

August 13, 2013

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-13-0045 – DIRECT FINAL
RULE: SAFEGUARDS INFORMATION - MODIFIED HANDLING
CATEGORIZATION CHANGE FOR MATERIALS FACILITIES
(RIN 3150-AJ18)

The Commission has approved for publication in the *Federal Register* the direct final rule and companion proposed rule (Enclosures 1 and 2 to SECY-13-0045), subject to the attached comments and edits.

The Commission agrees with staff's recommended certification that the rule, while affecting an estimated 112 licensees, will not have significant impact on a substantial number of small entities to satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Attachment: Changes and edits to rules in SECY-13-0045

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes and Edits to Rules in SECY-13-0045

- II. Changes to the *Federal Register* notice for the Direct Final Rule.
1. Page 3, line 7, revise to read: "...licensees (EA-03-225; January 12, 2004)..."
 2. Page 3, line 9, add a comma after "byproduct,"
 3. Page 4, line 7 from the bottom of the page, revise to read: "...containing source material, or byproduct, or special nuclear material..."
 4. Page 7, line 7, revise to read: "...containing source material, or byproduct, or special nuclear material..."
 5. Page 8, line 2, add the following three sentences to the end of Section "E.": "In addition, the SGI-M security Orders and security plans required by the Orders must be destroyed in accordance with 10 CFR 73.23(i) once the rule is effective and the Orders are rescinded. Documents must be marked and protected as SGI-M until they are destroyed. Additionally, if a panoramic irradiator or M&D licensee develops a Part 37 security plan, in preparation for compliance with Part 37 before § 73.23 is revised, the licensee may decontrol the Part 37 security plan in accordance with § 73.23(h)."
 6. Page 8, line 12, revise to read: "...The regulations in Part 37..."
 7. Page 9, line 5 from the bottom of the page, revise to read: "...until the regulation in part 37 or compatible Agreement State requirement becomes effective."
 8. Page 10, line 1, revise to read: "...Laboratories (SNL)..."
 9. Page 10, line 7, revise to read: "...M&D licensees have a similar risk..."
 10. Page 12, add a new Section "J." as follows:

J. Are individuals transporting Category 1 radioactive material subject to the background investigation requirements?

As part of this rulemaking, the NRC considered the level of responsibility to place on its licensees regarding fingerprinting and criminal history records checks for persons involved in the transportation of category 1 of radioactive material. Licensees covered by the fingerprinting and criminal history records check requirements of 10 CFR Part 37 may decide to transfer radioactive material away from the site or may receive radioactive material from another entity.

Such transfers or receipts may occur either as part of a shipment to or from a domestic company or an international company. Individuals involved in the shipment, in particular those employed by carriers or other organizations handling shipments, may have unescorted access to the material during the shipment process. These persons may not be employees of the licensee and thus may not be under the licensee's direct control. Section 37.29(a) grants relief from the background investigation for those individuals who

are commercial vehicle drivers for category 2 road shipments and package handlers at transportation facilities such as freight terminals and railroad yards.

Under this final rule, the Commission is revising the listing of categories of individuals relieved from the background investigation requirements with the following modification. Employees of carriers that transport category 1 quantities of radioactive material are also relieved. These individuals would typically be outside the control of the licensee and the licensee would have no way of knowing or influencing who those individuals might be. Additionally, information related to the physical protection of shipments of source material and byproduct material in category 1 quantities of radioactive material is no longer designated as SGI-M. The NRC will rely on the U.S. Department of Transportation (DOT) and the Transportation Security Administration (TSA) programs for background investigations of these personnel. While the background investigation may not be identical to those required under 10 CFR part 37, the NRC believes that the potential risk that a commercial driver or package handler might pose due to any difference in the background investigation is acceptably small.

11. Page 14, line 10, revise to read: "...containing source material, or byproduct, or special nuclear material..."
 12. Page 14, line 4 from the bottom of the page, revise to read: "...containing source material, or byproduct, or special nuclear material..."
 13. Page 15, line 7, revise to read: "**Appendix I to Part 73-Category 1 and 32 Radioactive Materials.**"
 14. Page 18, 7th row, last ("New") column of the table, revise to read: "NRCB"
 15. Page 18, 7th row, second to last ("Existing") column of the table, revise to read: "NRCB"
 16. Page 28, change date in signature block from "2012" to "2013"
- I. Changes to the *Federal Register* Notice for the Proposed Rule.
1. Page 11, change date in signature block from "2012" to "2013"