

Nuclear Regulatory Commission

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certificate of compliance or the approval of a compliance plan.

[44 FR 68186, Nov. 28, 1979, as amended at 45 FR 67645, Oct. 14, 1980; 45 FR 80271, Dec. 4, 1980; 46 FR 51724, Oct. 22, 1981; 47 FR 57482, Dec. 27, 1982; 52 FR 9653, Mar. 26, 1987; 53 FR 31683, Aug. 19, 1988; 53 FR 45451, Nov. 10, 1988; 59 FR 38899, Aug. 1, 1994; 59 FR 48960, Sept. 23, 1994; 63 FR 26962, May 15, 1998; 66 FR 55816, Nov. 2, 2001; 72 FR 12726, Mar. 19, 2007; 72 FR 49561, Aug. 28, 2007]

EFFECTIVE DATE NOTE: At 73 FR 63573, Oct. 24, 2008, § 73.1 was amended by revising paragraph (b)(7), effective Feb. 23, 2009. For the convenience of the user, the revised text is set forth as follows:

§ 73.1 Purpose and scope.

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(b) * * *

(7) This part prescribes requirements for the protection of Safeguards Information (including Safeguards Information with 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.

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§ 73.2 Definitions.

As used in this part:

(a) Terms defined in parts 50, 52, and 70 of this chapter have the same meaning when used in this part.

Appropriate Nuclear Regulatory Commission Regional Office listed in appendix A means:

(1) For domestic shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of the shipment is located.

(2) For export shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of the shipment is located, and the Regional Office for the region in which the last point of exit of the shipment from the U.S. is located.

(3) For import shipments—the Regional Office within whose region the licensee who is responsible for the physical protection arrangements of the shipment is located, and the Regional Office for the region in which

the first point of entry of the shipment into the U.S. is located.

Armed escort means an armed person, not necessarily uniformed, whose primary duty is to accompany shipments of special nuclear material for the protection of such shipments against theft or radiological sabotage.

Armed response personnel means persons, not necessarily uniformed, whose primary duty in the event of attempted theft of special nuclear material or radiological sabotage shall be to respond, armed and equipped, to prevent or delay such actions.

Authorized individual means any individual, including an employee, a student, a consultant, or an agent of a licensee who has been designated in writing by a licensee to have responsibility for surveillance of or control over special nuclear material or to have unescorted access to areas where special nuclear material is used or stored.

Bullet/resisting means protection against complete penetration, passage of fragments of projectiles, and spalling (fragmentation) of the protective material that could cause injury to a person standing directly behind the bullet-resisting barrier.

Contiguous sites means licensee controlled locations, deemed by the Commission to be in close enough proximity to each other, that the special nuclear material must be considered in the aggregate for the purpose of physical protection.

Continuous visual surveillance means unobstructed view at all times of a shipment of special nuclear material, and of all access to a temporary storage area or cargo compartment containing the shipment.

Controlled access area means any temporarily or permanently established area which is clearly demarcated, access to which is controlled and which affords isolation of the material or persons within it.

Deceit means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear materials, where the attempt involves falsification to present the appearance of authorized access.

DOE and Department of Energy means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.*), to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

Force means violent methods used by an adversary to attempt to steal strategic special nuclear material or to sabotage a nuclear facility or violent methods used by response personnel to protect against such adversary actions.

Formula quantity means strategic special nuclear material in any combination in a quantity of 5,000 grams or more computed by the formula, grams = (grams contained U-235) + 2.5 (grams U-233 + grams plutonium). This class of material is sometimes referred to as a Category I quantity of material.

Guard means a uniformed individual armed with a firearm whose primary duty is the protection of special nuclear material against theft, the protection of a plant against radiological sabotage, or both.

Incendiary device means any self-contained device intended to create an intense fire that can damage normally flame-resistant or retardant materials.

Intrusion alarm means a tamper indicating electrical, electromechanical, electrooptical, electronic or similar device which will detect intrusion by an individual into a building, protected area, vital area, or material access area, and alert guards or watchmen by means of actuated visible and audible signals.

Isolation zone means any area adjacent to a physical barrier, clear of all objects which could conceal or shield an individual.

Lock in the case of vaults or vault type rooms means a three-position, manipulation resistant, dial type, built-in combination lock or combination padlock and in the case of fences, walls, and buildings means an integral door lock or padlock which provides protection equivalent to a six-tumbler cylinder lock. *Lock* in the case of a vault or vault type room also means any manipulation resistant, electromechanical device which provides the same function as a built-in combination lock or combination padlock, which can be operated remotely or by the *reading* or insertion of information, which can be uniquely characterized, and which allows operation of the device. *Locked* means protected by an operable lock.

Material access area means any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which each constitute a physical barrier.

Movement control center means an operations center which is remote from transport activity and which maintains periodic position information on the movement of strategic special nuclear material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

Need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy (DOE), (except that the DOE shall be considered a person to the extent that its facilities are subject to the licensing and related regulatory authority of the Commission pursuant to section 202 of the Energy Reorganization Act of 1974 and sections 104, 105, and 202 of the Uranium Mill Tailings Radiation Control Act of 1978), any state or political subdivision of a state, or any political subdivision of any government or nation,

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or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Physical barrier means:

(1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30° and 45° from the vertical, with an overall height of not less than eight feet, including the barbed topping;

(2) Building walls, ceilings and floors constructed of stone, brick, cinder block, concrete, steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (1) of this definition of a height of not less than 8 feet; or

(3) Any other physical obstruction constructed in a manner and of materials suitable for the purpose for which the obstruction is intended.

Protected area means an area encompassed by physical barriers and to which access is controlled.

Radiological sabotage means any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in this chapter is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation.

Safeguards Information means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

Security management means persons responsible for security at the policy and general management level.

Security Storage Container includes any of the following repositories: (1) For storage in a building located with-

in a protected or controlled access area, a steel filing cabinet equipped with a steel locking bar and a three position, changeable combination, GSA approved padlock; (2) A security filing cabinet that bears a Test Certification Label on the side of the locking drawer, or interior plate, and is marked, *General Services Administration Approved Security Container* on the exterior of the top drawer or door; (3) A bank safe-deposit box; and (4) Other repositories which in the judgement of the NRC, would provide comparable physical protection.

Security supervision means persons, not necessarily uniformed or armed, whose primary duties are supervision and direction of security at the day-to-day operating level.

Special nuclear material of low strategic significance means:

(1) Less than an amount of special nuclear material of moderate strategic significance as defined in paragraph (1) of the definition of strategic nuclear material of moderate strategic significance in this section, but more than 15 grams of uranium-235 (contained in uranium enriched to 20 percent or more in U-235 isotope) or 15 grams of uranium-233 or 15 grams of plutonium or the combination of 15 grams when computed by the equation, grams = (grams contained U-235) + (grams plutonium) + (grams U-233); or

(2) Less than 10,000 grams but more than 1,000 grams of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope); or

(3) 10,000 grams or more of uranium-235 (contained in uranium enriched above natural but less than 10 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category III quantity of material.

Special nuclear material of moderate strategic significance means:

(1) Less than a formula quantity of strategic special nuclear material but more than 1,000 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope) or more than 500 grams of uranium-233 or plutonium, or in a combined quantity of more than 1,000 grams when computed by the equation, grams = (grams

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contained U-235) + 2 (grams U-233 + grams plutonium); or

(2) 10,000 grams or more of uranium-235 (contained in uranium enriched to 10 percent or more but less than 20 percent in the U-235 isotope).

This class of material is sometimes referred to as a Category II quantity of material.

Stealth means methods used to attempt to gain unauthorized access, introduce unauthorized materials, or remove strategic special nuclear material, where the fact of such attempt is concealed or an attempt is made to conceal it.

Strategic special nuclear material means uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope), uranium-233, or plutonium.

Tactical Response Team means the primary response force for each shift which can be identified by a distinctive item of uniform, armed with specified weapons, and whose other duties permit immediate response.

Transport means any land, sea, or air conveyance or modules for these conveyances such as rail cars or standardized cargo containers.

Undergoing processing means performing active operations on material such as chemical transformation, physical transformation, or transit between such operations, to be differentiated from storage or packaging for shipment.

Vault means a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry.

Vault-type room means a room with one or more doors, all capable of being locked, protected by an intrusion alarm which creates an alarm upon the entry of a person anywhere into the room and upon exit from the room or upon movement of an individual within the room.

Vital area means any area which contains vital equipment.

Vital equipment means any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Equipment or systems which would be required to func-

tion to protect public health and safety following such failure, destruction, or release are also considered to be vital.

Watchman means an individual, not necessarily uniformed or armed with a firearm, who provides protection for a plant and the special nuclear material therein in the course of performing other duties.

[38 FR 35430, Dec. 28, 1973, as amended at 39 FR 2352, Jan. 21, 1974; 40 FR 52841, Nov. 13, 1975; 42 FR 10838, Feb. 24, 1977; 43 FR 37425, Aug. 23, 1978; 44 FR 43282, July 24, 1979; 44 FR 68187, Nov. 28, 1979; 45 FR 14201, Mar. 5, 1980; 46 FR 51724, Oct. 22, 1981; 53 FR 45451, Nov. 10, 1988; 55 FR 51401, Dec. 14, 1990; 57 FR 33429, July 29, 1992; 72 FR 49561, Aug. 28, 2007]

EFFECTIVE DATE NOTE: At 73 FR 63573, Oct. 24, 2008, § 73.2 was amended by adding new definitions *Background check*, *Individual Authorized Access to Safeguards Information*, *Individual Authorized Access to Safeguards Information—Modified Handling*, *Quantities of Concern*, *Safeguards Information—Modified Handling*, and *Trustworthiness and reliability*, in alphabetical order and by revising the definitions of “*Need to know*” and *Safeguards Information*, effective Feb. 23, 2009. For the convenience of the user, the added and revised text is set forth as follows:

§ 73.2 Definitions.

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Background check includes, at a minimum, a Federal Bureau of Investigation (FBI) criminal history records check (including verification of identity based on fingerprinting), employment history, education, and personal references. Individuals engaged in activities subject to regulation by the Commission, applicants for licenses to engage in Commission-regulated activities, and individuals who have notified the Commission in writing of an intent to file an application for licensing, certification, permitting, or approval of a product or activity subject to regulation by the Commission are required under § 73.57 to conduct fingerprinting and criminal history records checks before granting access to Safeguards Information. A background check must be sufficient to support the trustworthiness and reliability determination so that the person performing the check and the Commission have assurance that granting individuals access to Safeguards Information does not constitute an unreasonable risk to the public health and safety or the common defense and security.

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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 part.

Individual Authorized Access to Safeguards Information—Modified Handling is an individual authorized to have access to and handle Safeguards Information designated as Safeguards Information—Modified Handling information pursuant to the requirements of §§ 73.21 and 73.23 of this part.

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“*Need to know*” means a determination by a person having responsibility for protecting Safeguards Information (including Safeguards Information designated as Safeguards Information—Modified Handling) that a proposed recipient’s access to Safeguards Information is necessary in the performance of official, contractual, licensee, applicant, or certificate holder employment. In an adjudication, “need to know” means a determination by the originator of the information that the information is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and the proposed recipient of the specific Safeguards Information possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific Safeguards Information in the proceeding. Where the information is in the possession of the originator and the NRC staff (dual possession), whether in its original form or incorporated into another document or other matter by the recipient, the NRC staff makes the determination. In the event of a dispute regarding the “need to know” determination, the presiding officer of the proceeding shall make the “need to know” determination.

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Quantities of Concern means the quantities of the radionuclides meeting or exceeding the threshold limits set forth in Table I-1 of Appendix I of this part.

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Safeguards Information means information not classified as National Security Information or Restricted Data which specifically identifies a licensee’s or applicant’s detailed control and accounting procedures for the physical protection of 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 of and location of certain plant equipment vital to the safety of production or utilization facilities; and any other information within the scope of Section 147 of the Atomic Energy Act of 1954, as amended, 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 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 the specific Safeguards Information handling requirements that are applicable to Safeguards Information needing a higher level of protection.

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Trustworthiness and reliability are characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of Safeguards Information (including Safeguards Information designated as Safeguards Information—Modified Handling) to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability for this purpose is based upon a background check.

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§ 73.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretations of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

§ 73.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be sent as follows:

- (a) By mail addressed to: ATTN: Document Control Desk, Director, Office of