond to unauthorized removal of radioactive material. Specifically, under § 37.49(a)(1), the licensee must maintain a continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and response

when the capability to continuously monitor and detect unauthorized entries is lost. Therefore, the NRC considers the current specific requirement for continuous and alternative communication capabilities in § 37.49(c) unnecessary to provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material from theft or diversion.

6. Removing maintenance and testing requirements in §§ 37.43(c)(3)(iv) and 37.51:

The NRC is proposing to remove the requirement for a maintenance and testing program. Currently, § 37.51 requires licensees to implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material remain operable and capable of performing their intended function when needed. Under § 37.49, licensees are already required to monitor, detect, assess, and respond to unauthorized removal of radioactive material. To meet this performance-based requirement, systems used to secure or detect unauthorized access to radioactive material must remain operable and capable of performing their intended functions when needed. In practice, such systems are exercised during normal operations. Any failure—such as a malfunctioning sensor or communication issue—would impair licensees' ability to monitor, detect, assess, and respond, prompting timely corrective action by the licensees. Therefore, a separate maintenance and testing requirement in § 37.51 imposes an unnecessary regulatory burden on licensees.

As a conforming change, the NRC is proposing to remove the associated training requirement in § 37.43(c)(3)(iv), as it would no longer be necessary in the absence of a required maintenance and testing program.

7. Revising requirements for mobile devices in § 37.53(b) to allow removal of vehicle keys:

The NRC is proposing to revise the language in § 37.53(b) to reflect advancements in vehicle ignition and disabling technologies by removing the prohibition on a licensee relying on key removal. Currently, § 37.53(b) requires each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material in or on a vehicle or trailer to utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee, unless the health and safety requirements for a site prohibit the disabling of the vehicle. Section 37.53(b) further states that licensees are prohibited from relying on the removal of an ignition key to meet this requirement. The intent of this requirement in the current NRC regulations is to delay unauthorized removal of radioactive material contained in mobile devices by preventing the vehicle or trailer from leaving the licensee's control during vehicle theft. However, most modern vehicles now incorporate transponder (chip) keys or electronic fobs that are recognizable only by the vehicle's programmed computer and automatically disable the ignition system when removed, effectively immobilizing the vehicle. Only this specific transponder key or electronic fob can be used to enter and start the vehicle. The NRC has determined that a licensee may use this technology as an acceptable method to disable the vehicle. As a result, the NRC is proposing to remove the existing prohibition in § 37.53(b) on a licensee relying on key removal, which is outdated and does not reflect advancements in technology.

#### 8. Administrative changes:

The NRC is proposing to make minor nomenclature changes by revising the language in §§ 37.23, 37.25, 37.45, 37.49, and 37.53 to remove the word "shall" and add in its place the word, "must".

#### **B. Whom would this action affect?**

The regulatory changes in this proposed rule would affect all radioactive materials licensees who possess, use, and transfer category 1 and category 2 quantities of radioactive materials.

## **V. Specific Request for Comment**

The NRC is seeking advice and recommendations from the public on the proposed rule. The NRC is particularly interested in comments from the public on certain proposed changes under E.O. 14300 aimed at enhancing efficiency and reducing unnecessary regulatory burden related to the physical protection of category 1 and category 2 quantities of radioactive material. No classified or safeguards information should be disclosed in comments. The NRC is particularly interested in comments with clear justifications and supporting rationales on the following issues:

- Question #1: Are there significant unintended consequences associated with removing the requirement for licensees to provide certifications to the NRC under § 37.23(b)(2) that a reviewing official is trustworthy and reliable? Licensees would continue to be required to designate reviewing officials under oath or affirmation as trustworthy and reliable but would no longer be required to transmit the certifications to the NRC. Provide a rationale for your response.
- Question #2: What are the pros and cons of the NRC removing the requirement for 10-year reinvestigations under § 37.25(c) of individuals with unescorted access to category 1 or category 2 quantities of radioactive material? Provide a rationale for your response.
- Question #3: Are there significant safety-related implications of changing the requirement in § 37.45(d) for licensees to coordinate with the LLEA from at least once every 12 months to at least once every 3 years? What should the required coordination frequency be? Please provide a rationale for your response.

## **VI. Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, in accordance with section 605(b), the NRC is not preparing a regulatory flexibility certification analysis. The proposed rule affects NRC licensees that fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810), but it will impose no new burden on those “small entities.” As noted in Section VII, “Regulatory Analysis” of this document, the NRC expects that the proposed rule, if adopted, will reduce burden on “small entities.”

## **VII. Regulatory Analysis**

### **A. Introduction**

The NRC has prepared a draft regulatory analysis on this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC has determined that the action in this proposed rule is expected to reduce regulatory burden and generate cost savings for licensees, the NRC and the Agreement States, when compared to the no-action alternative. The NRC requests public comment on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

### **B. Identification and Analysis of Alternative Approaches**

The NRC identified two alternatives for this action: 1) no action (i.e., maintaining the status quo regulatory baseline), and 2) the proposed rulemaking to revise language in 10 CFR part 37 as discussed in Section IV. Under the no action alternative, the NRC would not publish this proposed rule and licensees would continue to comply with the existing regulations in 10 CFR part 37. However, this alternative would not realize the cost savings presented in Section VII.D. In addition, the NRC determined that the no-action alternative would not be consistent with the direction in Section 5 of E.O. 14300.

The no-action alternative is considered as a baseline for comparing the incremental impacts of the proposed rule.

### **C. Assumptions and Data Used for Analysis**

Throughout this analysis, various labor rates are used. These rates are used consistently for all the issues and their derivations are described below.

Licensee labor rates were obtained from National Wage Data available on the Bureau of Labor Statistics (BLS) Web site for year 2024 (<https://data.bls.gov/oes/#!/industry/000000>). Depending on the industry and the occupation (e.g., manufacturing, health and safety, etc.), an appropriate mean hourly labor rate is selected. The rate is then increased using a multiplier of 1.6 to account for benefits (insurance premiums, pension, and legally required benefits). Because exact hourly rates would be difficult to obtain and may not be sufficiently recent, nationwide mean hourly rates are used for lower paid employees, such as clerical staff.

All savings presented in this analysis are expressed in 2024 dollars, as the wage rate used for valuation is a lagging indicator. Using 2024 dollars ensures consistency throughout the analysis. The NRC's wage rate is currently based on 2024 data. Subject to Commission approval, the NRC staff will use the most recent wage rate data available at the time of final rule development for valuation purposes.

The NRC used data from the regulatory analysis, "Regulatory Analysis for Final Rule: Physical Protection of Byproduct Material (10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73)," dated December 2011 (2011 regulatory analysis), which was associated with the 2013 final rule, dated March 19, 2013 (78 FR 16922). To align with this rulemaking, the original 2010 dollar values were adjusted to 2024 dollars using the Consumer Price Index for All Urban Consumers, applying an inflation factor of 1.39 as published by the BLS.

Based on information obtained from the NRC's National Source Tracking System in 2025, the NRC estimates that approximately 960 licensees possessing category 1 and category 2 quantities of radioactive material across the National Materials Program will

be affected by this proposed rule. These licensees represent a diverse group, including pool-type irradiator operators; manufacturers and distributors; medical facilities using stereotactic radiosurgery devices; self-shielded irradiator users (such as those operating blood irradiators); teletherapy unit operators; radiographers; well loggers; broad scope licensees; radioisotope thermoelectric generator operators; and entities involved in the shipment or preparation for shipment of category 1 or category 2 quantities of radioactive material. Of the estimated 960 licensees, approximately 180 are NRC licensees, while the remaining 780 are licensed by Agreement States, a ratio equivalent of 1 NRC licensee to 4.3 Agreement State licensees. In addition, the NRC estimates that approximately 260 licensees are authorized to possess, use, or transfer category 1 quantities of radioactive material, and about 700 are authorized for category 2 quantities.

#### **D. Costs and Benefits of the Proposed Action**

1) The NRC is proposing to revise § 37.23(b)(2) by removing the requirement for licensees to submit a certification under oath or affirmation. The NRC anticipates that eliminating this requirement will result in cost savings for licensees. Currently, there are 40 Agreement States, each with its own process for implementing § 37.23(b)(2). As such, the NRC does not have data on the number of certifications submitted annually to the Agreement States.

For this analysis, the NRC assumes that the number of certifications received by all Agreement States is proportional to the number received by the NRC, which is based on the ratio of the number of NRC licensees to the number of Agreement State licensees provided in Section C, "Assumptions and Data Used for Analysis." The NRC currently receives approximately two certifications annually from its licensees. Based on the equivalent ratio for NRC licensees to Agreement State licensees, the NRC estimated that Agreement States collectively receive about nine certifications per year. Therefore, the total number of certifications submitted annually across both NRC and Agreement State licensees is estimated to be 11.

The NRC estimates that the development of each certification will require one hour of effort by a facility manager, using the BLS loaded wage rate for occupation code 11-3013 across all industries, which is \$88.10 per hour. Accordingly, the NRC estimates the annual savings for Agreement State licensees at \$793, with a total undiscounted 10-year savings of \$7,929. For NRC licensees, the estimated annual savings is \$176, with a 10-year total of \$1,762 (undiscounted). In addition, the NRC estimates a cost savings for the NRC from the reduction in resources required to process certification documents. The NRC estimates that processing each affirmation document currently would take approximately 1 hour at a labor cost of \$158 per hour. Therefore, eliminating this task would result in annual savings of \$316 for the NRC. Over a 10-year period, the total undiscounted savings would be \$3,160. The NRC assumes that the Agreement States would incur similar processing times and labor costs—1 hour per certification at \$158 per hour. Based on the estimated number of 9 certifications per year, the annual savings for the Agreement States would be approximately \$1,422, with a 10-year total of \$14,220 (undiscounted).

Combining the savings for licensees, the Agreement States, and the NRC, the total estimated savings over a 10-year period is \$23,911 (undiscounted). The total 10-year net present value (NPV) at 7 and 3 percent discount is \$16,794 and 20,396 respectively. Table 1 summarizes the combined savings for both industry and government.

Table 1. Combined Potential Savings for Licensees, Agreement States and NRC

Total Net Cost Savings (2024 dollars)			
Year	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$2,391	\$2,235	\$2,321
2	\$2,391	\$2,088	\$2,254
3	\$2,391	\$1,952	\$2,188
4	\$2,391	\$1,824	\$2,124
5	\$2,391	\$1,705	\$2,063
6	\$2,391	\$1,593	\$2,002
7	\$2,391	\$1,489	\$1,944
8	\$2,391	\$1,392	\$1,888
9	\$2,391	\$1,301	\$1,833
10	\$2,391	\$1,215	\$1,779

Total	\$23,911	\$16,794	\$20,396
Annualized		\$2,391	\$2,391

2) The NRC is proposing to remove the provision in § 37.25(c) that requires licensees to conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material.

To estimate the potential industry savings from this proposed change, the NRC relied on data from the 2011 regulatory analysis, which detailed the costs associated with implementing reinvestigations. This historical data was used to reverse-engineer the original cost estimates into projected savings, since the proposed rule eliminates the reinvestigation requirement.

According to the 2011 regulatory analysis, there were 1,400 NRC and Agreement State licensees, categorized by size as small, medium, and large, with employee counts of approximately 364 (26 percent), 826 (59 percent), and 210 (15 percent) respectively. These licensees collectively spend an estimated \$536,111 annually on reinvestigations. For this analysis, the NRC used the same percentage breakdown based on the estimated 960 NRC and Agreement State licensees to calculate per-licensee reinvestigation costs. Because the 2011 cost estimations were in 2010 dollars, the NRC adjusted the dollar value to 2024 dollars using the appropriate inflation factor as described in Section C of this analysis. Given that reinvestigations occur on a 10-year cycle—matching the timeframe of this analysis—the NRC assumes all reinvestigations would occur within the same year. To calculate annual savings over a 10-year period, the staff multiplied the annual cost savings by 10. As a result, the removal of § 37.25(c) is estimated to save the industry approximately \$5.361 million (undiscounted) over the 10-year period of analysis with an NPV of 7 and 3 percent at \$3.756 million and \$4.573 million respectively. Table 2 presents the detailed breakdown of these projected savings.

Table 2. Combined Potential Savings for Licensees

Total Net Cost Savings (2024 dollars)
---------------------------------------

Year	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$536,111	\$501,038	\$520,496
2	\$536,111	\$468,260	\$505,336
3	\$536,111	\$437,626	\$490,617
4	\$536,111	\$408,996	\$476,327
5	\$536,111	\$382,240	\$462,454
6	\$536,111	\$357,233	\$448,984
7	\$536,111	\$333,863	\$435,907
8	\$536,111	\$312,021	\$423,211
9	\$536,111	\$291,609	\$410,884
10	\$536,111	\$272,532	\$398,917
Total	\$5,361,108	\$3,765,418	\$4,573,134
Annualize		\$536,111	\$536,111

3) The NRC is proposing to revise the requirement under § 37.43(c)(3) for licensees to provide refresher training to individuals implementing the security program from not to exceed 12 months to at least every 3 years, and when significant changes are made to the security program. This change is expected to reduce the financial burden on licensees.

For this analysis, the NRC estimates that approximately 960 licensees would be affected by the proposed change in § 37.43(c). According to the 2011 regulatory analysis, these licensees collectively spend an estimated \$10.1 million (adjusted for inflation to 2024 dollars) annually on refresher training. By shifting from annual to triannual training, the industry is expected to save approximately \$20.2 million over the two years in which training would no longer be required. No savings would occur in the third year, when training is required.

Over a 10-year period, the NRC estimates total savings of \$70.8 million (undiscounted), with discounted annualized savings of \$7.2 million at a 7 percent discount rate. Table 3 provides a detailed breakdown of the 10-year savings associated with this provision.

Table 3. Combined Potential Savings for Licensees

Total Net Cost Savings (2024 dollars)
---------------------------------------

year	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$10,125,081	\$9,462,693	\$9,830,176
2	\$10,125,081	\$8,843,638	\$9,543,860
3	-	-	-
4	\$10,125,081	\$7,724,376	\$8,996,003
5	\$10,125,081	\$7,219,043	\$8,733,984
6	-	-	-
7	\$10,125,081	\$6,305,392	\$8,232,617
8	\$10,125,081	\$5,892,889	\$7,992,832
9	-	-	-
10	\$10,125,081	\$5,147,078	\$7,534,011
Total	\$70,875,567	\$50,595,108	\$60,863,484
Annualized		\$7,203,605	\$7,135,057

4) The NRC is proposing to revise the requirement under § 37.45(d) for licensees to coordinate with the LLEA from an annual to a triannual schedule, or when licensees make changes to the facility design or operation that adversely affect the potential vulnerability of the licensee’s material to theft, sabotage or diversion. This change is expected to reduce the administrative burden on the licensees and result in cost savings.

For this analysis, the NRC assumes that coordination with the LLEA would currently require approximately 2 hours per year per licensee. While the NRC does not have comprehensive data on all facilities that would be affected by this proposed change, it will assess savings on a per-facility basis. Further, the NRC assumes that the LLEA coordination task would require 2 hours of effort per occurrence by a facility manager, using the BLS loaded wage rate for occupation code 11-3013, across all industries, which is \$88.10 per hour. This would result in an annual coordination cost of approximately \$176.20 per licensee. Assuming licensees coordinate with the LLEA only in the third year of each 3-year cycle following the rule’s implementation and applying the per-licensee savings to the estimated 960 licensees, the annual industry savings during the first and second years—when coordination is not required—would be approximately \$169,144. No savings would occur in the third year, when coordination with the LLEA is required. This analysis does not consider the costs of licensee

coordination with LLEA that is initiated as needed due to changes made to the facility design or operation.

Over a 10-year period, the total undiscounted savings from the proposed change to § 37.45(d) is estimated at \$1.18 million. The annualized savings are projected to be an estimated \$120,339 discounted at 7 percent. Table 4 provides a detailed breakdown of the 10-year savings associated with this provision.

Table 4. Combined Potential Savings for Licensees

Total Net Cost Savings (2024 dollars)			
Year	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$169,144	\$158,078	\$164,217
2	\$169,144	\$147,737	\$159,434
3	-	-	-
4	\$169,144	\$129,039	\$150,282
5	\$169,144	\$120,597	\$145,905
6	-	-	-
7	\$169,144	\$105,334	\$137,529
8	\$169,144	\$98,443	\$133,524
9	-	-	-
10	\$169,144	\$85,984	\$125,859
Total	\$1,184,010	\$845,215	\$1,016,754
Annualized		\$120,339	\$119,194

5) The NRC is proposing to remove the requirement under § 37.49(a)(3)(C)(ii) for licensees possessing category 2 quantities of radioactive material to conduct weekly verification to confirm the material's presence.

This requirement applies only to licensees who possess, use, or transfer category 2 quantities of radioactive material, which is estimated at 700 affected licensees. In addition, the NRC does not maintain specific data on which personnel perform these weekly verifications at each facility. For this analysis, the NRC assumes that the task would require 1 hour of effort per week by a facility manager, using the BLS loaded wage rate for occupation code 11-3013, across all industries, which is \$88.10 per hour. Therefore, the estimated weekly cost per facility for this verification is \$88.10,

resulting in an annual cost of approximately \$4,581 per licensee. Applying this per-licensee cost to the estimated 700 licensees, the removal of this requirement under § 37.49(a)(3)(c)(ii) is projected to yield total industry savings of approximately \$32.1 million (undiscounted) over a 10-year period. When discounted at 7 percent, the annualized savings are estimated at \$3.2 million. Table 5 provides a detailed breakdown of the projected 10-year savings resulting from this proposed change.

Table 5. Combined Potential Savings for Licensees Who Possess, Use, or Transfer Category 2 Quantities of Radioactive Material

Total Net Cost Savings (2024 dollars)			
Year	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$3,206,840	\$2,997,046	\$3,113,436
2	\$3,206,840	\$2,800,978	\$3,022,754
3	\$3,206,840	\$2,617,736	\$2,934,712
4	\$3,206,840	\$2,446,482	\$2,849,235
5	\$3,206,840	\$2,286,432	\$2,766,248
6	\$3,206,840	\$2,136,852	\$2,685,678
7	\$3,206,840	\$1,997,058	\$2,607,454
8	\$3,206,840	\$1,866,410	\$2,531,509
9	\$3,206,840	\$1,744,308	\$2,457,775
10	\$3,206,840	\$1,630,194	\$2,386,190
Total	\$32,068,400	\$22,523,502	\$27,354,995
Annualized		\$3,206,840	\$3,206,840

6) The NRC is proposing to remove the requirement under § 37.51, which mandates that licensees implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed.

According to the existing regulations, equipment relied upon for security must be inspected and tested either at the manufacturer's recommended frequency or, if none is provided, at least annually (not to exceed 12 months). Because the NRC does not maintain data on manufacturer-recommended maintenance intervals, the NRC assumes that all licensees follow an annual maintenance and testing schedule. Further, the NRC

assumes that this task would require 2 hours of effort annually by a facility manager, using the BLS loaded wage rate for occupation code 11-3013, across all industries, which is \$88.10 per hour. Therefore, the estimated annual cost per licensee is \$176. Applying this to the estimated 960 licensees, the total industry savings of approximately \$1.69 million (undiscounted) over a 10-year period, with annualized savings of \$169,144, discounted at 7 percent. Table 6 provides a detailed breakdown of the estimated 10-year savings resulting from the removal of this provision.

Table 6. Combined Potential Savings for Licensees

Total Net Cost Savings (2024 dollars)			
Years	Undiscounted	7% Discount Rate	3% Discount Rate
1	\$169,144	\$158,079	\$164,218
2	\$169,144	\$147,737	\$159,435
3	\$169,144	\$138,072	\$154,791
4	\$169,144	\$129,039	\$150,283
5	\$169,144	\$120,598	\$145,905
6	\$169,144	\$112,708	\$141,656
7	\$169,144	\$105,335	\$137,530
8	\$169,144	\$98,444	\$133,524
9	\$169,144	\$92,003	\$129,635
10	\$169,144	\$85,984	\$125,859
Total	\$1,691,443	\$1,187,999	\$1,442,835
Annualized		\$169,144	\$169,144

7) The NRC is proposing to revise the current language in § 37.53(b), which requires each licensee for devices in or on a vehicle or trailer containing category 1 or category 2 quantities of radioactive material to utilize a method to disable the vehicle or trailer, other than removing the ignition key, when not under direct control and constant surveillance by the licensee, unless the health and safety requirements for a site prohibit the disabling of the vehicle.

The NRC estimates that 57 NRC licensees currently implement § 37.53(b) and operate a category 1 or category 2 mobile fleet of vehicles. While the NRC does not maintain specific data on Agreement State licensees with similar fleets, it extrapolated—based on the NRC-to-Agreement State licensee ratio equivalent provided in Section C—

that approximately 262 Agreement State licensees would also own such fleets. This results in an estimated total of 319 NRC and Agreement State licensees with category 1 or category 2 mobile fleets. The NRC assumes that, with the removal of § 37.53(b), licensees would no longer need to purchase vehicle disabling devices such as ignition kill switches or steering wheel clubs—methods commonly used to comply with current requirements, according to inspector experience. An internet search indicates that vehicle ignition kill switches cost approximately \$300 and vehicle steering wheel clubs about \$30. While some newer vehicles may come equipped with built-in vehicle disabling features, the NRC assumes that licensees are equally likely to buy any type of vehicle disabling device, using an average cost of \$165 per unit.

Based on Agreement State inspector input, the NRC further assumes that each licensee owns five vehicles and replaces its entire fleet every 5 years. Over a 10-year period, this means each licensee would avoid purchasing 10 vehicle disabling devices, totaling \$1,650 in savings per licensee. Across all 319 licensees, this results in an estimated total industry savings of \$526,350 (undiscounted) over 10 years, and an annualized savings of \$48,967 when discounted at 7 percent. Table 7 provides a detailed breakdown of the estimated 10-year savings resulting from the removal of this provision.

Table 7. Cost Savings from Vehicle Disabling Devices

Years	Undiscounted	7%	3%
1		\$ -	\$ -
2		\$ -	\$ -
3		\$ -	\$ -
4		\$ -	\$ -
5	\$263,175	\$200,775	\$233,828
6		\$ -	\$ -
7		\$ -	\$ -
8		\$ -	\$ -
9		\$ -	\$ -
10	\$263,175	\$143,150	\$201,702
Total	\$526,350	\$343,925	\$435,529
Annualized		\$48,967	\$51,057

**F. Conclusions**

The NRC’s proposed rule would revise language in 10 CFR part 37 to modernize the requirements relating to physical protection of category 1 and category 2 quantities of radioactive material. The NRC has determined that the proposed updates are expected to reduce regulatory burden and generate cost savings for both Agreement State and NRC licensees, NRC, and Agreement State, when compared to the alternative of no-action (i.e., the status quo). Based on the NRC’s analysis, the potential industry savings over a 10-year period are estimated at approximately \$111.7 million (undiscounted). The annualized savings are projected to be approximately \$11.3 million discounted at 7 percent.

In addition, the NRC estimates cost saving in 2024 dollars to be \$11.3 million discounted at 7% in perpetuity.

The NRC acknowledges that these estimates may be refined in the final rule as additional information is gathered regarding the rule’s impact on industry operations.

Table 8 summarizes the cumulative savings associated with the proposed changes in this rulemaking.

Table 8. Total Cumulative Savings for Licensees, NRC, and Agreement State in 2024 Dollars

Year	Undiscounted	7%	3%
1	\$14,208,712	\$13,279,170	\$13,794,866
2	\$14,208,712	\$12,410,439	\$13,393,073
3	\$3,914,486	\$3,195,387	\$3,582,309
4	\$14,208,712	\$10,839,758	\$12,624,256
5	\$14,471,887	\$10,318,255	\$12,483,576
6	\$3,914,486	\$2,608,387	\$3,278,321
7	\$14,208,712	\$8,848,471	\$11,552,983
8	\$14,208,712	\$8,269,599	\$11,216,488
9	\$3,914,486	\$2,129,221	\$3,000,128
10	\$14,471,887	\$7,356,773	\$10,768,443
Total	\$111,730,789	\$79,255,461	\$95,694,443

Annualized		\$11,284,195	\$11,218,308
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### **G. NRC Rulemaking Costs**

The NRC would incur rulemaking costs for developing the final rule and associated final guidance. This would include reviewing and addressing public comments on the proposed rule and guidance, writing the final rule and final guidance, publishing the final rule in the *Federal Register* notice, and implementing the final rule. The NRC estimates a total of 2,500 hours for developing the final rule and guidance, with the associated undiscounted one-time cost of \$395,000, or \$369,159 when discounted at 7 percent.

### **VIII. Backfitting and Issue Finality**

The NRC has determined that the backfitting provisions in §§ 50.109, 70.76, and 72.62, all entitled “Backfitting,” and the issue finality provisions in 10 CFR part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants,” do not apply to this proposed rule because it does not involve any provisions that will impose backfits as defined in 10 CFR chapter I or affect the issue finality of any approval issued under 10 CFR part 52. As a general matter, eliminating a requirement does not meet the definition of “backfitting” because such an act by the NRC would be a nonmandatory relaxation of an existing requirement. For the same reason, the elimination of a requirement would not affect the issue finality of a 10 CFR part 52 approval.

### **IX. Cumulative Effects of Regulation**

The NRC seeks to minimize potential negative consequences resulting from the cumulative effects of regulation. The NRC believes that the de-regulatory impacts of this rulemaking activity are unlikely to cause implementation challenges for stakeholders. In addition, during the pendency of this rulemaking, the NRC is deprioritizing issuance of regulatory actions that might influence the implementation date for the new rule

requirements (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature).

To fully understand any potential cumulative effects of regulation implications that could result from this rulemaking, the NRC is asking the following questions. Response to these questions is voluntary and any input will be considered during development of the final rule.

1. The NRC is proposing an effective date that will be 30 days after the date of publication of a final rule. Does this provide sufficient time to implement the proposed requirements? Please provide a rationale for your response.

2. Are there unintended consequences related to this rulemaking and how should they be addressed? Please provide a rationale for your response.

3. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that support this proposed rule.

## **X. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## **XI. National Environmental Policy Act**

### **A. Introduction**

The NRC has prepared this environmental assessment (EA) in compliance with the NRC's environmental protection regulations in 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,"

which implement the National Environmental Policy Act of 1969, as amended (NEPA). This EA evaluates and documents the potential environmental impacts that may result from this proposed rulemaking, if ultimately promulgated as a final rule by the NRC. As described below, the NRC has determined under NEPA and the Commission's regulations in Subpart A of 10 CFR part 51 that there would be no significant impact associated with this proposed rulemaking action to revise regulations related to the physical protection of category 1 and category 2 quantities of radioactive material.

### **B. Proposed Action**

As discussed in Section IV, the proposed action would revise language in 10 CFR part 37 related to the physical protection of category 1 and category 2 quantities of radioactive material.

### **C. Environmental Impacts of the Proposed Action**

The proposed rulemaking action would not change the type or quantity of personnel, equipment, or facilities already required under current 10 CFR part 37 regulations. The NRC staff expects licensee implementation of the rulemaking action if it becomes final to be procedural, taking place in an office setting, and relying on paper or an electronic (e.g., computer) screen to demonstrate compliance with revised 10 CFR part 37 regulations. In addition, the proposed rulemaking action would not authorize any site-specific action on the part of the NRC or licensees.

Because the proposed rulemaking would not authorize any site-specific action, the NRC staff has determined that the proposed rulemaking action would not result in any significant direct, indirect, or cumulative effects on water resources, terrestrial and aquatic biota, air quality, or result in any land-use or socioeconomic changes. Similarly, the proposed rulemaking action does not have the potential to disturb critical habitats, affect any threatened or endangered species, or result in adverse effects to historic properties and cultural resources.

In addition, the NRC has determined the proposed rulemaking action would not change radiation protection and emergency preparedness requirements or overall risk

and would result in no new or different environmental effects. Additionally, licensees would continue to be required to comply with the radiation protection requirements in 10 CFR part 20, "Standards for Protection Against Radiation."

Therefore, the NRC concludes that the proposed changes in this rulemaking would have no significant impact on the environment.

Moreover, if the Commission promulgates a final rule, the NRC would continue its current practice of conducting a separate evaluation, including the appropriate environmental review under NEPA, for each site-specific application to use, possess, or transfer category 1 and category 2 quantities of radioactive material subject to 10 CFR part 37.

#### **D. Environmental Impacts of the Alternative to the Proposed Agency Action**

Under the no-action alternative, the NRC would not pursue a rulemaking related to modernizing requirements relating to physical protection of category 1 and category 2 quantities of radioactive material. Under the no-action alternative, the NRC would continue to regulate the use, possession, and transfer of category 1 and category 2 quantities of radioactive material in accordance with the existing 10 CFR part 37 regulations. In addition, licensees would continue to be required to comply with the radiation dose requirements in 10 CFR part 20. Because neither the proposed rulemaking action, as stated in Section C, nor the no-action alternative would result in a significant impact to human health or the environment, there would be no difference in environmental effects between the no-action alternative and the proposed agency action (rulemaking). However, the no-action alternative would not meet the purpose and need of the proposed agency action, as mandated by E.O. 14300, because it would not modernize the requirements relating to physical protection of category 1 and category 2 quantities of radioactive material.

#### **E. Agencies and Persons Consulted**

The NRC developed the proposed rule and is requesting public comment on this draft EA. The agency will consider comments received on the docket as it develops the

final rule and the final EA. The NRC will issue the final EA when it publishes the final rule.

The NRC has determined that the proposed agency action would have no effect on Federally listed threatened or endangered species or critical habitat. Likewise, the NRC determined that the proposed rulemaking action would have no adverse effect on any historic property. Therefore, the NRC has determined that no further consultation is required under Section 7 of the Endangered Species Act of 1973, as amended, or under Section 106 of the National Historic Preservation Act of 1966, as amended.

#### **F. Conclusion and Finding of No Significant Environmental Impacts.**

The NRC has determined under NEPA and the Commission's regulations in Subpart A of 10 CFR part 51 that there would be no significant impact associated with this proposed rulemaking action to revise regulations related to the physical protection of category 1 and category 2 quantities of radioactive material. This EA and finding of no significant impact can be tracked with the Council on Environmental Quality identification number EAXX-429-00-000-1770619846. The NRC describes the costs and benefits of the proposed rulemaking action compared to the no-action alternative in Section VII, "Regulatory Analysis," of this document.

### **XII. Paperwork Reduction Act**

This proposed rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The proposed rule would reduce the unnecessary regulatory burden for the existing information collections. This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Type of submission: New

The title of the information collection: Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, Proposed Rule.

The form number if applicable: Not applicable

How often the collection is required or requested: Coordination with LLEAs would occur at least every 3 years, rather than at least every 12 months. The 10-year reinvestigation requirement in § 37.25(c) would be eliminated.

Who will be required or asked to respond: All radioactive materials licensees who possess, use, and transfer category 1 and category 2 quantities of radioactive materials.

An estimate of the number of annual responses: A reduction of 2,560 responses (320 reporting + 960 recordkeeping + 1,280 third-party disclosure).

The estimated number of annual respondents: 960 respondents (180 NRC licensees + 780 Agreement States licensees).

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: A burden reduction of 3,120 hours (320 annual reporting hours + 240 recordkeeping hours + 2,560 third-party disclosure hours).

Abstract: Consistent with E.O. 14300, the NRC is conducting a review and wholesale revision of its regulations. As part of this initiative, the NRC is proposing to revise its regulations to remove requirements relating to physical protection of category 1 and category 2 quantities of radioactive material. The proposed rule would remove the requirement for licensees to submit oath or affirmation certifications for reviewing officials to the NRC, as well as eliminate the 10-year reinvestigation mandate. Additionally, the required coordination frequency with LLEAs would be reduced from at least every 12 months to at least every 3 years, or when licensees make changes to the facility design or operation that adversely affect the potential vulnerability of the licensee's material to theft, sabotage or diversion. Lastly, the obligation to maintain a maintenance and testing program, including related recordkeeping, would also be eliminated.

The NRC is seeking public comment on the potential impact of the information collection contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

Please explain your response.

2. Is the estimate of the burden of the proposed information collection accurate?

Please explain your response.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.

4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package is available in ADAMS under Accession No. ML25287A035 or may be viewed free of charge by contacting the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). You may obtain information and comment on submissions related to the OMB clearance package by searching on <http://www.regulations.gov> under Docket ID NRC-2025-1238.

You may submit comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by the following methods: Federal rulemaking Web Site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2025-1238.

Mail comments to: FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at OMB Office of Information and Regulatory Affairs (3150-0214), Attention: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.

Submit comments by [INSERT DATE 30 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 staff is able to ensure consideration only for comments received on or before this date.

#### Public Protection Notification

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

### **XIII. Coordination with NRC Agreement States**

The working group that prepared this proposed rule included a representative from the Organization of Agreement States. Comments from the Agreement States representative were taken into consideration during the development of this proposed rule.

### **XIV. Compatibility of Agreement State Regulations**

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), the NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those that are designated as Categories A, B, C, D, NRC, and H&S; and those required for compatibility include those regulations and other legally binding requirements designated as Compatibility Categories A, B, C, and D. Compatibility Category A are those program elements that include basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B pertains to a limited number of program elements that cross jurisdictional boundaries and should be addressed to ensure uniformity of regulation on a nationwide basis. The Agreement State program element

should be essentially identical to that of NRC. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, therefore, are not required to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of title 10 of the *Code of Federal Regulations*. These program elements should not be adopted by the Agreement States. Category H&S program elements are not required for purposes of compatibility; however, they have particular health and safety significance. The Agreement States should adopt the essential objectives of such program elements to maintain an adequate program.

The NRC is proposing to remove the requirements in §§ 37.25(b)(1), 37.25(c), 37.49(a)(3)(ii), 37.49(c)(1), 37.49(c)(2), 37.51(a), and 37.51(b) from the 10 CFR part 37 regulations. As such, the associated compatibility categories of these provisions would also be removed. The Agreement States should also remove those requirements in this proposed rule from their regulations to maintain compatibility with the NRC program. The deleted requirements were designated as compatibility Categories B and C, which are required for cross-jurisdictional consistency or necessary to prevent gaps, duplications, or conflicts across the National Materials Program. Failure to remove these requirements will result in gaps and conflicts between programs in the National Materials Program that will negatively impact the uniformity of regulation on a nationwide basis.

Compatibility categories for other provisions that are subject to amendment or reassignment would remain unchanged except for the requirements in § 37.45(d). The

compatibility category for § 37.45(d) is reassigned from Category B to Category C because of the lack of cross-jurisdictional impacts from the engagement of local law enforcement by licensees and because the requirement is limited to each licensee's facility. As compatibility Category C, Agreement States' equivalent regulation must still adopt the essential objective of § 37.45(d), which is to require the licensee to coordinate with local law enforcement to provide a response in the event of a threat at the licensee's facility.

The final rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table:

Compatibility Table				
Section	Change	Subject	Compatibility	
			Existing	New
10 CFR 37.23(b)(2)	Amend	Access authorization program requirements	B	B
10 CFR 37.23(c)(1)	Amend	Access authorization program requirements	B	B
10 CFR 37.25(b)(1)	Remove	Background investigations	C	-
10 CFR 37.25(b)(2)	Amend and Reassign	Background investigations	C	C
10 CFR 37.25(c)	Remove	Background investigations	B	-
10 CFR 37.43(c)(3)	Amend	General security program requirements	B	B
10 CFR 37.43(c)(3)(iv)	Amend	General security program requirements	B	B
10 CFR 37.45(d)	Amend	LLEA coordination	B	C
10 CFR 37.49(a)(3)(ii)	Remove	Monitoring, detection, and assessment	B	-
10 CFR 37.49(c)(1)	Remove	Monitoring, detection, and assessment	B	-
10 CFR 37.49(c)(2)	Remove	Monitoring, detection, and assessment	B	-
10 CFR 37.49(d)	Amend and Reassign	Monitoring, detection, and assessment	B	B
10 CFR 37.51(a)	Remove	Maintenance and testing	C	-
10 CFR 37.51(b)	Remove	Maintenance and testing	C	-
10 CFR 37.53(b)	Amend	Requirements for mobile devices	B	B

## **XV. Executive Orders**

Additional information about these statutes and Executive Orders can be found at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/procedural-requirements>.

A. Executive Order 12866: Regulatory Planning and Review (as amended by Executive Order 14215, Ensuring Accountability for All Agencies)

The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is a significant regulatory action under section 3(f) of E.O. 12866. Accordingly, NRC submitted this proposed rule to OIRA for review. NRC is required to conduct an economic analysis in accordance with section 6(a)(3)(B) of E.O. 12866. More can be found in Section VII, of this document, “Regulatory Analysis.”

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this proposed rule can be found in Section VII, of this document, “Regulatory Analysis.”

D. Executive Order 14270: Zero-Based Regulatory Budgeting to Unleash American Energy

E.O. 14270, “Zero-Based Regulatory Budgeting to Unleash American Energy,” requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC’s permitting regime. The NRC determined that the regulatory changes proposed in this rule are necessary for compliance with Executive Order 14300. Therefore, the NRC views this rulemaking to be outside the scope of

Executive Order 14270 and did not insert conditional sunset dates for the regulatory changes in this proposed rule.

### **XVI. Criminal Penalties**

This proposed rule includes Federal regulations that, if adopted, would be enforceable by criminal penalty, as authorized by Section 223 of the AEA. Therefore, per E.O. 14294, those regulations constitute “criminal regulatory offenses.”

For the purposes of Section 223 of the AEA, the NRC is amending 10 CFR part 37 under one or more of Sections 161b, 161i, or 161o of the AEA, except as noted in § 37.109(b). The applicability of criminal penalties to regulations in part 37 is set forth in § 37.109. Willful violations of 10 CFR part 37, other than those listed in § 37.109(b) (including as updated by this proposed rule), would be subject to criminal enforcement.

### **XVII. Availability of Guidance**

The NRC expects to update NUREG-2155, “Implementation Guidance for 10 CFR Part 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,” Revision 2, dated March 2022, to conform with this rulemaking effort. To support an accelerated development schedule for this proposed rule, the updates will be made in a future revision of the guidance, rather than concurrently with this rulemaking. Interim guidance, in the form of frequently asked questions (FAQs), will be added to the NRC's public website.

You may submit comments on the draft FAQs by the methods outlined in the ADDRESSES section of this document.

### **XVIII. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

DOCUMENT	ADAMS ACCESSION NO. / WEB LINK / FEDERAL REGISTER CITATION
National Wage Data available on the Bureau of Labor Statistics (BLS) Web site for year 2024	<a href="https://data.bls.gov/oes/#/industry/000000">https://data.bls.gov/oes/#/industry/000000</a>
2011 regulatory analysis, “Regulatory Analysis for Final Rule: Physical Protection of Byproduct Material (10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73),” dated December 2011	ML112920114
Final rule, “Physical Protection of Byproduct Material (10 CFR Parts 20, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73),” dated March 19, 2013	78 FR 16922
OMB Supporting Statement and Associated Burden Spreadsheet—10 CFR Part 37—Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material Proposed Rule (OMB Clearance No. 3150-0214)	ML25287A035 (package)
NUREG-2155, “Implementation Guidance for 10 CFR Part 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,” Revision 2, dated March 2022	ML22083A141
E.O. 14154, “Unleashing American Energy,” dated January 29, 2025	90 FR 8353
E.O. 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” dated January 31, 2025	90 FR 8633
E.O. 14300, “Ordering the Reform of the Nuclear Regulatory Commission,” dated May 29, 2025	90 FR 22587
Draft FAQs for the Proposed Rule: Modernizing Requirements Relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material	ML25287A030

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2025-1238. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2025-1238); 2) click the “Subscribe” link; and 3) enter an email address and click on the “Subscribe” link.

#### List of Subjects in 10 CFR Part 37

Byproduct material, Criminal penalties, Exports, Hazardous materials transportation, Imports, Licensed material, Nuclear materials, Penalties, Radioactive materials, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 37:

**PART 37—PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL**

1. The authority citation for part 37 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 11, 53, 81, 103, 104, 147, 148, 149, 161, 182, 183, 223, 234, 274 (42 U.S.C. 2014, 2073, 2111, 2133, 2134, 2167, 2168, 2169, 2201, 2232, 2233, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

**§ 37.13 [Amended]**

2. In § 37.13(b), remove section number “37.51,”

3. In § 37.23, revise paragraphs (b)(2) and (c)(1) to read as follows:

**§ 37.23 Access authorization program requirements.**

\* \* \* \* \*

(b)\* \* \*

(2) Each licensee must name one or more individuals to be reviewing officials.

After completing the background investigation on the reviewing official, the licensee must 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 fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints.

\* \* \* \* \*

(c)\* \* \*

(1) Licensees may not initiate a background investigation without 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 must provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of § 37.25(b).

\* \* \* \* \*

4. In § 37.25, revise paragraph (b) and remove paragraph (c) to read as follows:

**§ 37.25 Background investigations.**

\* \* \* \* \*

(b) Grandfathering. Individuals who have been determined to be trustworthy and reliable under the provisions of part 73 of this chapter 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. The licensee must document that the individual was determined to be trustworthy and reliable under the provisions of part 73 of this chapter or a security order. Security order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride.

5. In § 37.43, revise paragraph (c)(3) to read as follows:

**§ 37.43 General security program requirements.**

\* \* \* \* \*

(c)\* \* \*

(3) Refresher training must be provided at least every 3 years and when significant changes have been made to the security program. This training must include:

(i) Review of the training requirements of paragraph (c) of this section and any changes made to the security program since the last training;

(ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review.

\* \* \* \* \*

6. In § 37.45, revise paragraph (d) to read as follows:

**§ 37.45 LLEA coordination.**

\* \* \* \* \*

(d) The licensee must coordinate with the LLEA at least every 3 years, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

7. In § 37.49, remove and reserve paragraph (a)(3)(ii), remove paragraph (c), and revise and redesignate paragraph (d) as paragraph (c) to read as follows:

**§ 37.49 Monitoring, detection, and assessment.**

\* \* \* \* \*

(c) *Response.* Licensees must 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 must include requesting, without delay, an armed response from the LLEA.

**§ 37.51 [Reserved]**

8. Remove and reserve § 37.51.

9. In § 37.53, revise paragraph (b) to read as follows:

**§ 37.53 Requirements for mobile devices.**

\* \* \* \* \*

(b) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee must utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

Dated: April 7, 2026.

For the Nuclear Regulatory Commission.

Carrie Safford,  
Secretary of the Commission.

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