

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 73**

**[NRC-2014-0118]**

**RIN 3150-AJ41**

**Enhanced Security of Special Nuclear Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Discontinuation of rulemaking activity.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is discontinuing a rulemaking activity that would have codified certain requirements of security orders issued to special nuclear material and fuel cycle facility licensees after the terrorist attacks of September 11, 2001. The purpose of this document is to inform members of the public of the discontinuation of the rulemaking activity and to provide a brief explanation for the NRC's decision. This rulemaking activity 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 activity discussed in this document is discontinued.

**ADDRESSES:** Please refer to Docket ID NRC-2014-0118 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 ID NRC-2014-0118. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individuals 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 "[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](mailto: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:** Edward M. Lohr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0253; e-mail: [Edward.Lohr@nrc.gov](mailto:Edward.Lohr@nrc.gov); or Timothy E. Harris, Office of Nuclear Security and Incident Response; telephone: 301-287-3594; e-

mail: [Tim.Harris@nrc.gov](mailto:Tim.Harris@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Following the terrorist attacks of September 11, 2001, the NRC issued security orders (post-9/11 security orders) to special nuclear material (SNM) and fuel cycle facility licensees to require implementation of additional security requirements to address the new threat environment. The general scope of these orders was discussed in the 2015 final regulatory basis for the SNM rulemaking (ADAMS Accession No. ML14321A007). These orders imposed additional physical protection measures such as increased security patrols; augmented security forces and capabilities; and adding additional security posts, physical barriers, and intrusion detection capability. The orders also required the fuel cycle facility licensees to evaluate the protection of computer and digital assets and enhance coordination with local law enforcement and other governmental agencies. Consistent with its principles of openness and reliability, the NRC's regulatory practice is to codify in the NRC's public regulations, when possible, those requirements issued by order to a class of licensees, in order to make the requirements generally applicable and assemble them in one location.

In 2006, the Commission approved the staff's schedules and resources for the initial rulemaking on enhancing security for SNM. At that time, the scope of the rulemaking included incorporating the physical protection requirements contained in the post-9/11 security orders into generically applicable regulations to increase regulatory predictability and stability, and to allow interested stakeholders to provide comments on these new security requirements as part of the rulemaking process. In 2010, the

Commission amended the scope of the rulemaking by approving, in part, the staff's request to pursue a revised categorization scheme for SNM, which included a material attractiveness approach as part of the rulemaking.

The NRC staff developed a draft regulatory basis for the rulemaking that was published for public comment in June 2014 (ADAMS Accession No. ML14113A468). Based on the comments received, a final regulatory basis was published in April 2015. In April 2016, the Commission directed the staff to suspend all activities on the proposed SNM rulemaking in order to enable the Commission to benefit from further engagement with interagency partners.

In August 2018, the Commission directed the staff to proceed with an expedited rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders. Consistent with this direction, the staff developed a draft revised regulatory basis (ADAMS Accession No. ML18332A053) and noticed it in the Federal Register (84 FR 6980) for public comment on March 1, 2019. A subsequent notice (84 FR 10269) was published on March 20, 2019, extending the public comment period to April 19, 2019. The NRC received 12 publicly available comments (all posted at <http://www.regulations.gov> under Docket ID NRC-2014-0118) and 1 non-publicly available comment (classified). The NRC considered these comments in the development of the final revised regulatory basis.<sup>1</sup>

The NRC held a public meeting on the Cumulative Effects of Regulation in April 2019 and presented the status of the rulemaking based on the August 2018 Commission direction. The NRC informed the attendees that some requirements of the orders would not be codified in the regulations due to their sensitive nature. Therefore, some of the

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<sup>1</sup> Because the NRC is discontinuing the rulemaking, the NRC is ceasing efforts to finalize the revised regulatory basis and will not provide individual responses to the comment submissions.

orders would need to remain in place even after codifying the non-sensitive requirements. Several stakeholders expressed concerns on resuming the rulemaking with the limited scope. One concern expressed was that having requirements in both orders and in the NRC's regulations would create a patchwork of regulatory requirements and potentially confuse the regulated community. In general, the public meeting comments were similar to those received on the draft revised regulatory basis.

## **II. Process to Discontinue Rulemaking**

When the staff identifies a rulemaking activity that can be discontinued, a request for approval to discontinue the rulemaking is submitted to the Commission. The Commission provides its decision in a staff requirements memorandum (SRM). If the Commission approves discontinuing the rulemaking activity, the staff informs the public of the Commission's decision through the publication of a Federal Register notice.

A rulemaking activity may be discontinued at any stage in the rulemaking process. For a rulemaking activity that the public has commented on, the NRC will consider those comments before discontinuing the rulemaking activity; however, the NRC will not provide individual comment responses. For rulemaking activities that have generated significant public interest, the NRC conducts a public meeting or other form of public engagement to communicate its intent before discontinuing the rulemaking.

After Commission approval to discontinue a rulemaking activity, the staff updates the next edition of the Unified Agenda to indicate that the rulemaking is discontinued. The rulemaking activity will appear in the completed section of that edition of the Unified Agenda but will not appear in future editions.

### **III. Decision to Discontinue Rulemaking**

During the development of the final revised regulatory basis, the staff considered the feedback received from the external stakeholders and conducted a preliminary cost analysis for the rulemaking. The preliminary cost analysis concluded that the cost to conduct the rulemaking would exceed potential benefits by \$770,000. The staff also determined that the enhancement to security had already occurred through the implementation of the post-9/11 security orders. The staff did identify, for those portions of the orders that could be codified, that transparency with the public would be increased by pursuing rulemaking. However, staff was not able to identify any additional qualitative or quantitative benefits that would offset the cost to conduct the rulemaking. Based on this information and the input from stakeholders, the staff determined that the limited-scope rulemaking would not further improve public health and safety or the common defense and security and was not cost justified. Accordingly, the staff concluded that the rulemaking should be discontinued.

The staff presented its recommendation to the Commission in SECY-19-XXXX, dated [INSERT date of SECY-19-XXXX]. On [INSERT date of SRM-SECY-19-XXXX], the Commission issued SRM-SECY-19-XXXX, which approved the staff's recommendation to discontinue this rulemaking activity.

#### **IV. Conclusion**

The NRC is discontinuing the “Enhanced Security of Special Nuclear Material” rulemaking for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for the rulemaking activity and reference this document to indicate that the rulemaking is no longer being pursued. The rulemaking activity will appear in the completed actions section of that edition of the Unified Agenda but will not appear in future editions. If the NRC decides to pursue a similar or related rulemaking activity in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this       day of       2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.