

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 26, 32, 40, 50, 53, ~~60, 63~~, 73, 74, and 150

[NRC-1999-0002, NRC-2001-0012, NRC-2002-0013, NRC-2006-0008, ~~NRC-2007-0670~~, NRC-2008-0200, ~~NRC-2009-0089~~, NRC-2009-0227^{7, 8}, and NRC-2009-0079]

RIN 3150-AH18; 3150-AG89; 3150-AG64; 3150-AH81; ~~3150-AI06~~; 3150-AI29; ~~3150-AI38~~; 3150-AI68; 3150-AI50

Rulemaking Activities Being Discontinued by the NRC

AGENCY: Nuclear Regulatory Commission.

ACTION: Rulemaking activities; discontinuation.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing ~~40-eight~~ rulemaking activities. The purpose of this action is to inform members of the public that these rulemaking activities are being discontinued and to provide a brief discussion of the NRC's decision to discontinue them. ~~In addition, to improve the transparency of the NRC's rulemaking process, [t~~hese rulemaking activities will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the rulemaking activities discussed in this document are discontinued.

ADDRESSES: Please refer to Docket IDs NRC-1999-0002, NRC-2001-0012, NRC-2002-0013, NRC-2006-0008, ~~NRC-2007-0670~~, NRC-2008-0200, ~~NRC-2009-0089~~, NRC-2009-0227, and NRC-2009-0079 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket IDs NRC-1999-0002, NRC-2001-0012, NRC-2002-0013, NRC-2006-0008, ~~NRC-2007-0670~~, NRC-2008-0200, ~~NRC-2009-0089~~, NRC-2009-0227, and NRC-2009-0079. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

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

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

FOR FURTHER INFORMATION CONTACT: Leslie Terry, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1167; e-mail: Leslie.Terry@nrc.gov.

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS:

- I. Background
- II. Process for Discontinuing Rulemaking Activities
- III. Controlling the Disposition of Solid Materials (RIN 3150-AH18; NRC-1999-0002)
- IV. Entombment Options for Power Reactors (RIN 3150-AG89; NRC-2001-0012)
- V. Transfers of Certain Source Materials by Specific Licensees (RIN 3150-AG64; NRC-2002-0013)
- VI. Approach to Risk-Informed, Performance-Based Requirements for Nuclear Power Reactors (RIN 3150-AH81; NRC-2006-0008)
- ~~VII. Geologic Repository Operations Area Security and Material Control and Accounting Requirements (RIN 3150-AI06; NRC-2007-0670)~~
- ~~VIII.~~VII. Expansion of the National Source Tracking System (RIN 3150-AI29; NRC-2008-0200)
- ~~IX. Geologic Repository Operations Area (GROA) Fitness for Duty Requirements (RIN 3150-AI38; NRC-2009-0089)~~
- ~~X.~~VIII. Sabotage of Nuclear Facilities, Fuel, or Designated Material (RIN 3150-AI68; NRC-2009-0227)
- ~~XI.~~IX. Security-Force Fatigue at Nuclear Facilities (No RIN or NRC Docket ID)
- ~~XII.~~X. Domestic Licensing of Source Materials--Amendments and Integrated Safety Analysis (RIN 3150-AI50; NRC-2009-0079)
- ~~XIII.~~XI. Conclusion

I. Background

Each year the NRC staff develops the NRC's Common Prioritization of Rulemaking report, which is used to develop rulemaking program budget estimates and to determine the relative priority of rulemaking activities. During the most recent review of ongoing and potential rulemaking activities, the NRC staff identified ~~nine~~seven rulemaking activities in various stages of development, which the Commission approved to ~~that can~~ be discontinued. For ~~efficiency and~~ transparency, the NRC staff is including in this action an additional ~~tenth~~eight activity that the Commission has already provided initial direction to discontinue.

~~In SECY-15-XXXX, "<INSERT: title of SECY paper>," dated <INSERT: date> (ADAMS Accession No. MLXXXXXXXXXX), the NRC staff requested the Commission approve discontinuing the nine rulemaking activities and to publish a *Federal Register* notice (FRN) informing the public that 10 rulemaking activities (including a rule the Commission had already provided initial direction to discontinue) are discontinued. In the Staff Requirements Memorandum (SRM) for SECY-15-XXXX, dated <INSERT: date> (ADAMS Accession No. MLXXXXXXXXXX), the Commission approved discontinuing the nine rulemaking activities and publishing an FRN to inform the public that 10 rulemaking activities are discontinued.~~

A discussion of the NRC's decision to discontinue these ~~nine~~nine~~eight~~ rulemaking activities, ~~and a tenth rulemaking activity that the Commission already provided initial direction to discontinue,~~ is provided in Sections III through XII of this document.

II. Process for Discontinuing Rulemaking Activities

When the NRC staff identifies a rulemaking activity that can be discontinued, they will request, through a Commission paper, approval from the Commission to discontinue it. The

Commission provides its decision in an SRM. If the Commission approves discontinuing the rulemaking activity, the NRC will inform the public of the decision to discontinue it.

A rulemaking activity may be discontinued at any stage in the rulemaking process. For a rulemaking activity that has received public comments, the NRC will consider those comments before discontinuing the rulemaking activity; however, the NRC will not provide individual comment responses.

After Commission approval to discontinue the rulemaking activity, in the next edition of the Unified Agenda, the NRC will update the entry for the rulemaking activity to indicate that it is no longer being pursued. The rulemaking activity will appear in the completed section of that edition of the Unified Agenda but will not appear in future editions.

III. Controlling the Disposition of Solid Materials (RIN 3150-AH18; NRC-1999-0002)

The NRC began an enhanced participatory process to evaluate alternative courses of action for control of solid materials at NRC-licensed facilities that have very low amounts of, or no amount of, radioactivity. As part of this process, the NRC published an Issues Paper in the *Federal Register* on June 30, 1999 (64 FR 35090), requesting public comment on various alternatives. The NRC also held a series of public meetings during the fall of 1999. The Issues Paper described the following process alternatives: (1) continue the current NRC practice of case-by-case consideration of licensee requests for release of solid material and consider updating existing guidance; or (2) conduct a rulemaking to establish criteria for control of solid materials. The Issues Paper indicated that a rulemaking could have three technical approaches: (1) permit release of solid materials for unrestricted use if the potential dose to the public from this use is less than a specified level determined during the rulemaking process; (2) restrict release of solid materials to only certain authorized uses; or (3) do not permit either unrestricted or restricted release of solid materials that have been in an area where radioactive material has

been used or stored, and instead require all these materials to go to a licensed low-level waste disposal facility.

The agency received over 900 comment letters containing around 2,379 individual comments on the Issues Paper, in addition to those summarized from the public meeting transcripts. The comments were summarized in NUREG/CR-6682, "Summary and Categorization of Public Comments on Controlling the Disposition of Solid Materials," published in September 2000 (ADAMS Accession No. ML040720691). Comments were received from essentially every stakeholder group, including environmental and citizen's groups, members of the general public, scrap and recycling companies, steel and cement manufacturers, hazardous and solid waste management facilities, U.S. Department of Energy, State agencies, Tribal governments, scientific organizations, international organizations, NRC licensees, and licensee organizations. Most of the comments focused on the specific technical approach or criteria that should be developed and reflected a broad spectrum of viewpoints on the issues related to control of solid materials. The NRC staff considered all the comments received.

The NRC staff submitted a draft proposed rule to the Commission, SECY-05-0054, "Proposed Rule: Radiological Criteria for Controlling the Disposition of Solid Materials," dated March 31, 2005 (ADAMS Package Accession No. ML041550790). The NRC staff proposed this rule to the Commission because the NRC wanted to improve the efficiency and effectiveness of the NRC regulatory process by establishing criteria for the disposition of solid materials in the regulations. This proposed rule would have added radiological criteria for controlling the disposition of solid materials that have no, or very small amounts of, residual radioactivity resulting from licensed operations, and which originate in restricted or impacted areas of NRC-licensed facilities. In the SRM for SECY-05-0054, dated June 1, 2005 (ADAMS Accession No. ML051520185), the Commission disapproved publication of the proposed rule *at that time* [emphasis added] because the NRC was "faced with several high priority and complex tasks,

the current approach to review specific cases on an individual basis is fully protective of public health and safety, and the immediate need for this rule has changed due to the shift in timing for reactor decommissioning.”

This rulemaking continued to be on hold while the Commission was focused on enhancing security and emergency preparedness and response as well as beginning preparations for new authorizations under the Energy Policy Act of 2005, including new nuclear facility licensing and regulation.

The NRC has decided not to proceed with this rulemaking activity because, even though there has been a recent increase in decommissioning, the current regulatory framework provides for case by case approval of alternate disposal procedures under 10 CFR 20.2002. To date, the NRC has received a limited number of licensee requests per year. The NRC staff is conducting a low-level waste programmatic assessment. As part of this assessment, the NRC staff will conduct a scoping study of various low-level waste issues. If the NRC staff determines a need to pursue rulemaking as a result of this study, then the NRC staff will request Commission approval for the rulemaking.

IV. Entombment Options for Power Reactors (RIN 3150-AG89; NRC-2001-0012)

The NRC published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* (66 FR 52551; October 16, 2001) to request public comment on the issues surrounding the feasibility of entombment. The ANPR was published because the NRC was considering an amendment to its regulations that would have clarified the use of entombment for power reactors. The NRC had determined that entombment of power reactors was a technically viable decommissioning alternative and could be accomplished safely. The ANPR also included dose criteria for license termination. The dose criteria given in the ANPR included a provision that would have permitted license termination under restricted and unrestricted release conditions.

The agency received 19 comment letters on the ANPR from States, licensees, the Nuclear Energy Institute, the U.S. Environmental Protection Agency (EPA), the Conference of Radiation Control Program Directors' E-24 Committee, the Southeast Compact Commission, and a private individual. There was no consensus on a preferred option; some commenters supported the entombment option while other commenters did not. In general, comments from the eight utilities and the Nuclear Energy Institute stated that they would like to have entombment available as a decommissioning option; however, none ~~unequivocally~~ committed to using entombment as a decommissioning process.

The NRC has decided not to proceed with this rulemaking activity because the three decommissioning options, which include entombment for power reactors, are currently being considered within the rulemaking for reactor decommissioning. Specifically, in the SRM for SECY-14-0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements," dated December 30, 2014 (ADAMS Accession No. ML14364A111), the Commission directed the NRC staff to proceed with rulemaking on reactor decommissioning. ~~The Commission further directed that the rulemaking address issues discussed in SECY-00-0145, "Integrated Rulemaking Plan for Nuclear Power Plant Decommissioning," dated June 28, 2000 (ADAMS Accession No. ML003721626), which includes the entombment option for power reactors~~

V. Transfers of Certain Source Materials by Specific Licensees (RIN 3150-AG64; NRC-2002-0013)

On August 28, 2002 (67 FR 55175), the NRC published a proposed rule in the *Federal Register* that would have required prior NRC approval for transfers of source material derived from licensees' specifically licensed material to ensure that these transfers do not pose a health and safety concern.

The NRC received 25 comments from individuals, industrial groups, environmental organizations, and State and Federal government agencies. A summary of comments and issues raised by commenters includes the following: (1) proposed release limits were inconsistent with part 20 of title 10 of the *Code of Federal Regulations* (10 CFR); (2) better clarification was needed regarding doses applied to non-disposal transfers; (3) the only technical basis discussed was based on an overly conservative assessment; (4) the proposed rule was inconsistent with the existing exemption in 10 CFR 40.13(a); (5) these transfers could impact public health and safety; (6) the environmental assessment was insufficient and the NRC should develop an environmental impact statement; (7) more information was needed about implementation of the rule; (8) the policy was inconsistent with past documents issued by the Commission on this subject; (9) ~~why would~~ the rule ~~not should also~~ apply to general licensees; (10) there should be a minimum quantity level below which approvals for transfer would not be needed; (11) the number of transfers were underestimated; (12) the NRC underestimated the impact to industry because Agreement State licensees were not included in the regulatory analysis; and (13) differing commenter opinions on whether to include the word “disposes” in the authorized activities in 10 CFR 40.13(a). Several commenters commented on the agency’s question on whether the regulations should include new requirements specifically prohibiting intentional dilution. Several commenters were against including new regulations for dilution because they believed that it would potentially lead to additional, unnecessary burdens for industry. Several commenters thought that regulations should be added to prevent intentional dilution for purposes of waste treatment and disposal. Some of these commenters thought that “intentional dilution” needed to be better defined. The NRC staff considered all the comments received.

The NRC has decided not to proceed with this rulemaking activity because the concerns are being considered in other regulatory processes. Specifically, there is ongoing work related

to SECY-03-0068, “Interagency Jurisdictional Working Group Evaluating the Regulation of Low-Level Source Material or Materials Containing Less than 0.05 Percent by Weight Concentration Uranium and/or Thorium,” dated May 1, 2003 (ADAMS Package Accession No. ML030920468), and recent discussions with the U.S. Environmental Protection Agency that would allow certain low-level wastes to be disposed of in Resource Conservation and Recovery Act (commonly known as RCRA) sites. In addition, the NRC has decided not to proceed with this rulemaking activity because the NRC has, on a case-by-case basis, successfully dealt with the issues this rulemaking activity would have addressed.

VI. Approach to Risk-Informed, Performance-Based Requirements for Nuclear Power Reactors (RIN 3150-AH81; NRC-2006-0008)

On May 4, 2006 (71 FR 26267), the NRC published an ANPR in the *Federal Register* to request public comment on an approach that would have established a comprehensive set of risk-informed and performance-based requirements applicable for all nuclear power reactor technologies as an alternative to current requirements. At the time the ANPR was published, the NRC already had an ongoing effort to revise some specific regulations to make them risk-informed and performance-based. The rulemaking would have used operating experience, lessons learned from the ~~current~~ rulemaking activities, and advances in the use of risk-informed technology to focus NRC and industry resources on the most risk-significant aspects of plant operations to better protect public health and safety. The set of new alternative requirements would have been intended primarily for new nuclear power reactors, although they would ~~be~~ have been available to existing reactor licensees.

The ANPR included 73 questions about the proposed rulemaking scope and plan. The NRC received 15 comment submittals from the regulated industry, consensus standard committees, private individuals, and a foreign regulatory body. Many of the public comments

supported the concept of a risk-informed, performance-based regulatory framework and the development of technology-neutral regulations. Some public comments recommended that it was too soon to develop the proposed framework and that the NRC and the industry needed to pilot the licensing of advanced reactor technology using the current 10 CFR parts 50 and 52 frameworks to identify challenges. Some comments did not support the framework as described in the ANPR because it did not require specific design standards and asserted that it did not adequately employ consensus standards that have been demonstrated as adequate and safe for existing reactors. The NRC staff considered all the comments received.

In SECY-07-0101, “Staff Recommendations Regarding a Risk-Informed and Performance-Based Revision to 10 CFR Part 50,” dated June 14, 2007 (ADAMS Package Accession No. ML070790253), the NRC staff requested that the Commission defer the rulemaking activity until after the development of the licensing strategy for the Next Generation Nuclear Plant (NGNP) or receipt of an application for design certification or a license for the Pebble Bed Modular Reactor. In the SRM for SECY-07-0101, dated September 10, 2007 (ADAMS Accession No. ML072530501), the Commission approved the NRC staff's recommendation to defer the rulemaking activity. In the same SRM, the Commission approved the NRC staff's proposal to provide a recommendation on initiating a rulemaking 6 months after the development of the licensing strategy for the NGNP was finalized. Subsequently, the NGNP project was terminated and the NRC no longer had a viable demonstration project. The NRC has decided not to proceed with this rulemaking activity or continue to expend resources tracking this rulemaking, which is now ten years old. The NRC has several initiatives underway that would further risk-inform and performance-base the regulatory framework. Discontinuing this particular rulemaking would not preclude other ongoing or future risk-informed, performance-based initiatives.

The NRC is open to new opportunities to explore ~~such a~~ risk-informed, performance-based licensing strategy. In the past 2 years, there has been renewed U.S. industry and Executive Branch interest in advanced non-light water reactors (LWRs). The NRC is working to develop a regulatory process to address the unique aspects of these designs within the current regulatory framework. A new risk-informed, performance-based framework has the potential to address some of these unique aspects assuming that the necessary supporting data is available. Currently the advanced non-LWR designs have not reached a level of maturity that would support development of a regulatory basis for rulemaking.

~~The NRC has decided not to proceed with this rulemaking activity until such time that advanced non-LWR designs reach a state of maturity that would generate the supporting data needed to develop a new risk-informed performance-based framework.~~ When supporting data is available, the NRC staff would reevaluate the need for rulemaking.

~~VII. Geologic Repository Operations Area Security and Material Control and Accounting Requirements (RIN 3150-A106; NRC-2007-0670)~~

~~On December 20, 2007, the NRC published a proposed rule in the *Federal Register* (72 FR 72522) regarding security measures for the protection of spent nuclear fuel, high-level radioactive waste, and other radioactive material at a geologic repository operations area (GROA) licensed under 10 CFR part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada." The NRC proposed new requirements for training, access authorization, defensive strategies, and reporting. The proposed rule would have established general performance objectives and corresponding system capabilities for the GROA material control program, with a focus on strengthening, streamlining, and consolidating all material control and accounting regulations specific to a GROA. In addition, the proposed rule would have required an emergency plan to address radiological emergencies.~~

~~The NRC held a public meeting in January 2008 on this proposed rule. The NRC received four comment letters, with a total of 58 pages of specific comments. The entities that commented included local, State, and Federal government agencies and the nuclear industry. The general comments ranged from commending the NRC for taking action to ensure security of the Yucca Mountain repository to recommending that the NRC withdraw and re-notice the proposed rule and replace the starting point from a nuclear power reactor model to an independent spent fuel storage installations (ISFSI) model that would simplify the proposed rule and more accurately represent the actual operations of the geologic repository operations area. The commenters asserted that the security and materials control and accounting requirements for an ISFSI would be adequate for a geologic repository operations area. The commenters asserted that the NRC should delay the proposed rule until a license application for a geologic repository is submitted to the NRC and the NRC has had an opportunity to review the relevant information and that the next version of the proposed rule should be issued for public comment at that time. Many substantive comments were provided in response to specific questions that appeared in the discussion points of the proposed rule and the rule text. The commenters submitted extensive comments and recommendations for changes to individual sections of the proposed rule. A lengthy comment about the design basis threat was provided and included a discussion about designing a geologic repository operations area to withstand an aircraft impact scenario. An Agreement State contended that it had a “need to know” and must review the design basis threat and proposed rule and provide comments. The NRC staff considered all the comments received.~~

~~The NRC has decided not to proceed with this rulemaking activity because of the lack of funding to complete this rulemaking.⁴~~

⁴-As background, Congress outlined in the Nuclear Waste Policy Act of 1982, as amended, that the role of the NRC was to serve as the independent regulator for the design, construction, operation, and eventual decommissioning of a

~~VIII.~~VII. **Expansion of the National Source Tracking System (RIN 3150-AI29; NRC-2008-0200)**

On April 11, 2008, the NRC published a proposed rule in the *Federal Register* (73 FR 19749) that would have expanded the current National Source Tracking System (NSTS) to include certain additional sealed sources. This rule would have required licensees to report certain transactions involving these sealed sources to the NSTS; these transactions included the manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. Each licensee would have had to provide its initial inventory of nationally tracked sources to the NSTS and annually verify and reconcile the information in the system with the licensee's actual inventory.

The NRC received 19 comment letters from States, licensees, industry organizations, and individuals. Almost all of the comment letters were opposed to expanding the NSTS as proposed for the following reasons: (1) the rule is premature and should be delayed to allow time to refine the burden estimates in the regulatory analysis using actual experience from the current NSTS; (2) the NSTS should be fully operational and successfully tracking currently required sources before the NRC adds additional sources to NSTS; and (3) there needs to be additional justification of the security risks posed by these sources before incurring the additional regulatory burden. The NRC staff considered all the comments received.

Based on public comments, the NRC staff requested the Commission to defer completion of the NSTS final rule (SECY-09-0011, "Deferral of Rulemaking: Expansion of National Source Tracking System (RIN 3150-AI29)," dated January 15, 2009 (ADAMS Accession No. ML083540566)).

On May 11, 2009, a copy of a draft final rule was provided to the Agreement States for review. The Executive Boards of the Organization of Agreement States and the Conference of Radiation Control Program Directors provided comments. The agency received 26 comments from individual states. All of the comments received from the States, except one, opposed the NSTS expansion final rule. Most of the commenters cited a risk that implementing the rule would shift limited personnel resources away from what they believe are more near-term and tangible health and safety aspects of radiation protection.

The Commission was unable to reach a decision on the NRC staff's recommendation to defer the NSTS final rule (SRM for SECY-09-0011, dated May 28, 2009 (ADAMS Accession No. ML091480775)). Instead, the Commission directed the NRC staff to conduct a data and system operations and performance analysis of the NSTS based on system operation with Category 1 and 2 sources and report to the Commission. The NRC staff conducted these analyses and reported to the Commission.

The NRC has decided not to proceed with this rulemaking activity because the existing regulatory basis, draft proposed rule, and final proposed rule are now out of date. This rulemaking was developed and proposed as the NSTS was being developed and deployed in late 2008. Since 2009, the NRC published 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material" (78 FR 16922; March 19, 2013); gained significant experience in the management and operation of the National Source Tracking System (see <http://www.nrc.gov/security/byproduct/ismp/nsts.html>); and deployed two on-line applications to support validation of licenses, the Web-Based Licensing System (see <http://www.nrc.gov/security/byproduct/ismp/wbl.html>) and the License Verification System (see <http://www.nrc.gov/security/byproduct/ismp/lvs.html>). The NRC staff is conducting a program review of 10 CFR part 37, which includes an assessment of whether additional measures are warranted for Category 3 materials. Following completion of the 10 CFR part 37 assessment, if

the NRC staff determines that the NSTS should be expanded, then the NRC staff will request Commission approval for the rulemaking. The NRC staff will be reporting to the Commission and the Congress on this review in 2016.

~~IX. Geologic Repository Operations Area (GROA) Fitness-for-Duty Requirements (RIN 3150-AI38; NRC-2009-0089)~~

~~The NRC staff determined that the final rule published in the *Federal Register* on March 31, 2008 (73 FR 16966), “Fitness for Duty Programs,” inadvertently omitted 10 CFR part 60, “Disposal of High-Level Radioactive Wastes in Geologic Repositories,” and 10 CFR part 63, “Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada.” The NRC staff intended to apply select requirements of 10 CFR part 26, “Fitness for Duty Programs,” to licensees licensed under 10 CFR parts 60 and 63.~~

~~The NRC has decided not to proceed with this rulemaking activity because of the lack of funding to complete this rulemaking.~~

X.VIII. Sabotage of Nuclear Facilities, Fuel, or Designated Material (RIN 3150-AI68; NRC-2009-0227)

In SECY-12-0066, “Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities Designated by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear Facilities or Fuel,” dated April 26, 2012 (ADAMS Accession No. ML120200150), the NRC staff recommended, in part, that the Commission defer a decision on whether to proceed with a rulemaking to revise 10 CFR 73.81, “Criminal penalties,” to add certain radioactive material or other property to the scope of criminal penalties for sabotage authorized under in Section 236, “Sabotage of Nuclear Facilities or Fuel,” of the Atomic Energy Act of 1954, as amended (AEA).

In SECY-12-0066, the NRC staff noted that the NRC had not previously issued regulations to implement the authority of Section 236 of the AEA. Instead, the NRC has viewed the language of this statute as plain enough to enable the U.S. Department of Justice (DOJ) to initiate prosecutions for criminal acts, particularly involving the most significant facilities that the NRC regulates, including nuclear power reactors and fuel cycle facilities. This rulemaking would have allowed the NRC to identify certain radioactive material or other property for inclusion within the scope of Section 236.a(7) of the AEA if the Commission determined that this material or other property was significant to public health and safety or common defense and security. The NRC staff evaluated whether further rulemaking was needed to expand nuclear facilities, nuclear waste, or nuclear fuel covered under the scope of Section 236 of the AEA. The NRC staff evaluated (1) materials in 10 CFR part 73, appendix I, "Category 1 and 2 Radioactive Materials" (material list in appendix A to 10 CFR part 37); (2) production reactor spent nuclear fuel and naval reactor spent nuclear fuel, and (3) source material in the physical form of uranium hexafluoride.

In SECY-12-0066, the NRC staff discussed why these materials were chosen for evaluation and the application of Section 236.a(3) of the AEA. The NRC staff stated that "Including certain radioactive material or other property within the scope of the criminal penalties in Section 236 of the AEA may provide DOJ with additional tools for combating terrorists and other malevolent actors." However, the NRC staff noted that a determination of the list of radionuclides and quantities to use in a subsequent rulemaking would need to be coordinated with NRC activities to implement Recommendation 2 of the 2010 Radiation Source Protection and Security Task Force Report [task force recommendations appear in SECY-11-0169, "U.S. Nuclear Regulatory Commission Implementation Plan for the Radiation Source Protection and Security Task Force Report" (ADAMS Package Accession No. ML113070551)], as well as consideration of ongoing actions related to chemical security. The NRC staff indicated that it

could not develop the required regulatory basis for a rulemaking to expand the scope of Section 236 of the AEA to include these materials until these activities are completed. The Commission approved the NRC staff's recommendation in the SRM for SECY-12-0066, dated June 18, 2012 (ADAMS Accession No. ML121700765).

The NRC staff completed the additional activities discussed in SECY-12-0066 and informed the Commission that there was no compelling reason to revise 10 CFR 73.81 to implement the scope authority provided by Section 236 of the AEA to provide criminal sanctions for sabotage of nuclear facilities, nuclear waste, and nuclear fuel or other property.

The NRC has decided not to proceed with this rulemaking activity because the NRC staff has concluded that a rulemaking to modify 10 CFR 73.81 to implement the new authority of Section 236 of the AEA would not serve as an effective deterrent for individuals intent on committing sabotage of nuclear facilities, nuclear waste, or nuclear fuel or other property and is not warranted at this time.

XI-IX. Security-Force Fatigue at Nuclear Facilities (No RIN or NRC Docket ID)

In COMSECY-04-0037, "Fitness-for-Duty Orders to Address Fatigue of Nuclear Facility Security Force Personnel," dated June 21, 2004 (ADAMS Accession No. ML040790094), the NRC staff requested Commission approval to issue security orders concerning fitness-for-duty enhancements to address fatigue concerns for security force personnel at five classes of NRC-licensed facilities: (1) Independent Spent Fuel Storage Installations, (2) Decommissioning Reactors, (3) Category 1 Fuel Cycle Facilities, (4) Gaseous Diffusion Plants, and (5) the Natural Uranium Conversion Facility. In the SRM for COMSECY-04-0037, dated September 1, 2004 (ADAMS Accession No. ML042450533), the Commission directed the NRC staff to pursue the rulemaking process rather than issuing security orders for those materials facilities and personnel for whom the NRC staff believes fatigue related requirements are necessary.

On June 18, 2014 (FR 79 34641), the NRC published a draft regulatory basis for public comment in the *Federal Register* to support the potential amendments to revise a number of existing security-related regulations relating to physical protection of special nuclear material at NRC-licensed facilities and in transit, as well as the fitness for duty programs for security officers at Category 1 fuel cycle facilities. The draft regulatory basis encompassed three separate rulemaking efforts: (1) Enhanced Security at Fuel Cycle Facilities, (2) Special Nuclear Material Transportation Security, and (3) Security-Force Fatigue at Category 1 Fuel Cycle Facilities.

During the public comment period the two Category 1 fuel cycle licensees proposed an alternative to the Security-Force Fatigue rulemaking. Specifically, the affected licensees proposed adding a fatigue management program for security officers into their security plans. On April 22, 2015 (80 FR 22434), the NRC published the final regulatory basis that explained that the NRC had decided to separate the regulatory basis activities for the Security-Force Fatigue at Category 1 Fuel Cycle Facilities to allow staff time to explore the alternative to rulemaking proposal.

The NRC has decided not to proceed with the Security-Force Fatigue rulemaking activity because, after reviewing the two licensees' proposed changes to their security plans to manage security officer fatigue, NRC licensing staff considers the proposal a viable option because it will establish fatigue requirements that can be readily inspected and enforced for the two Category 1 fuel cycle licensees within their security plans.

XII.X. Domestic Licensing of Source Materials--Amendments and Integrated Safety

Analysis (RIN 3150-AI50; NRC-2009-0079)

On May 17, 2011 (76 FR 28336), the NRC published a proposed rule in the *Federal Register*, proposing to amend its regulations by adding additional requirements for source

material licensees who possess significant quantities of uranium hexafluoride (UF₆). The proposed amendments would require these licensees to conduct integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR part 70 licensees; set possession limits for UF₆ for determining licensing authority (NRC or Agreement States); add defined terms; add an additional evaluation criterion for applicants who submit an evaluation in lieu of an emergency plan; require the NRC to perform a backfit analysis under specified circumstances; and make administrative changes to the structure of the regulations. The NRC held a public meeting on February 22, 2008, to discuss the scope of the proposed rulemaking and to seek public input on the proposed threshold quantities for determining when a facility will be regulated by the NRC or an Agreement State.

The agency received nine comment letters addressing multiple issues. Comments on the proposed rule were submitted on behalf of several affected States, by industry representatives, NRC licensees, and an individual. The comments and responses were grouped into eight areas: general, procedural, definitions, performance requirements, jurisdiction/authority, backfitting, reporting, and corrections. Most of the comments were generally opposed to the proposed changes to the regulations. Several comments questioned the cost amounts used in the regulatory analysis. All the commenters opposed the probabilistic risk assessment. The NRC staff considered all the comments received.

The NRC staff submitted a draft final rule to the Commission in SECY-12-0071, "Final Rule: Domestic Licensing of Source Material – Amendments/Integrated Safety Analysis (RIN 3150-A150)," dated May 7, 2012 (ADAMS Accession No. ML12094A344). The draft final rule was revised from the proposed rule based on comments from Agreement States and the public. In the SRM for SECY-12-0071, dated May 3, 2013 (ADAMS Accession No. ML13123A127), the Commission disapproved publication of the draft final rule. The Commission directed the NRC

staff to revise the rule and associated guidance to address issues given in the SRM and to resubmit the rule for Commission consideration.

In COMSECY-15-0002, “Termination of Rulemaking to Revise Title 10 of The *Code of Federal Regulations* Part 40, 'Domestic Licensing of Source Material' and Staff Plans to Address Other Items in Staff Requirements Memorandum for SECY-12-0071 (RIN 3150-A150)” (ADAMS Accession No. ML13331A559), the NRC staff proposed termination of this rulemaking. The NRC staff based this recommendation on: (1) Honeywell’s existing uranium conversion facility, and the licensed but as yet un-built uranium deconversion facility to be operated by International Isotopes; both already have newly approved ISAs as required by their licenses, (2) the NRC does not anticipate new applications for 10 CFR part 40 uranium conversion or deconversion facilities in the foreseeable future, (3) the hazards at Honeywell’s uranium conversion facility and the hazards at International Isotopes planned uranium deconversion facility are facility-specific and sufficiently controlled, (4) the NRC staff’s reanalysis of the rule has reduced the priority of the rulemaking, and (5) consideration of the cumulative effects of regulation. The agency plans to develop Interim Staff Guidance related to 10 CFR part 70 facilities. The Commission approved termination of this rulemaking in the SRM for COMSECY-15-0002, dated April 17, 2015 (ADAMS Accession No. ML15107A488).

The NRC staff is including discussion of this decision in this document to inform members of the public.

~~XIII~~.XI. Conclusion

The NRC is no longer pursuing the ~~40-eight~~ rulemaking activities for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for these rulemaking activities with reference to this document to indicate that they are no

longer being pursued. These rulemaking activities will appear in the completed section of that edition of the

Unified Agenda but will not appear in future editions. Should the NRC determine to pursue anything in these areas in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this XX day of MONTH 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.