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RULES AND DIRECTIVES
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Cindy Bladey, Chief, Rules, Announcements, and Directives Branch
Office of Administration
USNRC

Subject: Request for Comments on Criminal Penalties for Unauthorized Introduction of Weapons and Sabotage [Docket ID: NRC-2011-0164] **RECEIVED**

As requested by the NRC's FRN (76 FR 43937), dated July 22, 2011, I am providing comments on whether the NRC should conduct further rulemaking on the subject of criminal penalties for unauthorized introduction of weapons into certain NRC-regulated facilities, or regarding the sabotage of certain NRC regulated facilities, radioactive material, or special nuclear material. Although the comment period for this notice has ended, I am requesting the NRC consider the following comments in evaluating the need for further rulemaking.

1. I recommend the NRC not conduct any further rulemaking with respect to section 229 of the AEA. I believe the cost outweigh any potential benefits of expanding the criminal penalties under section 229 to licensed facilities beyond those included in the NRC's most recent final rule on section 229. The remaining facilities (that would be covered by a further NRC rulemaking) do not pose a significant enough security risk to warrant the cost of rulemaking, either by the NRC or by Agreement States. Applying this statute to facilities that are regulated by Agreement States would require Agreement State rulemaking, unless this issue were deemed to fall under common defense and security.
2. If the NRC concludes that rulemaking on section 229 is necessary, then I recommend that the rulemaking for section 229 should be accomplished under the NRC's common defense and security authority. This is because the issue at hand is federal prosecution of certain criminal acts; therefore, the NRC should not require that Agreement States enact mirroring criminal statutes, as Congress has determined that this malevolent act is a federal crime.
3. I recommend the NRC conduct a rulemaking with respect to section 236 of the AEA to address the additional facilities and radioactive material, and special nuclear material proposed by the NRC staff in the FRN. A rulemaking on section 236 would not incur any costs for NRC or Agreement State licenses; however, it would provide additional tools for the US Department of Justice (DOJ) in combatting terrorism. Therefore, further rulemaking is both appropriate and cost beneficial.
4. I recommend that any rulemaking on section 236 be conducted under the NRC's common defense and security authority.

Comments on the specific questions asked by the NRC in the FRN are enclosed.

Respectfully

S. Hardin
Mt. Airy, MD

Enclosure: As stated

*SUBST Review Complete
Memplite = ADM-013*

*E-RIDS = ADM-03
1 Cell = F. Storz (fcs)*

Enclosure – Comments on Specific Questions

1. Q1.1 – The NRC should conduct further rulemaking only under section 236.
2. Q1.2 – No. With Congress' enactment of sections 229 and 236, it has concluded that federal criminal sanctions are both necessary and appropriate for these specific malevolent acts. The AEA established a principal of federal regulation of nuclear power and radioactive material. State oversight of certain radioactive materials is circumscribed by the provisions of section 274 of the AEA. A consistent national standard is achieved through federalism, not individual, varying, state statutes.
3. Q1.3 – Option 3 (section 236 alone) is best. This option has the lowest cost (other than the no action alternative), no cost for licensees, and increased flexibility for DOJ prosecutions. It is also simpler and avoids Agreement State issues (in both the rulemaking and implementation).
4. Q2.1 – No. The Category 1 threshold limits for byproduct radioactive materials specified in Appendix I of 10 CFR Part 73 should be used in this rulemaking, if byproduct materials are included.
5. Q2.2 – I do not recommend using a different list of radionuclides (e.g., Part 71). Appendix I should be used. The question of whether additional radionuclides should be included should be evaluated separately on whether Appendix I (and similar tables in Parts 37 and 110) should be changed.
6. Q3.1 – Yes. These waste materials will be handled in an NRC-regulated geologic repository (be it Yucca Mountain or elsewhere). An NRC-regulated repository will include production reactor SNF and Naval Reactor SNF. Therefore, these waste materials should be include in this rulemaking to provide the necessary tools to support DOJ prosecutions of malevolent acts against geologic repositories, their supporting facilities, and the transportation of these materials to the repository.
7. Q3.2 – Yes. Source material and special nuclear material in the form of UF_6 have the same chemical hazard (i.e., the principal risk form malevolent acts against these materials is chemical, not radiological). Therefore, including source material in this chemical form is appropriate.
8. Q3.3 – Yes. Classified enrichment technology components are very sensitive from a nuclear proliferation standpoint. Therefore, they should be included in this rulemaking
9. Q.4.1 – If a section 229 rulemaking is conducted (which I do not recommend), the rulemaking should be based on the NRC's common defense and security authority. This is because the issue at hand is federal prosecution of certain criminal acts; therefore, the NRC should not require that Agreement States enact mirroring criminal statutes, as Congress has determined that this malevolent act is a federal crime. Conducting this rulemaking under the NRC's public health and safety authority would potentially require Agreement Sates to enact mirroring statutes or regulations.

10. Q4.2 – The NRC should use its common defense and security authority to conduct a rulemaking under section 236. Since this rulemaking facilitates the DOJ prosecution of federal criminal acts, common defense and security authority is the only appropriate basis for such a rulemaking.
11. Q4.3 – I do not recommend conducting a rulemaking under section 229. However, if the NRC concludes it is necessary, the rulemaking should be conducted under common defense and security authority. See response to Q4.1 for additional details.
12. Q4.4 – If the NRC determines it should conduct a rulemaking under its public health and safety authority, then the NRC regulations should be Compatibility Category “NRC.” The basis for category “NRC” is the need for consistent federal standards to implement a federal criminal statute.