

any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that nevertheless, pose ethical concerns. SSA ethics officials are available to provide advice and guidance to SSA employees as to such situations.

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## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76 and 150

RIN: 3150-AH57

### Protection of Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the protection of Safeguards Information (SGI) to protect SGI from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The proposed amendments are consistent with recent Commission practices reflected in orders and threat advisories, issued since September 11, 2001. The proposed amendments would affect certain licensees, information, and materials not currently specified in the regulations, but which are within the scope of Commission authority under the Atomic Energy Act of 1954, as amended (AEA).

**DATES:** The comment period expires March 28, 2005. Submit comments specific to the information collections aspects of this rule March 14, 2005. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH57) in the subject line of your comments. Comments on this rulemaking submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission,

Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher at (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal Rulemaking Portal <http://www.regulations.gov>.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone: (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101. Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be reviewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/ADAMS/index.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Marjorie Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1633, e-mail [MUR@nrc.gov](mailto:MUR@nrc.gov) or Bernard Stapleton, Office of Nuclear Security and Incident Response, Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2432, e-mail [BWS2@nrc.gov](mailto:BWS2@nrc.gov).

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### I. Background

Safeguards Information (SGI) is a special category of sensitive unclassified information to be protected from unauthorized disclosure under section 147 of the Atomic Energy Act of 1954, as amended (AEA). Although SGI is considered to be sensitive unclassified information, it is handled and protected more like classified National Security Information than like other sensitive unclassified information (e.g., privacy and proprietary information). Part 73, "Physical Protection of Plants and Materials," of the Commission's regulations in Title 10 of the Code of Federal Regulations contains requirements for the protection of SGI. Commission orders issued since September 11, 2001, have also imposed requirements for the designation and protection of SGI. These requirements apply to SGI in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires SGI. An individual's access to SGI requires both a valid "need to know" such information and authorization based on an appropriate background investigation. Power reactors, certain research and test reactors, and spent fuel storage installations are examples of the categories of licensees currently within the scope of the provisions of part 73 for the protection of SGI. Examples of the types of information designated as SGI include the physical security plan for a licensee's facility; the design features of such a licensee's physical protection system; and operational procedures for the licensee's security organization.

The Commission has authority under section 147 of the AEA to designate, by regulation or order, other types of information as SGI. For example, section 147.a.(2) allows the Commission to designate as SGI a licensee's or applicant's detailed security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material in quantities determined by the Commission to be significant to the public health and

safety or the common defense and security. The Commission has, by order, imposed SGI handling requirements on certain categories of these other licensees. An example is a November 25, 2003 order issued to certain materials licensees.<sup>1</sup>

Violations of SGI handling and protection requirements, whether those specified in part 73 or those imposed by order, are subject to the applicable civil and criminal sanctions. Employees, past or present, and all persons who have had access to SGI have a continuing obligation to protect SGI in order to prevent inadvertent release and unauthorized disclosure. Information designated as SGI must be withheld from public disclosure and must be physically controlled and protected. Protection requirements include (1) secure storage; (2) document marking; (3) restriction of access; (4) limited reproduction; (5) protected transmission; and (6) controls for information processing on electronic systems.

Inadequate protection of SGI, including inadvertent release and unauthorized disclosure, may result in civil and/or criminal penalties. The AEA explicitly provides in section 147.a. that “any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.” Furthermore, willful violation of any regulation or order governing SGI is a felony subject to criminal penalties in the form of fines or imprisonment, or both, as prescribed in section 223 of the AEA.

## II. Need for Rule

Changes in the threat environment have revealed the need to protect additional types of security information held by a broader group of licensees as SGI. Under the current regulations, some categories of licensees are not explicitly included in the categories of licensees subject to the general performance requirements in 10 CFR 73.21(a). Similarly, the current regulations do not specify all of the types of information that are now recognized to be significant to the public health and safety or the common

defense and security. The unauthorized release of this information could result in harm to the public health and safety and the Nation’s common defense and security, as well as damage to the Nation’s critical infrastructure, including nuclear power plants and other facilities and materials licensed and regulated by the NRC.

Since September 11, 2001, the NRC has issued orders that have increased the number of licensees whose security measures will be protected as SGI and have added additional types of security information considered to be SGI. Orders have been issued to power reactor licensees, fuel cycle facility licensees, certain source material licensees, and certain byproduct material licensees. Some of the orders expanded the types of information to be protected by licensees who already have an SGI protection program, such as nuclear power reactor licensees. Other orders were issued to licensees that have not previously been explicitly subject to SGI protection requirements in the regulations, such as certain licensees authorized to manufacture or initially transfer items containing radioactive material.<sup>2</sup> Some orders impose a new designation: Safeguards Information—Modified Handling (SGI-M). SGI-M pertains to certain SGI subject to handling requirements that are modified from what part 73 itself currently requires. This designation for SGI applies to certain quantities of source, byproduct, and special nuclear materials for which the risk of unauthorized disclosure of information is relatively low. In contrast, more stringent requirements are imposed for the protection of SGI pertaining to licensees such as power reactors and certain fuel cycle facilities.

Some of the requirements imposed by orders that have increased the types of information to be considered SGI are not covered by the current regulations. Although new SGI requirements could continue to be imposed through the issuance of orders, the regulations would not reflect current Commission SGI policy and/or requirements. Orders apply only to the licensees named in the orders, and enforcement orders do not apply prospectively to applicants for new licenses such as a rule would. *Duke Energy Corp.* (Catawba Nuclear Station, Units 1 and 2), CLI-04-6, 59 NRC 62 (2004) (February 18, 2004). Finally, it has been Commission policy to codify requirements in the regulations and not to rely on orders indefinitely to impose requirements that should have generic application.

<sup>2</sup> See 69 FR 3397 (January 23, 2004).

## III. Purpose of Rulemaking

NRC staff review of the SGI regulatory program indicates that changes in the regulations are needed to address issues such as access to SGI, types of security information to be protected, and handling and storage requirements.<sup>3</sup>

This rulemaking would:

Codify the SGI requirements imposed by the orders;

Expand the scope of part 73 to include additional categories of licensees (e.g., source and byproduct material licensees, research and test reactors not previously covered, and fuel cycle facilities not previously covered);

Expand the types of security information covered by the definition of SGI in § 73.21 to include access authorization for background screening, detailed emergency planning scenarios and implementing procedures, vulnerabilities or weaknesses corrected in a security system, and some training and qualification information; and

Update § 73.21 to address advanced technology, such as new types of portable communication devices and copiers using digital technology.

A graded approach based on the risks and consequences of information disclosure is being used in determining which category of licensee or type of information will be subject to certain protection requirements. This graded approach can be applied to such issues as the type of information to be protected, the classes of licensees subject to the rule, and the level of handling requirements necessary for the various licensees. For example, the graded approach allows certain licensees, whose quantities and forms of material pose a low risk from unauthorized information disclosure, to employ the modified-handling procedures introduced in recent orders for Safeguards Information designated as SGI-M.

The requirements set forth in this proposed rule are the minimum restrictions the Commission believes to be necessary in the current threat environment to protect Safeguards Information against inadvertent release or unauthorized disclosure which might compromise the health and safety of the public or the common defense and security. The proposed rule covers those facilities and materials the Commission has already determined need to be protected against theft or sabotage. The

<sup>3</sup> The NRC staff is in the process of revising the guidance for designation of SGI and has issued a draft document for comment (Nuclear Regulatory Commission Draft Guide for the Designation of Safeguards Information, July 2004).

<sup>1</sup> This order was published in the **Federal Register** as “All Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Who Possess Certain Radioactive Material of Concern and All Persons Who Obtain Safeguards Information Described Herein; Order Issued on November 25, 2003 Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately),” (69 FR 3397 (January 23, 2004).

categories of information constituting SGI relate to the types of facilities and the quantities of special nuclear material, source material and byproduct material determined by the Commission to be significant and therefore subject to protection against unauthorized disclosure pursuant to section 147 of the AEA. Unauthorized release of Safeguards Information could reduce the deterrence value of systems and measures used to protect nuclear facilities and materials and allow for the possible compromise of those facilities and materials. Such disclosures could also facilitate advance planning by an adversary intent on committing acts of theft or sabotage against the facilities and materials within the scope of the rule. The rule requirements satisfy the minimum restrictions provision of section 147.a.(3)(A) of the AEA. Further, the Commission has determined, pursuant to section 147.a.(3)(B) of the AEA, that the unauthorized disclosure of the information that is the subject of the proposed rule could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of nuclear material or a facility.

#### IV. Request for Specific Comment

The NRC is soliciting specific public comment on the following issue associated with the proposed rulemaking action:

Differing Requirements for Access to SGI and SGI-M—sections 73.22(b)(1) and 73.23(b)(1) contain differing requirements for performing background checks and making trustworthiness and reliability determinations for granting personnel access to SGI or SGI-M. Specifically, under § 73.22(b)(1)(i)(A), an individual to be authorized access to SGI by a nuclear power reactor applicant or licensee must demonstrate trustworthiness and reliability and undergo a Federal Bureau of Investigation criminal history check to the extent required by § 73.57, which includes fingerprinting. Individuals to be authorized access to SGI by other applicants or licensees covered by § 73.22 or by a source, byproduct, or special nuclear material applicant or licensee pursuant to § 73.23(b)(1)(i) must demonstrate trustworthiness and reliability through a comprehensive background check or other means approved by the Commission. These different requirements are based on the statutory authorization in section 149 of the AEA for the NRC to require fingerprinting of individuals to be granted access to SGI by nuclear power

reactor applicants or licensees. There is not a similar statutory authorization to require fingerprinting by other applicants or licensees.

The NRC specifically invites comment on whether stakeholders would perceive difficulties in complying with these varying requirements. If so, the Commission would welcome stakeholder's suggestions, comments, and/or proposals which would provide a more uniform approach to background checks and trustworthiness and reliability determinations.

#### V. Discussion of Proposed Amendments by Section

Conforming changes to 10 CFR part 2, "Rules of practice for domestic licensing proceedings and issuance of orders," would be made to the following sections to include citation of 10 CFR 73.22 and 73.23, in addition to citation of current § 73.21, as applicable appropriate: paragraph (f) of § 2.709, "Discovery against NRC staff;"<sup>4</sup> paragraph (a)(4)(iii) of § 2.1003, "Availability of material;" and paragraph (b)(6) of § 2.1010, "Pre-License application presiding officer."

Conforming changes are also being proposed to 10 CFR part 30, "Rules of general applicability to domestic licensing of byproduct material," and 10 CFR part 40, "Domestic licensing of source material." The proposed changes would add provisions to the sections of those parts addressing applications for specific licenses and terms and conditions of licenses. In part 30, §§ 30.32, "Application for specific licenses" and 30.34, "Terms and conditions of licenses," would be amended to include citation of §§ 73.21 and 73.23. In part 40, corresponding sections (§§ 40.41 and 40.31) would be amended to include citation of § 73.21 and the requirements of § 73.22 or § 73.23, as applicable. With these additions, it should be clear that part 30 and part 40 licensees and applicants (subject to 10 CFR part 73), under each part would be required to protect categories of documents and information in accordance with the requirements of part 73.

Conforming changes to 10 CFR part 50, "Domestic licensing of production and utilization facilities," would add to § 50.34, "Contents of applications; technical information" and § 50.54, "Conditions of licenses," citations to § 73.22, "Protection of Safeguards Information: Specific Requirements"

and § 73.23, "Protection of Safeguards Information-Modified Handling: Specific Requirements." The purpose of these changes would be to reflect that specific requirements for protecting SGI relating to such licensees and materials would be moved from § 73.21 to proposed § 73.22 and § 73.23, of this chapter, as applicable.

Conforming changes are also being proposed to 10 CFR part 52, "Early site permits; standard design certifications; and combined licenses for nuclear power plants." Specifically, § 52.47, "Contents of applications," relating to standard design certifications, would be amended to add as paragraph (c) the requirement that an applicant for a standard design certification under part 52 shall protect SGI against unauthorized disclosure in accordance with the requirements of §§ 73.21 and 73.22 of this chapter, as applicable. A similar conforming change is being proposed for § 52.79, "Contents of application; technical information," relating to combined licenses for nuclear power facilities.

Part 60, "Disposal of high-level Radioactive wastes in geologic repositories," would be amended to add in § 60.21, "Content of application," new paragraph (d). That paragraph would state that the application for a license for a geologic repository operations area shall protect as SGI detailed security measures and related information, in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable. A parallel change would be made to a new paragraph (d) to § 60.42, "Conditions of license."

Part 63, "Disposal of high-level radioactive wastes In a geologic repository at Yucca Mountain, Nevada," would be amended to add new paragraph (d) to § 63.21, "Content of application." That section would state that the applicant for a license to receive and possess source, byproduct, and special nuclear material at a geologic repository at Yucca Mountain, Nevada shall protect the detailed security measures for the physical protection of high-level radioactive waste as SGI in accordance with §§ 73.21 and 73.22. A corresponding change (*i.e.*, adding new paragraph (e)) would be made to § 63.42, "Conditions of license."

Conforming changes are being proposed for 10 CFR part 70, "Domestic licensing of special nuclear material," subpart D—"License applications." Specifically, § 70.22, "Contents of applications," and § 70.32 "Conditions of licenses," would be modified to add citation of proposed § 73.23. These modifications are being proposed to be

<sup>4</sup> In § 2.709(f), which replaces former § 2.744(e), a few changes in the language and citations in former § 2.744(e), not relevant here, were made as part of a separate rulemaking amending 10 CFR part 2. "Changes to Adjudicatory Process; Final Rule," FR 2182, 2262 (January 14, 2004).

consistent with the addition of proposed § 73.23 containing specific requirements for Safeguards Information—Modified Handling related to certain quantities of source and byproduct material and special nuclear material of moderate or low strategic significance, except for those materials covered under § 73.22.

Part 71, “Packaging and transportation of radioactive material,” would be amended to add new § 71.11, “Protection of Safeguards Information” because licensees, certificate holders, or applicants for a Certificate of Compliance for transport of radioactive material would be required to protect Safeguards Information in accordance with the applicable amended requirements in part 73. The proposed revision does not address the protection of design-related information with respect to transportation packages.

Part 72, “Licensing requirements of the independent storage of spent nuclear fuel, high-level radioactive waste, and reactor-related greater than Class C waste,” would also be amended. A new paragraph (f) would be added to § 72.22, “Contents of application; General and financial information,” to require that each applicant for a license under part 72 would be required to protect SGI against unauthorized disclosure in accordance with § 73.21 and the requirements of § 73.22 or § 73.23, of this chapter, as applicable. In § 72.44, “License conditions,” paragraph (h) would include a similar requirement for each licensee subject to part 73. Section 72.212 would be changed to designate paragraph (b)(5)(v) as paragraph (b)(5)(vi) and a new paragraph (b)(5)(v) would be added to require that each general licensee that receives, transfers, and possesses power reactor spent fuel, power reactor-related Greater than Class C (GTCC) waste, and other radioactive materials associated with spent fuel storage shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23, of this chapter, as applicable. A new paragraph (n) would be added to § 72.236, “Specific requirements for spent fuel storage cask approval and fabrication,” to note that Safeguards Information shall be protected against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

#### Section 73.1 Purpose and Scope

Paragraph (b)(7) of this section would be amended to include a reference to “Safeguards Information-Modified Handling” (SGI-M), the designation for

marking of documents containing Safeguards Information (SGI) to which the Commission has determined modified protection requirements apply. Orders to certain materials licensees contain this new SGI-M designation and the handling requirements for such information.

#### Section 73.2 Definitions

This section would be amended to add definitions of the terms *Individual Authorized Access to Safeguards Information* and *Individual Authorized Access to Safeguards Information-Modified Handling; Trustworthiness and Reliability*, and *Safeguards Information-Modified Handling Requirements*. In addition, the definition of the term *Safeguards Information* would be modified.

The new terms *Individual Authorized Access to Safeguards Information* and *Individual Authorized Access to Safeguards Information-Modified Handling*, would be added to distinguish such individuals from an “authorized individual,” which is defined now to apply only to the control of and access to special nuclear material, without reference to handling of information or documents.

The new term, *Safeguards Information-Modified Handling*, would be added to reflect the new designation for marking of SGI subject to this regulation. This marking has been previously established through Commission orders.

The new term, *Trustworthiness and Reliability*, would be added to reflect Commission expectations regarding positive character attributes for access to SGI and SGI-M handling in addition to an individual’s “need to know” such information. This expectation is embodied elsewhere in part 73 (§ 73.56, “Personnel access authorization requirements for nuclear power plants.”) and in 10 CFR 26.10, “General performance objectives,” for fitness-for-duty. Specifically, § 73.56(b) requires, as a performance objective of a licensee’s access authorization program, “high assurance” that individuals granted unescorted access to a nuclear power plant’s protected and vital areas are trustworthy and reliable. Similarly, under § 26.10(a), a licensee’s fitness-for-duty program must provide reasonable assurance that covered personnel will perform their tasks in a “trustworthy and reliable manner.”

The definition of “*Safeguards Information*” would be changed to reflect that certain categories of information relating to source and byproduct material are subject to protection as SGI against unauthorized

disclosure pursuant to section 147 of the AEA. In addition, this definition would embody the Commission’s authority under section 147 of the AEA to determine, by order or regulation, that the unauthorized disclosure of other information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials and facilities. The Commission may from time to time exercise its authority under section 147.a.<sup>5</sup> of the AEA to define additional information as SGI. Thus, the public and other stakeholders would, through orders or new regulations, be given notice of any additional definitions of SGI.

The proposed definition of SGI would also delete the words “licensee’s or applicant’s” [information]. This change is being proposed to reflect in the regulations the Commission’s authority under section 147 of the AEA to determine that other information involving the materials described in that provision shall be protected as SGI. This authority can be exercised if the unauthorized disclosure of that information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials and facilities regulated by the Commission. The proposed change is also based on the Commission’s very broad authority under section 161.b. of the AEA to regulate the use and possession of source, byproduct, and special nuclear material in order to promote the common defense and security or to protect health and minimize danger to life or property.

#### Section 73.21 Protection of Safeguards Information: Performance Requirements

This section would be revised as follows:

##### Section 73.21(a) General Performance Requirements

The language in paragraph (a) would be simplified and revised to state at the outset that any person, including a licensee or an applicant, who produces, receives or acquires SGI shall ensure that it is protected against unauthorized disclosure. Although this is not a new requirement under § 73.21(a), the current language and format of that paragraph does not emphasize this as an

<sup>5</sup> In the exercise of this authority, the Commission makes certain determinations and applies the minimum restrictions necessary to protect SGI, in compliance with section 147 of the AEA.

obligation that extends to any person who produces, receives, or acquires SGI.

Revised paragraphs § 73.21(a)(1)(i) and (a)(1)(ii) would embody the general performance requirement in paragraph (a) of current § 73.21 that licensees, applicants, and persons subject to that section must establish, implement, and maintain an information protection system that includes specified measures. However, the proposed rule presents separate requirements for the different categories of licensees.

Proposed § 73.22 contains the specific requirements for Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures. Measures for protecting SGI relating to certain quantities of source and byproduct material, and special nuclear material of moderate or low strategic significance are specified in proposed § 73.23.<sup>6</sup>

Although the measures for the protection of SGI are applicable if the information is produced, received, or acquired, if licensees do not have such information then the associated requirements would not apply. For example, research and test reactors are not required to implement the power reactor Design Basis Threat (DBT),<sup>7</sup> and therefore, in all likelihood would not possess DBT-related information. However, should a research and test reactor receive or acquire such information, it would be required to protect the information in accordance with applicable measures.

Including the references to source, byproduct, and special nuclear material in these new paragraphs would reflect the full scope of section 147 of the AEA. That section authorizes the Commission to protect against the unauthorized disclosure of SGI which specifically identifies a licensee's or applicant's detailed procedures or security measures relating to special nuclear material, byproduct material, and source material, in quantities determined by the Commission through order or

regulation to be significant. This change would lessen the need for the Commission to issue orders to licensees for the protection of SGI relating to categories of licensees, information, or materials not currently within the scope of part 73.

Section 73.21(a)(1)(i) and (a)(1)(ii) would also add the word "implement" to the requirement in current § 73.21(a) that licensees and persons subject to this section must establish and maintain an information protection system to protect against the unauthorized disclosure of SGI.

#### *Section 73.21(b) Commission Authority*

This is a new paragraph that recognizes the Commission's broad authority and flexibility under section 147 of the AEA to designate information as SGI or SGI-M and to impose levels of handling requirements on any person who produces, receives, or acquires SGI. In exercising this authority, the Commission is required to make a finding that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of the theft, diversion, or sabotage of a facility or source, byproduct, and special nuclear material. In addition, the Commission is to impose the minimum restrictions necessary to protect the health and safety of the public or the common defense and security.

The remaining paragraphs of § 73.21 will be renumbered into new §§ 73.22 and 73.23, and modified as noted.

#### *Section 73.22 Protection of Safeguards Information: Specific Requirements*

New § 73.22 would be added, containing specific requirements for Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures.

#### *Section 73.22(a) Information To Be Protected*

Current § 73.21(b) "Information To Be Protected," would be renumbered as § 73.22(a) and be revised to add specificity to the types of information and documents that must be protected as SGI. Such information and documents would include the elements

and characteristics of the DBT in a level of detail greater than that specified in § 73.1, as well as security-related requirements to be protected against unauthorized disclosure such as protective measures, interim compensatory measures, and additional security measures. These changes are necessary to codify in the regulations the recent practices of the Commission as reflected in orders and threat advisories issued since September 11, 2001.

Section 73.21(a)(1), "Physical Protection at Fixed Sites," would be changed to be consistent with the language in section 147.a.(1), (2), and (3) of the AEA to include information relating to all of the materials there specified. As revised, paragraph (a)(1) of § 73.21 would not be limited to information concerning the protection of power reactors authorized to operate and facilities that possess formula quantities of strategic special nuclear material, as is current § 73.21(b)(1). Section (a)(1)(i) would be revised to delete the word "nuclear" to be consistent with the terminology in section 147 of the AEA. In addition, the words "All portions of" would be added at the beginning of this category to make clear the broader scope of this category of information intended to be protected as SGI.

Sections 73.22(a)(1)(iii) and 73.22(a)(1)(v) embody changes to current § 73.21(b)(1)(iii) and current § 73.21(b)(1)(v). The new § 73.22(a)(ii) would delete the words "Details of" at the beginning of these categories of information to make clear the broader scope of the information intended to be protected as SGI.

Section 73.22(a)(1)(vi) would be current § 73.21(b)(1)(vi) and would be amended to include the phrase "passwords integral to the physical security system" because such passwords constitute the type of information that should be protected as SGI.

Section 73.22(a)(1)(viii), current § 73.21(b)(1)(viii), and § 73.22(a)(1)(ix), current § 73.21(b)(1)(ix), would be revised to add at the beginning of each category the words "All portions of." This change would make it clear that the referenced plans in their entirety and subparts are intended to be designated as SGI. In addition, current § 73.21(a)(1)(ix) would be changed to recognize the importance of the licensee's overall facility guard training and qualification plan as a "composite" plan.

New § 73.22(a)(1)(x) would reflect a combination of current paragraphs § 73.21(b)(1)(x), § 73.21(b)(1)(xi), and

<sup>6</sup> The quantities are those determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security.

<sup>7</sup> The DBTs, as described in 10 CFR 73.1, provide specific adversary characteristics which power reactor and Category I fuel cycle facilities need to protect against. The DBTs form the basis for site-specific defensive strategies as set forth in a site's physical security plan and contingency plan.

§ 73.21(b)(1)(xii). As revised, this paragraph would specify the enumerated aspects of response forces.

Proposed § 73.22(a)(1)(xi) would be added to cover information concerning the size, tactics and capabilities required to defend against the DBT or information that would disclose elements and characteristics of the DBT in a greater level of detail than that specified in § 73.1.

Proposed § 73.22(a)(1)(xii) would be added to specify for protection as SGI engineering and safety analyses, emergency planning procedures or scenarios, and other similar information relating to the physical protection of a facility or materials if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Proposed § 73.22(a)(1)(xiii) is the current § 73.21(b)(1)(xiii).

#### *Section 73.22(a)(2) Physical Protection in Transit*

The introductory paragraph in current § 73.21(b)(2) and § 73.21(b)(2)(i), § 73.21(b)(2)(iii) and § 73.21(b)(2)(iv) are renumbered as new introductory paragraph § 73.22(a)(2), § 73.22(a)(2)(i), § 73.22(a)(2)(iii) and § 73.22(a)(2)(iv). The introductory paragraph would be changed to reflect the applicability of § 73.22 to the transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel.

Section 73.22(a)(2)(i) would be revised to include the words "All portions of" to make it clear that these plans in their entirety and subparts are intended to be designated as SGI.

Current § 73.21(b)(2)(ii) would be renumbered as § 73.22(a)(2)(ii) but would otherwise be unchanged.

Current § 73.21(b)(2)(iii) would be renumbered as § 73.22(a)(2)(iii) and changed to delete the words "Details of" to clarify that the features, devices, and systems in their entirety are a category of SGI to be protected as such.

Current § 73.21(b)(2)(iv) would be renumbered as § 73.22(a)(2)(iv) and would be otherwise unchanged.

Current § 73.21(b)(2)(v) would be renumbered as § 73.22(a)(2)(v) and would delete the words "radio-telephone" so as to encompass the more modern means of communications. This section would also delete the words "Details regarding" to clarify that all aspects of communications during

transport are included in this category of information.

Current § 73.21(b)(2)(vi) would be renumbered as § 73.22(a)(2)(vi) and would add the word "security" before the word "emergencies".

Section 73.22(a)(2)(vii) is new and its purpose would be to encompass information concerning the tactics and capabilities required to defend against attempted radiological sabotage or theft and diversion of formula quantities of special nuclear material or related information.

Section 73.22(a)(2)(viii) would be added to include as information to be protected as SGI, engineering or safety analyses and emergency planning procedures or scenarios relating to the protection of a facility or material if the unauthorized disclosure of that information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such facility or material.

Section 73.22(a)(3) is based on current § 73.21(b)(3), "Inspections, audits and evaluations," and would be broadened to cover specific requirements for Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures. Detailed information regarding defects, weaknesses or vulnerabilities is generally not released because identical circumstances may apply to a licensee or applicant employing similar security measures. In addition, the types of inspections and reports within the scope of the section would not be limited to safeguards inspections and reports. This language would recognize that documents concerning other types of inspections could contain SGI.

Current § 73.21(b)(4), Correspondence, would be renumbered § 73.22(a)(4) and would be otherwise unchanged.

Section 73.22(a)(5) would be new and would reflect the authority of the Commission under Section 147.a. of the AEA to designate as SGI such other information as the Commission may determine by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft,

diversion, or sabotage of material or a facility (within the scope of § 73.22). The Commission, may from time to time, exercise its authority under section 147.a.<sup>8</sup> of the AEA to define additional information as SGI and the public and other stakeholders would have notice as to what these additional definitions of SGI are, through orders or new regulations, that would specifically define SGI.

Section 73.22(b) is based on current § 73.21(c) through (i), which address access to SGI and specific requirements for protecting it from unauthorized disclosure. The Commission is proposing to re-structure part 73 to accommodate the separate handling requirements for SGI-M, imposed by order or regulation on certain byproduct, source, and special nuclear materials licensees. Proposed § 73.22 would contain the specific requirements for Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures. Corresponding specific requirements for SGI-M relating to certain quantities of source and byproduct material, and special nuclear material of low or moderate strategic significance would be set forth in proposed § 73.23.

Section 73.22(b)(1) would state, as does current § 73.21(c)(1), the requirement that no person may have access to SGI unless the person has an established "need to know" the information and fits within described occupational categories (proposed § 73.22(b)(1)(i) through (vii)). The new § 73.22(b)(1)(i)(A) and (B) add the requirement that individuals authorized access to SGI by a nuclear power reactor licensee and non-power reactor licensees and applicants, demonstrate "trustworthiness and reliability" prior to such access. The Commission has also updated the descriptions in § 73.21(c)(1)(ii) through (vi) of some of the occupational groups and added a new group, as described below.

The description of the occupational category in § 73.22(b)(1)(i), (Commission, U.S. government, or licensee or applicant employee, agent, or contractor) would change the language in current § 73.21(c)(1)(i) from

<sup>8</sup>In the exercise of this authority, the Commission would make certain determinations and apply the minimum restrictions necessary to protect SGI.

“U.S. Government” to “Executive Branch” of the U.S. Government. This change is necessary because for purposes of access to SGI, members of Congress are covered separately in the occupational category specified in proposed § 73.22(b)(1)(i).

Additionally, new § 73.22(b)(1)(i)(A) would require that an individual authorized access to SGI by a nuclear power reactor facility applicant or licensee must undergo an FBI criminal history check and must demonstrate trustworthiness and reliability. Another new paragraph, § 73.22(b)(1)(i)(B) would be added, mandating that individuals to be authorized access to SGI by a non-power reactor facility applicant or licensee must also demonstrate trustworthiness and reliability. However, this demonstration would be based on a comprehensive background check or other means approved by the Commission in lieu of the FBI criminal history check.

Section 73.22(b)(1)(ii) is based on current § 73.21(c)(1)(ii) but would delete the phrase “a duly authorized committee of” [the Congress]. Under the Commission’s current regulations in § 73.21(c)(1)(ii), a member of a “duly authorized committee of the Congress” with a “need to know” SGI is given access to such information. This section of the regulations does not set forth the meaning of a “duly authorized committee.” If narrowly interpreted, this occupational category might only apply to members of Congress who serve on NRC oversight committees. The deletion in the proposed rule of the phrase “a duly authorized committee” [of the Congress] would mean that the authorization would extend to all members of Congress (with a “need to know” SGI). This change would be made because many members of Congress are not on NRC oversight committees, yet they may need access to SGI because of the presence of nuclear facilities or materials in their states or districts. As amended, the language would not alter the Commission’s current practices in responding to requests from members of Congress for access to SGI.

In addition, the authorization in current § 73.21(c)(1)(ii) does not extend to congressional staff. The Commission is not proposing to extend the authorization to congressional staff. On a case-by-case basis, with explicit authorization from the appropriate NRC office, the NRC staff could share SGI with a Congressional staff member with a “need to know” SGI and who otherwise meets the requirements for access to such information.

Section 73.22(b)(1)(iii) renumbers current § 73.21(c)(1)(iii) and would be otherwise unchanged.

Section 73.22(b)(1)(iv) is based on current § 73.21(c)(1)(iv) but the word “representative” is being made plural to account for the fact that more than one representative may be designated under this occupational category. The plural form is consistent with similar language in the descriptions of occupational categories in current § 73.21(c)(1).

Current § 73.21(c)(1)(v) would be renumbered as paragraph (b)(1)(v) and the description of this occupational category would be changed to “employees” (which would include the current term “member”) of a state or local law enforcement authority who are responsible for responding to requests for assistance during safeguards or securities emergencies.

Section 73.22(b)(1)(vi) includes as an occupational category, State Radiation Control Program Directors and Homeland Security Advisors or their designated representatives. This category corresponds to § 73.23(b)(1)(iii).

Section 73.22(b)(1)(vii) is current § 73.21(c)(1)(vi) and substitutes the citation of 10 CFR § 2.709(f) for § 2.744(e) because the latter citation is outdated.

Section 73.22(b)(2) contains a statement contained in a recent Commission order<sup>9</sup> that finds that individuals in the occupational categories described in § 73.22(b)(1)(ii) through § 73.22(b)(1)(vii)<sup>10</sup> are considered to be trustworthy and reliable by virtue of their occupational status. For non-governmental individuals described in § 73.22(b)(1)(i), a determination of trustworthiness and reliability is required prior to granting access to SGI. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI, they are not authorized to receive SGI-M.

<sup>9</sup> e.g., “All Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess Certain Radioactive Material of Concern and All Other Persons Who Obtain Safeguards Information; Order Imposing Requirements for the Protection of Certain Safeguards Information (Effective Immediately)” (69 FR 3397, 3399; January 23, 2004).

<sup>10</sup> Individuals (or in some cases, their designated representatives) in the following occupational groups are included: State Governors, representatives of the IAEA, employees of state or local law enforcement, State Radiation Control Program Directors and State Homeland Security Advisors, and individuals to whom disclosure is ordered pursuant to 10 CFR 2.709(f). (69 FR 3399; January 23, 2004).

#### *Section 73.22(c) Protection While in Use or Storage*

Section 73.22(c)(1) contains the identical requirement in current § 73.21(d), that while in use, matter containing SGI shall be under the control of an individual authorized access to SGI.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. Some examples of these areas would be: Alarm stations, guard posts and guard ready rooms; engineering or drafting areas if visitors are escorted and information is not clearly visible; plant maintenance areas if access is restricted and information is not clearly visible; administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible. The primary consideration is limiting access to those who have a “need to know” and are authorized to have access. Section 73.22(c)(2) would be revised to limit access to lock combinations.

#### *Section 73.22(d) Preparation and Marking of Documents or Other Matter*

Section 73.22(d) would revise current § 73.21(e) to add in the title “or other matter,” to be consistent with the language in the substantive paragraphs that follow. In addition, a new provision would be added to require certification that a document or other matter contains SGI and the certification must set forth the name and title of the certifying official and the certification date. Also, portion marking would be required for correspondence to NRC. Such marking would have to be sufficient to allow the recipient to identify and distinguish those sections of the document or other matter containing the protected information from the information that is otherwise unprotected.

#### *Section 73.22(e) Reproduction of Matter Containing Safeguards Information*

Section 73.21(f) is renumbered to become § 73.22(e) and the text is revised to include direction for the use of digital copiers and to delete language regarding destruction of SGI, which has been relocated to § 73.22(i).

#### *Section 73.22(f) External Transmission of Documents and Material*

Section 73.22(f)(1) would amend § 73.21(g)(1) to set forth detailed requirements for packaging SGI when transmitted outside an authorized place of use or storage. These prescriptive requirements are consistent with the current practices of nuclear power

reactor licensees and the Commission now deems it necessary to require them to adequately protect SGI or SGI-M when such information is transmitted externally.

Section 73.22(f)(2) would amend § 73.21(g)(2) to conform to other changes made by this rulemaking.

Section 73.22(f)(3) would add language to current § 73.21(g)(3) to permit transmission of SGI by protected telecommunication circuits (including facsimile) or encryption (Federal Information Processing Standard). Both of these means of transmission must be approved by the appropriate NRC office.

*Section 73.22(g) Processing of SGI on Electronic Systems*

This section updates the title and expands the content of current § 73.21(h), "Use of automatic data processing (ADP) systems," to refer to the processing of SGI on electronic systems and to add specific requirements applicable to the computer processing of SGI.

*Section 73.22(h) Removal From Safeguards Information Category*

Section 73.22(h) revises current § 73.21(i) to add further restrictions on decontrolling SGI. One proposed change concerns the degree of care that must be exercised in removing information from the SGI category. The other new requirement would specify that the authority to determine that a document may be decontrolled shall be exercised only by the NRC or with NRC approval, or in consultation with the individual or organization that made the original determination, if possible. Removal from the SGI-M category is addressed in § 73.23(h).

*Section 73.22(i) Destruction of Matter Containing SGI*

Section 73.22(i) contains revised language from current § 73.21(f) to be consistent with the policies set forth in the orders regarding the destruction of documents.

*New Section 73.23 Protection of Safeguards Information-Modified Handling: Specific Requirements.*

This is a new section which would set forth the specific requirements for Safeguards Information—Modified Handling related to certain quantities of source and byproduct material and special nuclear material of moderate or low strategic significance, except for those materials covered under section 73.22. The term "SGI-M" would be used as the distinguishing marking for SGI relating to certain source, byproduct, and special nuclear material licensees. Section 73.23 is based on the

Commission's orders and threat advisories issued to certain byproduct materials licensees.

*Section 73.23(a) Information To Be Protected*

Section 73.23(a) sets forth the information to be protected in accordance with the handling requirements specified in § 73.23(c) through (i). In general terms, information deemed SGI-M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. SGI-M is the designation and marking for SGI which is subject to these requirements. The overall measure for consideration of SGI-M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act; the more specific the information, the more likely that it will be useful to an adversary.

Section 73.23(a) states that the specific types of information and documents to be protected as SGI-M include security-related requirements that must be protected from unauthorized disclosure such as protective measures, interim compensatory measures, and additional safety features. Sections 73.23(a)(1) through (a)(4) enumerate and describe the specific categories of SGI-M to be protected. These categories of information are based on those proposed in § 73.22(a)(1) through (a)(5), as applicable, which in turn update the types of information specified in current § 73.21(b)(1) through (b)(4). In reference to proposed § 73.23(a)(3)(i), regarding portions of certain inspection reports, evaluations, audits, or investigations, detailed information regarding defects, weaknesses or vulnerabilities is generally not released because identical circumstances may apply to licensees or applicants employing similar security measures. Section 73.23(a)(4) references correspondence as it pertains to this section.

Section 73.23(a)(5) would be new and would reflect the authority of the Commission under section 147a of the AEA to designate as SGI such other information as the Commission may determine by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft,

diversion, or sabotage of material or a facility (within the scope of § 73.22). The Commission, may from time to time, exercise its authority under section 147.a.<sup>11</sup> of the AEA to define additional information as SGI and the public and other stakeholders would have notice as to what these additional definitions of SGI are, through orders or new regulations, that would specifically define SGI.

Section 73.23(b)(1) addresses conditions for access to SGI-M. Authorization for access to SGI-M by licensee employees, agents, or contractors must be based on both an appropriate "need to know" determination by the licensee, as well as a determination concerning the trustworthiness and reliability of individuals having access to the information. Employees of an organization associated with the licensee's company, for example, a parent company, may be considered as employees of the licensee for access purposes. A recipient of SGI-M should be made aware that the information is SGI-M and those having access to it are subject to the requirements for its protection as well as civil and criminal sanctions for mishandling the information.

Section 73.23(b)(1)(ii) through (vi) describes occupational groups who are deemed to be trustworthy and reliable by virtue of their employment status. For non-governmental individuals in § 73.23(b)(1)(i) and (vii), a determination of trustworthiness and reliability is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection of the SGI-M, they are not authorized to receive SGI-M.

Section 73.23(b)(1)(ii) is identical to the current § 73.21(c)(1)(ii), except the phrase "a duly authorized committee of" [the Congress] would be deleted. Under the Commission's current regulations in § 73.21(c)(1)(ii), a member of a "duly authorized committee of the Congress" with a "need to know" SGI is given access to such information. This section of the regulations does not set forth the meaning of a "duly authorized committee." The deletion in the proposed rule of the phrase "a duly authorized committee" [of the Congress] would mean that the authorization would extend to all members of Congress (with a "need to know" SGI-

<sup>11</sup> In the exercise of this authority, the Commission would make certain determinations and apply the minimum restrictions necessary to protect SGI.

M). This change would be made because many members of Congress are not on NRC oversight committees, yet may need access to SGI-M because nuclear facilities or materials are located in their states or districts. As amended, the language would not alter the Commission's current practices in responding to requests from members of Congress for access to SGI.

In addition, the authorization in current § 73.21(c)(1)(ii) does not extend to Congressional staff. The Commission is not proposing to extend the authorization to Congressional staff. On a case-by-case basis, with explicit authorization from the appropriate NRC office, the NRC staff could share SGI-M with a Congressional staff member with a "need to know" SGI and who otherwise meets the requirements for access to such information.

Section 73.23(b)(1)(iii) corresponds to § 73.22(b)(1)(iii), which includes the Governor of a state or designated representatives as an occupational category presumed to be trustworthy and reliable for access to SGI.

Section 73.23(b)(1)(iv) is based on § 73.21(c)(1)(iv) and the only change is to make "representative" plural because that would be consistent with language for other occupational categories in which the plural form is used.

Section 73.23(b)(1)(v) corresponds to proposed § 73.22(b)(1)(v), in which the description of this occupational category would be changed to "employees" (which would include the current term "member") of a state or local law enforcement authority who are responsible for responding to requests for assistance during safeguards or securities emergencies.

Section 73.23(b)(1)(vi) is the same occupational category of individuals in § 73.22(b)(1)(vi). Because homeland security advisors is the correct title of the individuals to be included in this occupational category, that title is contained in proposed rule text.

Section 73.23(b)(1)(vii) corresponds to proposed § 73.22(c)(1)(vi), which is based on current § 73.21(c)(1)(vi). As proposed, this paragraph substitutes the citation of 10 CFR 2.709(f) for § 2.744(e) because the latter citation is outdated.

The subject of § 73.23(c) is protection of SGI-M while in use or storage. While in use, SGI-M shall be under the control of an individual authorized access to Safeguards Information Modified Handling. This requirement is satisfied if the SGI-M is attended by an authorized individual in certain locations even though the information is in fact not constantly being used.

Examples of such locations include: Engineering or drafting areas, plant

maintenance areas, or administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible in these areas. Under certain conditions, the general control exercised over occupied security zones or areas would be considered to meet this requirement. SGI-M, therefore, within alarm stations or within continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers. The primary consideration is limiting access to those who have a "need to know" and are otherwise authorized to have access.

Section 73.23(d) sets forth requirements for the preparation and marking of documents designated as SGI-M. Although the NRC defines what specific byproduct material information constitutes SGI-M, originators of documents are responsible for designating those documents that contain such information. All documents containing SGI-M in use or storage shall be marked in accordance with the requirements of § 73.23(d). As stated in current § 73.21(a) and by order,<sup>12</sup> since information protection procedures employed by State and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this paragraph.

Section 73.23(e) contains requirements governing the reproduction of matter containing SGI-M. Newer digital copiers which scan and retain images of documents represent a security concern. If the copier is retaining SGI-M information in memory, the copier cannot be connected to a network. It should be placed in a location that is cleared and controlled for the authorized processing of SGI-M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Section 73.23(f) concerns the external transmission of documents and material. Paragraph (f)(1) addresses the transmittal of Safeguards Information outside an authorized place of use and storage, requiring two sealed envelopes or wrappers and marking of the envelopes or wrappers. Within a facility, SGI-M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken

to protect the material against unauthorized disclosure. Individuals transporting SGI-M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual. SGI-M may be transported by any commercial delivery company that provides nationwide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to the requirements in § 73.23(b).

Section 73.23(g) describes the requirements for processing SGI-M on electronic systems. The basic objective of the restrictions is to prevent access and retrieval of stored SGI-M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI-M will be password protected to preclude access by an unauthorized individual.

Removal from the SGI-M category is addressed in § 73.23(h), which contains requirements which are identical to those in § 73.22(h) for the removal from the SGI category. Thus, these requirements would specify when information is to be removed from the SGI-M category, the degree of care to be exercised in decontrolling a document, and the authority to determine that a document may be decontrolled.

Section 73.23(i) contains detailed requirements for destruction of matter containing SGI-M. These requirements cover methods to destroy documents containing SGI-M and set forth characteristics of a document which would be considered completely destroyed.

Section 73.57 contains requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

Section 73.57(b)(2)(i) has been revised to include reference to § 73.22.

The language in § 73.57(b)(2)(ii), containing an exception to the fingerprinting requirement for the occupational categories of members of Congress and Governors of States, would be revised to be consistent with the proposed language in § 73.22(b)(1)(ii) and (iii) describing these same occupational categories.

*Section 76.113 Formula Quantities of Strategic Special Nuclear Material—Category 1*

The language of paragraph (c) would be changed to include a citation to new

<sup>12</sup> See, for example, the Order cited earlier as published in the *Federal Register* on January 23, 2004 (69 FR 3398).

§ 73.22, Protection of Safeguards Information: Specific Requirements.

*Section 76.115 Special Nuclear Material of Moderate Strategic Significance—Category II*

The language of this section would be changed to add a new paragraph (d) to state that the requirements for the protection of Safeguards Information pertaining to special nuclear material of moderate strategic significance (Category II) are contained in §§ 73.21 and 73.22.

*Section 76.117 Special Nuclear Material of Low Strategic Significance—Category III*

The language of this section would be changed to add a new paragraph (c) to state that the requirements for the protection of Safeguards Information pertaining to special nuclear material of low strategic significance (Category III) are contained in §§ 73.21 and 73.22.

*Section 150.15 Persons Not Exempt*

A change is also being proposed to part 150, “Exemptions and Continued Regulatory Authority in Agreement States and In Offshore Waters Under Section 274.” Paragraph (a)(9) would be added to § 150.15, “Persons not exempt,” to include the protection of SGI in the list of activities by persons in Agreement States that are not exempt from the Commission’s licensing and regulatory requirements.

## VI. Criminal Penalties

For the purpose of section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150 under one or more of sections 147 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

## VII. Agreement State Issues

The proposed changes to parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76, and 150 are considered to be Category NRC compatibility and therefore are areas of exclusive NRC authority. However, the proposed rule has been provided to the Agreement States for their review and comment prior to publication of draft rule text on the NRC Web site and the publication of the proposed rule in the **Federal Register**. The Agreement States of Illinois and Washington commented on the proposed rule. Both states expressed concern about the breadth of rule text reflecting the Commission’s authority to prohibit the unauthorized disclosure of SGI relating to such quantities of special nuclear material,

source, and byproduct material as the Commission determines to be significant to the public health and safety or the common defense and security. In response to this concern, the Commission notes that it needs such broad authority to adequately protect SGI and section 147 of the AEA provides such authority to the Commission.

## VIII. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled “Plain Language in Government Writing,” directed that the Government’s writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

## IX. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is using the following Government-unique standard: National Institute of Standards and Technology, Federal Information Processing Standard [FIPS] PUB–140–2, “Security Requirements for Cryptographic Modules,” May 25, 2001. The NRC has determined that using this Government-unique standard is justified because no voluntary consensus standard has been identified that could be used instead. In addition, this Government-unique standard was developed using the same procedures used to create a voluntary consensus standard.

## X. Finding of No Significant Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is that the proposed rule relates to the designation, handling and protection of Safeguards Information and the collection of information on which a determination to grant individuals access to this information is based. The determination

of this environmental assessment is that there will be no significant environmental impacts from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and proposed rule to every State Liaison Officer and requested comments on the environmental assessment.

## XI. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

*Type of Submission, New or Revision:* Revision.

*The Title of the Information Collection:* 10 CFR 73, “Protection of Safeguards Information.”

*The Form Number if Applicable:* Not applicable.

*How often the collection is required:* Licensees must mark and protect from unauthorized disclosure documents containing Safeguards Information or Safeguards Information designated for modified handling, on a continuous basis.

*Who Will be Required or Asked to Report:* Power reactor licensees and applicants, research and test reactor licensees and applicants, certificate holders and applicants, fuel cycle facility licensees and applicants, and certain other byproduct, source, and special nuclear material licensees and applicants.

*An Estimate of the Number of Annual Responses:* None.

*The Estimated Number of Annual Respondents:* 646 recordkeepers.

*An Estimate of the Total Number of Hours Needed Annually to Complete the Requirement or Request:* 5,926 (an average of 9 hours per recordkeeper).

*Abstract:* The NRC is amending its regulations for the protection of Safeguards Information to protect it from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities and materials. The proposed amendments would be consistent with Commission practices reflected in previously issued Orders and advisories. The proposed amendments would affect certain licensees, information, and materials not currently

specified in the regulations but which are within the scope of the Commission's statutory authority.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections 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?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 60 days after the signature date of this notice and are also available at the RuleForum site, <http://ruleforum.llnl.gov>.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by March 14, 2005 to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to [infocollects@nrc.gov](mailto:infocollects@nrc.gov) and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0002), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to [John\\_A.\\_Asalone@omb.eop.gov](mailto:John_A._Asalone@omb.eop.gov) or comment by telephone at (202) 395-4650.

#### 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.

## XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from the Office of the General Counsel, U.S. Nuclear Regulatory Commission, at 301-415-1633 or by e-mail at [mur@nrc.gov](mailto:mur@nrc.gov). The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

## XIII. Regulatory Flexibility Analysis

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comment from small entities (*i.e.*, small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the proposed regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety or the common defense and security. Those small entities that offer comments on how the proposed regulations could be modified to take into account the differing needs of small entities should specifically discuss—

- (a) The licensee's size and how the proposed regulations would result in a significant economic burden upon the licensee as compared to a larger licensee;
- (b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;
- (c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee;
- (d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing some special advantages to any particular individual or group;
- (e) How the proposed regulation, as modified, would still adequately protect public health and safety or the common defense and security.

Send comments to the NRC as indicated under the **ADDRESSES** heading.

The Commission is preparing an initial regulatory analysis of the impact

of this proposed rule on small entities. The NRC requests written comments on the analysis. Send comments to the NRC as indicated under the **ADDRESSES** heading.

## XIV. Backfit Analysis

The Commission has concluded, on the basis of the documented evaluation in the draft regulatory analysis, that the majority of the requirements in the proposed rule are not backfits as defined in 10 CFR 50.109(a)(4)(ii), 70.76(a)(4)(iii), 72.62, and 76.76(a)(4)(ii). The Commission has also concluded that the requirements in the rule that constitute backfits are necessary to insure that the facilities and materials described in the proposed rule provide adequate protection to the public health and safety and are in accord with the common defense and security, as applicable. Therefore, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3), 70.76, 72.62, and 76.76, do not apply. The documented evaluation in the draft Regulatory Analysis includes a statement of the objectives of and the reasons for the backfits that would be required by the proposed rule and sets forth the Commission's conclusion that these backfits are not subject to the cost-benefit standards of 10 CFR 50.109(a)(3), 70.76, 72.62, and 76.76.

### List of Subjects

#### 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

#### 10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

#### 10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

#### 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria,

Reporting and recordkeeping requirements.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

*10 CFR Part 60*

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 63*

Criminal penalties, High-level waste, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 71*

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

*10 CFR Part 72*

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

*10 CFR Part 73*

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 76*

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security

measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

*10 CFR Part 150*

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

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. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 2, 30, 40, 50, 52, 60, 63, 70, 71, 72, 73, 76 and 150.

**PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS**

1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued

under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Paragraph (f) of § 2.709 is amended to read as follows:

**§ 2.709 Discovery against NRC staff.**

\* \* \* \* \*

(f) In the case of requested documents and records (including Safeguards Information referred to in sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under § 2.390, but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding, any order to the Executive Director for Operations or a delegate of the Executive Director for Operations, to produce the document or records (or any other order issued ordering production of the document or records) may contain any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under § 2.315(c), and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it must also be protected according to the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable. The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under section 161.b. of the Atomic Energy Act.

\* \* \* \* \*

3. In § 2.1003, paragraph (a)(4)(iii) is revised to read as follows:

**§ 2.1003 Availability of material.**

- (a) \* \* \*
(4) \* \* \*

(iii) Which constitutes Safeguards Information under § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

\* \* \* \* \*

4. In § 2.1010, paragraph (b)(6) is revised to read as follows:

**§ 2.1010 Pre-License application presiding officer.**

\* \* \* \* \*

- (b) \* \* \*

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information, protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

\* \* \* \* \*

**PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

5. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 30.32, paragraph (j) is added to read as follows:

**§ 30.32 Application for specific licenses.**

\* \* \* \* \*

(j) Each applicant for a license for byproduct material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security who prepares a physical security plan, security procedures for emergencies, or guard qualification and training procedures, shall protect the plans, procedures, and other related Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter, as applicable.

7. In § 30.34, paragraph (j) is added to read as follows:

**§ 30.34 Terms and conditions of licenses.**

\* \* \* \* \*

(j) Each licensee subject to the requirements of part 73 of this chapter shall ensure that physical security plans, security procedures for emergencies, guard qualification and training procedures and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter, as applicable.

**PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL**

8. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232,

2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

9. In § 40.31, paragraph (m) is added to read as follows:

**§ 40.31 Application for specific licenses.**

\* \* \* \* \*

(m) Each applicant for a license for source material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security who prepares a physical security plan, security procedures for emergencies, or guard qualification and training procedures, shall protect the plans, procedures, and other related Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

10. In § 40.41, paragraph (h) is added to read as follows:

**§ 40.41 Terms and conditions of licenses.**

\* \* \* \* \*

(h) Each licensee subject to the requirements of part 73 of this chapter shall ensure that physical security plans, security procedures for emergencies, guard qualification and training procedures and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

**PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

11. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68

Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

12. In § 50.34, paragraph (e) is revised to read as follows:

**§ 50.34 Contents of applications; technical information.**

\* \* \* \* \*

(e) Each applicant for a license to operate a production or utilization facility, who prepares a physical security plan, a safeguards contingency plan, or a guard qualification and training plan, shall protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.

\* \* \* \* \*

13. In § 50.54, paragraph (v) is revised to read as follows:

**§ 50.54 Conditions of licenses.**

\* \* \* \* \*

(v) Each licensee subject to the requirements of part 73 of this chapter shall ensure that physical security, safeguards contingency and guard qualification and training plans and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements in § 73.22 or § 73.23 of this chapter, as applicable.

\* \* \* \* \*

**PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS**

14. The authority citation for part 52 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also

issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

15. In § 52.47, paragraph (c) is added to read as follows:

**§ 52.47 Contents of applications.**

\* \* \* \* \*

(c) Each applicant for a standard design certification under this part shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

16. In § 52.79, paragraph (e) is added to read as follows:

**§ 52.79 Contents of application; technical information.**

\* \* \* \* \*

(e) Each applicant for a combined license under this subpart shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

**PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES**

17. The authority citation for part 60 continues to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

18. In § 60.21, paragraph (d) is added to read as follows:

**§ 60.21 Content of application.**

\* \* \* \* \*

(d) The applicant for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982 shall protect as Safeguards Information in accordance with § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable, the detailed security

measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, the security organization personnel training and qualification plan, and other related security information.

19. In § 60.42, paragraph (d) is added to read as follows:

**§ 60.42 Conditions of license.**

\* \* \* \* \*

(d) The licensee shall ensure that the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, the security organization personnel training and qualification plan and other related security information is protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

**PART 63—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN A GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA**

20. The authority citation for part 63 continues to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2238, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

21. In § 63.21, paragraph (d) is added to read as follows:

**§ 63.21 Content of application.**

\* \* \* \* \*

(d) The applicant for a license to receive and possess source, special nuclear, and byproduct material at a geologic repository at Yucca Mountain, Nevada, shall protect as Safeguards Information in accordance with §§ 73.21 and 73.22 of this chapter, the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, and security organization personnel training and qualification plan and other related Safeguards Information.

22. In § 63.42, paragraph (e) is added to read as follows:

**§ 63.42 Conditions of license.**

\* \* \* \* \*

(e) The licensee shall ensure that the detailed security measures for physical protection of high-level radioactive waste, including the design for physical protection, the safeguards contingency plan, and security organization personnel training and qualification plan and other related Safeguards Information is protected against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.22 of this chapter, as applicable.

**PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

23. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub.L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

24. In § 70.22, paragraph (l) is revised and paragraph (o) is added to read as follows:

**§ 70.22 Contents of applications.**

\* \* \* \* \*

(l) Each applicant for a license to possess, use, transport, or deliver to a carrier for transport formula quantities of strategic special nuclear material, or more than 100 grams of irradiated reactor fuel, who prepares a physical security, safeguards contingency, or guard qualification and training plan shall protect these plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

\* \* \* \* \*

(o) Each applicant for a license to possess, use, transport or deliver to a carrier for transport special nuclear material of low or moderate strategic significance, who prepares a physical

security plan, safeguards contingency plan, or guard qualification and training plan shall protect these plans and other related security Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter.

25. In § 70.32, paragraph (j) is revised and paragraph (l) is added to read as follows:

**§ 70.32 Conditions of licenses.**

\* \* \* \* \*

(j) Each licensee who possesses a formula quantity of strategic special nuclear material, or who transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material, special nuclear material of moderate strategic significance, or special nuclear material of low strategic significance, or more than 100 grams of irradiated reactor fuel shall ensure that physical security, safeguards contingency, and guard qualification and training plans and other related Safeguards Information are protected against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

\* \* \* \* \*

(l) Each licensee who possesses, uses, transports, or delivers to a carrier for transport special nuclear material of moderate or low strategic significance and who prepares a physical security plan shall protect the plan and other related Safeguards Information against unauthorized disclosure in accordance with the requirements in §§ 73.21 and 73.23 of this chapter.

**PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL**

26. The authority citation for part 71 continues to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

27. § 71.11 is added to read as follows:

**§ 71.11 Protection of Safeguards Information.**

Each licensee, certificate holder, or applicant for a Certificate of Compliance for a transportation package for transport of spent fuel, strategic special nuclear material, critical mass of special nuclear material, or byproduct material

in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security, shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

28. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

29. In § 72.22, paragraph (f) is added to read as follows:

**§ 72.22 Contents of application: General and financial information.**

\* \* \* \* \*

(f) Each applicant for a license under this part to receive, transfer, and possess power reactor spent fuel, power reactor-related Greater than Class C (GTCC) waste, and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) shall protect Safeguards Information against

unauthorized disclosure in accordance with the requirements in § 73.21 and the requirements of § 73.22 or § 73.23, as applicable.

30. In § 72.44, paragraph (h) is added to read as follows:

**§ 72.44 License conditions.**

(h) Each licensee subject to the requirements of part 73 of this chapter shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23, as applicable.

31. In § 72.212, paragraph (b)(5)(v) is re-designated as (b)(5)(vi) and a new paragraph (b)(5)(v) is added to read as follows:

**§ 72.212 Conditions of general license issued under § 72.210.**

(v) Each general licensee that receives, transfers, and possesses power reactor spent fuel, power reactor-related Greater than Class C (GTCC) waste, and other radioactive materials associated with spent fuel storage shall protect Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

32. In § 72.236, paragraph (n) is added to read as follows:

**§ 72.236 Specific requirements for spent fuel storage cask approval and fabrication.**

(n) Safeguards Information shall be protected against unauthorized disclosure in accordance with the requirements of § 73.21 and the requirements of § 73.22 or § 73.23 of this chapter, as applicable.

**PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

33. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

34. In § 73.1, paragraph (b)(7) is revised to read as follows:

**§ 73.1 Purpose and scope.**

(7) This part prescribes requirements for the protection of Safeguards Information (including the designation or marking: Safeguards Information—Modified Handling) in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires that information.

35. In § 73.2, new definitions *Individual Authorized Access to Safeguards Information*, *Individual Authorized Access to Safeguards Information—Modified Handling*, *Safeguards Information—Modified Handling Requirements* and *Trustworthiness and reliability*, are added in alphabetical order and the definition of *Safeguards Information* is revised to read as follows:

**§ 73.2 Definitions.**

*Individual Authorized Access to Safeguards Information* is an individual authorized to have access to and handle such information pursuant to the requirements of §§ 73.21 and 73.22 of this chapter.

*Individual Authorized Access to Safeguards Information—Modified Handling Requirements* is an individual authorized to have access to and handle such information pursuant to the requirements of §§ 73.21 and 73.23 of this chapter.

*Safeguards Information* means information not otherwise classified as National Security Information or Restricted Data which specifically identifies detailed control and accounting procedures for special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; detailed security measures (including security plans, procedures, and equipment) for the physical protection of source, byproduct, or special nuclear material in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security; security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information the unauthorized disclosure of which, as determined by the Commission through order or regulation, could reasonably be expected to have a significant adverse

effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of radiological sabotage or theft or diversion of source, byproduct, or special nuclear material.

*Safeguards Information—Modified Handling* is the designation or marking applied to Safeguards Information which the Commission has determined requires handling requirements modified from those for other Safeguards Information.

*Trustworthiness and reliability* means positive attributes as an indication of an individual's background and character demonstrating a high level of confidence that the individual can be properly authorized to have access to and handle Safeguards Information and Safeguards Information—Modified Handling.

36. Section 73.21 is revised to read as follows:

**§ 73.21 Protection of Safeguards Information: Performance Requirements.**

(a) *General performance requirement.* (1) Each licensee, applicant, or other person who produces, receives, or acquires Safeguards Information shall ensure that it is protected against unauthorized disclosure. To meet this general performance requirement, such licensees, applicants, or other persons subject to this section shall:

(i) For Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures, establish, implement and maintain an information protection system that includes the applicable measures specified in § 73.22.

(ii) For Safeguards Information related to certain quantities of source and byproduct material and special nuclear material of moderate or low strategic significance, establish, implement, and maintain an information protection system that includes the measures specified in § 73.23.

(2) Information protection procedures employed by State and local police forces are deemed to meet the general performance requirement in § 73.21(a)(i).

(b) *Commission Authority.* Pursuant to section 147 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2167), the Commission may impose, by order

or regulation, Safeguards Information handling requirements different from those specified in § 73.21(a)(1) and (2) on any person who produces, receives, or acquires Safeguards Information.

37. Section 73.22 is added to read as follows:

**§ 73.22 Protection of Safeguards Information: Specific Requirements.**

This section contains specific requirements for the protection of Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities.

(a) *Information to be protected.* The types of information and documents that must be protected as Safeguards Information include security-related requirements such as protective measures, interim compensatory measures, additional security measures, and the following, as applicable:

(1) *Physical Protection at fixed sites.* Information not otherwise classified as Restricted Data or National Security Information relating to the protection of power reactors, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material, spent irradiated fuel in excess of 100 grams, and licensees authorized to possess a formula quantity of strategic nuclear material, including:

(i) All portions of the composite physical security plan for the facility or site.

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system.

(iii) Alarm system layouts showing the location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.

(iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.

(v) On-site and off-site communications systems in regard to their use for security purposes.

(vi) Lock combinations, mechanical key design, or passwords integral to the physical security system.

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in physical security plans,

safeguards contingency plans, or plant specific safeguards analyses.

(viii) All portions of the composite safeguards contingency plan for the facility or site.

(ix) All portions of the composite facility guard qualification and training plan disclosing features of the physical security system or response procedures.

(x) Information concerning onsite or offsite response forces, including size, identity, armament, and arrival times of such forces committed to respond to safeguards or security emergencies.

(xi) The elements and characteristics of the Design Basis Threat in a level of detail greater than as specified in § 73.1 or other information that would disclose the Design Basis Threat, including the tactics and capabilities required to defend against that threat.

(xii) Engineering and safety analyses, emergency planning procedures or scenarios, and other information related to the physical protection of the facility or materials if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

(xiii) Information required by the Commission pursuant to 10 CFR 73.55(c)(8) and (9).

(2) *Physical protection in transit.* Information not otherwise classified as Restricted Data or National Security Information related to the protection of transportation of, or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, including:

(i) All portions of the composite transportation physical security plan.

(ii) Schedules and itineraries for specific shipments. (Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series.)

(iii) Vehicle immobilization features, intrusion alarm devices, and communications systems.

(iv) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(v) Limitations of communications during transport.

(vi) Procedures for response to safeguards or security emergencies.

(vii) Information concerning the tactics and capabilities required to defend against attempted radiological sabotage, or theft and diversion of

formula quantities of special nuclear material, or related information.

(viii) Engineering or safety analyses, emergency planning procedures or scenarios related to the protection of the transported material if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material.

(3) *Inspections, audits and evaluations.* Information not otherwise classified as National Security Information or Restricted Data pertaining to inspections and reports that could affect the specific requirements for Safeguards Information related to power reactors, licensees authorized to possess a formula quantity of strategic special nuclear material, transportation of or delivery to a carrier for transportation of a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and fuel cycle facilities required to implement security measures including:

(i) Portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system.

(ii) Reports of investigations containing general information may be released after the investigation has been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (5 U.S.C. 552).

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information as defined in paragraphs (a)(1) through (a)(3) of this paragraph.

(5) Other information that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

(b) *Conditions for access.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the Executive Branch of the United States Government. However,

(A) An individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must demonstrate trustworthiness and reliability and undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57 prior to such access;

(B) Other individuals to be authorized access to Safeguards Information by an applicant or licensee covered by this section must demonstrate trustworthiness and reliability through a comprehensive background check or other means as approved by the Commission prior to such access;

(ii) A member of Congress;

(iii) The Governor of a State or

designated representatives;

(iv) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) Employees of a state or local law enforcement authority that are responsible for responding to requests for assistance during safeguards or security emergencies;

(vi) State Radiation Control Program Directors and State Homeland Security Advisors or their designated representatives; or

(vii) An individual to whom disclosure is ordered pursuant to § 2.709(f) of this chapter.

(2) The individuals described in (b)(1)(ii) through (vi) of this section are deemed to be trustworthy and reliable by virtue of their occupational status. For non-governmental individuals in (b)(1)(i) and (vii) of this section, a determination of trustworthiness and reliability is required.

(3) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (b)(1) of this section.

(c) *Protection while in use or storage.*

(1) While in use, matter containing Safeguards Information must be under the control of an individual authorized access to Safeguards Information. This requirement is satisfied if the Safeguards Information is attended by such an individual even though the information is in fact not constantly being used. Safeguards Information within alarm stations, continuously manned guard posts or ready rooms need not be locked in a locked security storage container.

(2) While unattended, Safeguards Information must be stored in a locked security storage container. The container may not identify the contents

of the matter contained and must preclude access by individuals not authorized access in accordance with the provisions of this section. Knowledge of lock combinations protecting Safeguards Information must be limited to a minimum number of personnel for operating purposes who have a "need to know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this Part. Access to lock combinations must be strictly controlled so as to prevent disclosure to an unauthorized individual not authorized access to Safeguards Information.

(d) *Preparation and marking of documents or other matter.* (1) Each document or other matter that contains Safeguards Information as described in § 73.21(a)(1)(i) and this section must be marked "Safeguards Information" in a conspicuous manner on the top and bottom of each page to indicate the presence of protected information. The first page of each document must also contain:

(i) The name, title, and organization of the individual authorized to make a Safeguards Information determination, and who has determined that the document contains Safeguards Information;

(ii) The date the determination was made; and

(iii) An indication that unauthorized disclosure would be subject to civil and criminal sanctions.

(2) In addition to the "Safeguards Information" markings at the top and bottom of each page, transmittal letters or memoranda which do not in themselves contain Safeguards Information shall be marked to indicate that attachments or enclosures contain Safeguards Information but that the transmittal document does not (*e.g.*, "When separated from Safeguards Information enclosure(s), this document is decontrolled).

(3) Any transmittal document forwarding Safeguards Information must alert the recipient that protected information is enclosed. Certification that a document or other media contains Safeguards Information must include the name and title of the certifying official and date designated. Portion marking of documents or other information is required for correspondence to and from the NRC. The portion marking must be sufficient to allow the recipient to identify and distinguish those sections of the document or other information containing the Safeguards Information from non-Safeguards Information.

(4) Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(5) The marking "SGI" must be used for Safeguards Information designated as such for the protection of facilities and material covered by 10 CFR 73.22.

(e) *Reproduction of matter containing Safeguards Information.* Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator. If Safeguards Information is reproduced on a digital copier that would retain Safeguards Information in its memory, then the copier may not be connected to a network.

(f) *External transmission of documents and material.* (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, must be packaged in two sealed envelopes or wrappers to preclude disclosure of the presence of protected information. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words "Safeguards Information." The outer envelope or wrapper must be opaque, addressed to the intended recipient, must contain the address of the sender, and may not bear any markings or indication that the document contains Safeguards Information.

(2) Safeguards Information may be transported by any commercial delivery company that provides nationwide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

(3) Except under emergency or extraordinary conditions, Safeguards Information must be transmitted electronically only by protected telecommunications circuits (including facsimile) or encryption (Federal Information Processing Standard [FIPS] 140-2) approved by the appropriate NRC office. For the purpose of this section, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a safeguards or security event or an event that has potential security significance. Physical security events required to be reported pursuant to § 73.71 are

considered to be extraordinary conditions.

(g) *Processing of Safeguards Information on electronic systems.* (1) Safeguards Information may be stored, processed or produced on a stand-alone computer (or computer system) for processing of Safeguards Information. "Stand-alone" means a computer or computer system to which access is limited to individuals authorized access to Safeguards Information. A stand-alone computer or computer system may not be physically or in any other way connected to a network accessible by users who are not authorized access to Safeguards Information.

(2) Each computer not located within an approved and lockable security storage container that is used to process Safeguards Information must have a removable storage medium with a bootable operating system. The bootable operating system must be used to load and initialize the computer. The removable storage medium must also contain the software application programs, and all data must be processed and saved on the same removable storage medium. The removable storage medium must be secured in a locked security storage container when not in use.

(3) A mobile device (such as a laptop computer) may also be used for the automated processing of Safeguards Information provided the device is secured in a locked security storage container when not in use. Other systems may be used if approved for security by the appropriate NRC office.

(h) *Removal from Safeguards Information category.* Documents originally containing Safeguards Information must be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this part. Care must be exercised to ensure that any document decontrolled not disclose Safeguards Information in some other form or be combined with other unprotected information to disclose Safeguards Information. The authority to determine that a document may be decontrolled shall be exercised only by the NRC or with NRC approval, or in consultation with the individual or organization that made the original determination, if possible.

(i) *Destruction of matter containing Safeguards Information.* Documents or other media containing Safeguards Information must be destroyed when no longer needed. The information can be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece

sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

38. Section 73.23 is added to read as follows:

**§ 73.23 Protection of Safeguards Information-Modified Handling: Specific Requirements.**

This section contains specific requirements for the protection of Safeguards Information related to certain quantities of source and byproduct material and special nuclear material of moderate or low strategic significance, except for those materials covered under § 73.22. The requirements of this section distinguish Safeguards Information requiring modified protection requirements (SGI-M) from Safeguards Information for facilities and materials needing a higher level of protection, as set forth in § 73.22.

(a) *Information to be protected.* The types of information and documents that must be protected as Safeguards Information include security-related requirements such as protective measures, interim compensatory measures, additional security measures, and the following, as applicable:

(1) *Physical Protection at fixed sites.* Information not otherwise classified as Restricted Data or National Security Information relating to source material, byproduct material, special nuclear material of moderate strategic significance, or special nuclear material of low strategic significance, in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security, including:

(i) All portions of the composite physical security plan for the facility or site.

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical security system.

(iii) Alarm system layouts showing location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.

(iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.

(v) On-site and off-site communications systems in regard to their use for security purposes.

(vi) Lock combinations, mechanical key design, or passwords integral to the physical security system.

(vii) Facility guard qualification and training procedures disclosing features

of the physical security system or response procedures.

(viii) Descriptions of security activities which disclose features of the physical security system or response measures.

(ix) Information concerning offsite response forces, including size, identity, armament, and arrival times of such forces committed to respond to safeguards or security emergencies.

(x) Engineering and safety analyses, emergency planning procedures or scenarios, and other information related to the physical protection of the facility or materials if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

(2) *Physical protection in transit.* Information not otherwise classified as Restricted Data or National Security Information related to the protection of shipments of certain quantities of source material and byproduct material and special nuclear material of moderate or low strategic significance, except for those materials covered under § 73.22, and in quantities determined by the Commission through order or regulation to be significant to the public health and safety or the common defense and security, including:

(i) Information regarding security features of a transportation physical security plan (Scheduling and itinerary information may be shared with others on a "need to know" basis and is not designated as Safeguards Information-Modified Handling).

(ii) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(iii) Limitations of communications during transport.

(iv) Procedures for response to safeguards or security emergencies.

(v) Engineering or safety analyses, emergency planning procedures or scenarios related to the protection of the transported material if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material.

(3) *Inspections, audits and evaluations.* Information not otherwise classified as National Security Information or Restricted Data relating to inspections and reports, such as:

(i) Portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system.

(ii) Reports of investigations containing general information may be released after the investigation has been completed, unless withheld pursuant to other authorities, *e.g.*, the Freedom of Information Act (5 U.S.C. 552).

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information, including the information in paragraphs (a)(1) through (a)(3) of this section.

(5) Other information that the Commission determines by order or regulation could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of material or a facility.

(b) *Conditions for access.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the Executive Branch of the United States Government.

Individuals authorized access to Safeguards Information by a source, byproduct, or special nuclear material applicant or licensee must demonstrate trustworthiness and reliability through a comprehensive background check or other means as approved by the Commission prior to such access;

(ii) A member of Congress;

(iii) The Governor of a State or designated representatives;

(iv) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) Employees of a state or local law enforcement authority that are responsible for responding to requests for assistance during safeguards or security emergencies;

(vi) State Radiation Control Program Directors and State Homeland Security Advisors or their designated representatives; or

(vii) An individual to whom disclosure is ordered pursuant to § 2.709(f) of this chapter.

(2) The individuals described in paragraph (b)(1)(ii) through (vi) of this section are deemed to be trustworthy

and reliable by virtue of their occupational status. For non-occupational individuals in (b)(1)(i) and (vii) of this section, a determination of trustworthiness and reliability is required.

(3) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (b)(1) of this section.

(c) *Protection while in use or storage.*

(1) While in use, matter containing Safeguards Information must be under the control of an individual authorized access to such information. This requirement is satisfied if the Safeguards Information is attended by such an individual even though the information is in fact not constantly being used. Safeguards Information within alarm stations, continuously manned guard posts or ready rooms need not be locked in a file drawer or cabinet.

(2) While unattended, Safeguards Information must be stored in a locked file drawer or cabinet. The container may not identify the contents of the matter contained and must preclude access by individuals not authorized access in accordance with the provisions of this section. Knowledge of lock combinations or access to keys protecting Safeguards Information must be limited to a minimum number of personnel for operating purposes who have a "need to know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this Part. Access to lock combinations must be strictly controlled so as to prevent disclosure to an individual not authorized access to Safeguards Information.

(d) *Preparation and marking of documents or other matter.* (1) Each document or other matter that contains Safeguards Information as described in § 73.23(a) and in this section must be marked "SGI—Modified Handling" in a conspicuous manner on the top and bottom of each page to indicate the presence of protected information. The first page of the document must also contain:

(i) The name, title, and organization of the individual authorized to make a Safeguards Information—Modified Handling safeguards information designation, and who has determined that the document contains Safeguards Information;

(ii) The date the determination was made; and

(iii) An indication that unauthorized disclosure would be subject to civil and criminal sanctions.

(2) In addition to the "SGI—Modified Handling" markings at the top and bottom of each page, transmittal letters or memoranda which do not in themselves contain Safeguards Information must be marked to indicate that attachments or enclosures contain Safeguards Information but that the transmittal does not (*e.g.*, "When separated from Safeguards Information—Modified Handling enclosure(s), this document is decontrolled").

(3) Any transmittal document forwarding Safeguards Information must alert the recipient that protected information is enclosed. Certification that a document or other media contains Safeguards Information must include the name and title of the certifying official and date designated. Portion marking of documents or other information is required for correspondence to and from the NRC. The portion marking must be sufficient to allow the recipient to identify and distinguish those sections of the document or other information containing the Safeguards Information. Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(e) *Reproduction of matter containing Safeguards Information.* Safeguards Information may be reproduced to the minimum extent necessary, consistent with need, without permission of the originator. If Safeguards Information is reproduced on a digital copier that would retain Safeguards Information in its memory, then the copier may not be connected to a network.

(f) *External transmission of documents and material.* (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, must be packaged in two sealed envelopes or wrappers to preclude disclosure of the presence of protected information. The inner envelope or wrapper must contain the name and address of the intended recipient and be marked on both sides, top and bottom, with the words "SGI—Modified Handling." The outer envelope or wrapper must be opaque, addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains Safeguards Information.

(2) Safeguards Information may be transported by any commercial delivery

company that provides nationwide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

(3) Except under emergency or extraordinary conditions, Safeguards Information must be transmitted electronically only by protected telecommunications circuits (including facsimile) or encryption (Federal Information Processing Standard [FIPS] 140-2) approved by the appropriate NRC office. For the purpose of this section, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event or an event that has potential security significance. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(g) *Processing of Safeguards Information on electronic systems.* (1) Safeguards Information designated for modified handling may be stored, processed or produced on a computer or computer system, provided that the system is assigned to the licensee's or contractor's facility. Each file containing Safeguards Information must be protected, either by a password or encryption, to prevent unauthorized individuals from gaining access. Word processors such as typewriters are not subject to these requirements as long as they do not transmit information off-site. (Note: if Safeguards Information is produced on a typewriter, the ribbon must be removed and stored in the same manner as other Safeguards Information or media.)

(2) Safeguards Information files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that the National Institute of Standards and Technology (NIST) has validated as conforming to Federal Information Processing Standards (FIPS). Safeguards Information files shall be properly labeled as "SGI-Modified Handling" and saved to removable media and stored in a locked file drawer or cabinet.

(3) A mobile device (such as a laptop computer) may also be used for the automated processing of Safeguards Information provided the device is secured in an appropriate locked storage container when not in use. Other systems may be used if approved for security by the appropriate NRC office.

(h) *Removal from Safeguards Information category.* Documents originally containing Safeguards

Information must be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this part. Care must be exercised to ensure that any document decontrolled shall not disclose Safeguards Information in some other form or be combined with other unprotected information to disclose Safeguards Information. The authority to determine that a document may be decontrolled must be exercised only by the NRC or with NRC approval or in consultation with the individual or organization that made the original determination, if possible.

(i) *Destruction of matter containing Safeguards Information.* Documents or other media containing Safeguards Information shall be destroyed when no longer needed. The information can be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

39. In § 73.57 paragraphs (b)(2)(i) and (ii) are revised to read as follows:

**§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) For unescorted access to the nuclear power facility or for access to Safeguards Information (but must adhere to provisions contained in §§ 73.21 and 73.22): NRC employees and NRC contractors on official agency business; individuals responding to a site emergency in accordance with the provisions of § 73.55(a); a representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement at designated facilities who has been certified by the NRC; law enforcement personnel acting in an official capacity; State or local government employees who have had equivalent reviews of FBI criminal history data; and individuals employed at a facility who possess "Q" or "L" clearances or possess another active government granted security clearance, i.e., Top Secret, Secret, or Confidential;

(ii) For access to Safeguards Information only but must adhere to provisions contained in §§ 73.21 and 73.22: Employees of other agencies of the United States Government; a member of the Congress; the Governor

of a State or his or her designated representatives; individuals to whom disclosure is ordered pursuant to § 2.709(f) of this chapter;

\* \* \* \* \*

**PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS**

40. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321-349 (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(a)); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sec. 76.7 also issued under Pub. L. 95-601. sec. 10, 92 Stat 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

41. In § 76.113, paragraph (c) is revised to read as follows:

**§ 76.113 Formula quantities of strategic special nuclear material—Category I.**

\* \* \* \* \*

(c) The requirements for the protection of Safeguards Information pertaining to formula quantities of strategic special nuclear material (Category I) are contained in §§ 73.21 and 73.22 of this chapter. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

\* \* \* \* \*

42. In § 76.115, paragraph (d) is added to read as follows:

**§ 76.115 Special nuclear material of moderate strategic significance—Category II.**

\* \* \* \* \*

(d) The requirements for the protection of Safeguards Information pertaining to special nuclear material of moderate strategic significance—Category II are contained in §§ 73.21 and 73.22 of this chapter.

43. In § 76.117, paragraph (c) is added to read as follows:

**§ 76.117 Special nuclear material of low strategic significance—Category III.**

\* \* \* \* \*

(c) The requirements for the protection of Safeguards Information pertaining to special nuclear material of low strategic significance—Category III are contained in §§ 73.21 and 73.22 of this chapter.

**PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274**

44. The authority citation for part 150 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

45. In § 150.15, paragraph (a)(9) is added to read as follows:

**§ 150.15 Persons not exempt.**

\* \* \* \* \*

(a) \* \* \*

(9) The requirements for the protection Safeguards Information in §§ 73.21 and 73.23 of this chapter.

\* \* \* \* \*

Dated at Rockville, Maryland this 7th day of February 2005.

For the Nuclear Regulatory Commission,  
**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

[FR Doc. 05-2665 Filed 2-10-05; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2004-20006; Directorate Identifier 2004-CE-49-AD]

RIN 2120-AA64

**Airworthiness Directives; Pilatus Aircraft Limited Models B4-PC11, B4-PC11A, and B4-PC11AF Sailplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Pilatus Aircraft Limited (Pilatus) Models B4-PC11, B4-PC11A, and B4-PC11AF sailplanes. This proposed AD would require you to repetitively inspect the control-column support for cracks and,

if any cracks are found, replace the control-column support with a new support. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct cracks in the control-column support, which could result in failure of the support. This failure could lead to loss of the primary flight control system.

**DATES:** We must receive any comments on this proposed AD by March 18, 2005.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH-6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: [fodermatt@pilatus-aircraft.com](mailto:fodermatt@pilatus-aircraft.com) or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465-9099; facsimile: (303) 465-6040.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. This is docket number FAA-2004-20006.

**FOR FURTHER INFORMATION CONTACT:**

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on this proposed AD?* We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2004-20006; Directorate Identifier 2004-CE-49-AD" at the

beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2004-20006. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

**Docket Information**

*Where can I go to view the docket information?* You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

**Discussion**

*What events have caused this proposed AD?* The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Aircraft Limited (Pilatus) Models B4-PC11, B4-PC11A, and B4-PC11AF sailplanes. The FOCA reports nine occurrences of cracks in the support of the control-column (part number (P/N) 112.35.11.072).