

Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

Stephanie Blaney /S/

Stephanie Blaney
FOIA Officer (Acting)

RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST

2016-0566

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RESPONSE
TYPE

INTERIM



FINAL

REQUESTER:

Julian Tarver

DATE:

OCT 07 2016

DESCRIPTION OF REQUESTED RECORDS:

SRM SECY 09-0087 and SECY 09-0087

PART I. -- INFORMATION RELEASED

- ☐ Agency records subject to the request are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☒ See Comments.

PART I.A -- FEES

AMOUNT*

\$

*See Comments for details



You will be billed by NRC for the amount listed.



None. Minimum fee threshold not met.



You will receive a refund for the amount listed.



Fees waived.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☐ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☒ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☐ You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that you have the right to seek assistance from the NRC's FOIA Public Liaison.

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Stephanie Blancy, Acting FOIA Officer

Karen Daney

2016-0566

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**RESPONSE TO FREEDOM OF INFORMATION
ACT (FOIA) REQUEST Continued**

RESPONSE
TYPE



INTERIM



FINAL

REQUESTER:

Julian Tarver

DATE:

OCT 07 2016

PART I.C COMMENTS (Continued)

SECY 09-0087 is non-public and will need to be reviewed by OGC. It will then need to be referred back to SECY for the Commission's final determination. We are still processing your request for SECY 09-0087.

Outside of Scope

September 22, 2009

MEMORANDUM FOR:

R. W. Borchardt
Executive Director for Operations

Stephen G. Burns
General Counsel

FROM:

Annette L. Vietti-Cook, Secretary

/RA/

SUBJECT:

STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M.,
TUESDAY, SEPTEMBER 22, 2009, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

Outside of Scope

II. SECY-09-0087 – Final Rule Establishing Criminal Penalties for the Unauthorized Introduction of Weapons Into Facilities Designated by the Nuclear Regulatory Commission

The Commission approved a final rule, with the attached changes, that would make it a Federal crime to, without authorization, willfully carry, transport or otherwise introduce or cause to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon certain facilities or installations subject to the regulatory authority of the Nuclear Regulatory Commission.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

10/23/09)

The Commission has disapproved the staff's request to conduct a separate, follow-on rulemaking addressing the inclusion of byproduct material facilities such as hospitals, academic facilities, and other types of facilities. Rather, the staff should conduct an assessment to determine whether including any such facilities is warranted considering existing federal, state, and local laws regarding the introduction of firearms and other weapons into these types of facilities, as well as other relevant facility specific considerations. The staff should engage with appropriate stakeholders, including the Organization of Agreement States. If the staff concludes, based on its assessment, that additional rulemaking is warranted, it should submit a rulemaking plan for the Commission's approval explaining the need for the rule and describing the views of stakeholders. If the staff proposes to include hospitals, it should evaluate the comments received from the Mayo clinic, which raised questions regarding the topics of materials security and patient psychological well being.

Attachment:

Outside of Scope

2. Changes to the final rule in SECY-09-0087

cc: Chairman Jaczko
Commissioner Klein
Commissioner Svinicki
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Outside of Scope

Changes to the Final Rule in SECY-09-0087

1. Page 3, line 5, insert "Federal" before "crime"
2. Page 7, line 3, change "advanced" to "advance"
3. Page 8, line 8, delete "here" after "NRC"
4. Page 10, end of first sentence, delete "during operation of the facility."
5. Page 10, line 9, revise as follows: ~~"However, if a~~An unauthorized ... or explosive resultsing in...."
6. Page 10, line 11, revise as follows: "... ~~this would~~ already constitutes..."
7. Page 11, revise first sentence in the "Criminal Penalties, Investigation, and Prosecution" section as follows: "Under the final rule's terms,..."
8. Page 11, revise 2nd sentence in the "Criminal Penalties, Investigation, and Prosecution" section to read as follows: "Whoever willfully introduces, without authorization, weapons or explosives into or upon any other protected facility or installation would be, upon conviction, punishable by a fine of not more than \$1,000, as set forth in section 229b of the AEA ~~will be subject to criminal penalties under Federal law.~~"
9. Page 12, in Section III, "Discussion of the Final Rule," the last paragraph under "Criminal Penalties, Investigation, and Prosecution," should be revised to read the following:

"The NRC is also not making violations of § 73.75 criminally punishable under AEA sections 229b and 229c. The Commission's objective in this rulemaking, which the Commission believes is consistent with the Congressional intent, is to ensure that the criminal penalties in sections 229b and 229c apply to persons who introduce weapons into facilities without authorization. Furthermore, the NRC has sufficient administrative sanctions at its disposal to enforce the posting requirements."
10. Page 17, line 13, insert "unauthorized" before "introduction"
11. Page 22, 2nd to last full sentence. Revise as follows: "The only costs associated with implementing the rule are the costs to procure, post, and maintain these signs- since procedures and organization required to protect against the unauthorized introduction of weapons are already required."
12. Page 23, first full sentence, revise as follows: "The NRC considers this cost to be reasonable because of the express congressional requirement that any facilities covered by regulations promulgated under AEA § 229a.(1) post such regulations "conspicuously," and because the signs are required to be posted only at locations where entry into covered facilities would ordinarily occur, ~~and because the signs will help prevent unintentional criminal violations.~~"
13. Page 23, second sentence in "Backfit Analysis" section, change "Backfit" to "backfit"

14. Page 25, lines 6 and 7 of the "AUTHORITY" section, revise to read "...Pub. L. 96-295..." and "...Pub. L. 96-399..."
15. Page 25, Section 73.75 (a)(2), revise to read "... spent fuel storage facilities installations."
16. Page 27, the rule text proposed for § 73.81(c)(1), should be modified to add the following sentence to the end of § 73.81(c)(1):

"Willful violations of this provision are punishable by the criminal penalties set forth in sections 229b and 229c of the Atomic Energy Act of 1954, as amended."
17. Page 27, line 10, revise to read: "...independent spent fuel storage facility installation..."
18. Page 28, the rule text proposed § 73.81(d) should be deleted in its entirety. (Any references to § 73.81(d) in other parts of the rule should also be deleted.)