

May 27, 2014

MEMORANDUM FOR: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: Rochelle C. Bavol, Acting Secretary /RA/

SUBJECT: COMSECY-14-0020 – REVISIONS TO DIRECT FINAL RULE:
SAFEGUARDS INFORMATION - MODIFIED HANDLING
CATEGORIZATION CHANGE FOR MATERIALS FACILITIES
(RIN 3150-AJ18)

The purpose of this memorandum is to request clarification on the Staff Requirements Memorandum (SRM) for SECY-13-0045, "Direct Final Rule: Safeguards Information - Modified [SGI-M] Handling Categorization Change for Materials Facilities (RIN 3150-AJ18)," dated August 13, 2013. In the SRM, the Commission approved for publication in the *Federal Register* the direct final rule and companion proposed rule that were sent as enclosures to SECY-13-0045, subject to the comments and edits attached to the SRM.

SRM edit #5 directed the staff to add the following three sentences to the end of Section E in the Discussion section of the direct final rule:

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by the Orders must be destroyed in accordance with 10 CFR 73.23(i) once the rule is effective and the Orders are rescinded.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).

When adding the text above to the end of Section E, the staff identified what it believes would be an inconsistency in the resulting language in Section E. The SRM edit directs licensees to destroy certain material protected as SGI-M, i.e., SGI-M Security Orders and security plans required by the Orders, while the remaining text in Section E unchanged by the SRM refers to decontrolling "documents or other matter originally containing SGI-M." The staff believes that the reference to "documents or matter originally containing SGI-M" could be interpreted to include the SGI-M security orders, the SGI-M security plans required by the Orders, and/or other information related to the SGI-M security plans. If the option to decontrol documents or other matter containing SGI-M material is left in Section E, licensees would receive what appear to be contradictory instructions; that they must disposition the SGI-M Security Orders and plans required by those Orders by destroying them, but that they can also decontrol documents and other matter originally containing SGI-M. As a result, the staff proposes to further revise Section E by deleting text allowing the option of decontrolling rather than destroying SGI-M documents,

to make the entire Section E consistent with the destroying direction in item 5 of the SRM. The only exception to destroying the SGI-M material that would be retained in Section E, consistent with the SRM, is if licensees create new 10 CFR Part 37 plans before 10 CFR 73.23 is revised. In that case, they would be creating new SGI-M information but the guidance allows them to immediately decontrol it.

The following attachments show the additional proposed staff revisions. Attachment 1 shows the Commission-approved Section E after incorporation of the text directed by the SRM. Attachment 2 shows the changes proposed by the staff: the staff proposes to retain the text shown in **bold**, and remove the text shown as ~~strike through~~. (Please note that the proposed revisions would result in removing text that was revised in another SRM edit, i.e., SRM edit # 4.) Finally, Attachment 3 shows how Section E would read if the staff-proposed changes are incorporated. The bolded text is new text; all remaining text was approved by the Commission (i.e., from Attachment 1), including underlined text, which was moved from the end of Section E to the beginning of Section E.

The staff requests approval to publish the proposed *Federal Register* notices for the direct final rule and companion proposed rule (Enclosures 1 and 2) which reflect the Attachment 3 wording for Section E, as well as additional changes made as a result of the Office of Management and Budget review. All of the changes made can be seen in the redline strikeout versions of these documents available in the Agencywide Documents Access and Management System at accession numbers ML14071A291 and ML1407A294.

Vote sheets will be forwarded electronically. Please reply to SECY by COB Tuesday, June 10, 2014.

Attachments:

- 1 – Direct Final Rule Section E After Incorporating SRM Changes
- 2 – Direct Final Rule Section E with Additional Proposed Staff Changes
- 3 – Direct Final Rule Section E Recommended Text After Additional Proposed Staff Changes

Enclosures:

1. Direct Final Rule
2. Companion Proposed Rule

cc: EDO
OGC
OPA
CFO

Attachment 1 – Direct Final Rule Section E After Incorporating SRM Changes

E. Will Documents Now Designated SGI-M Still Have to be Protected as SGI-M?

Documents must be marked and protected as SGI-M until they are removed from the SGI category (decontrolled). Documents or other matter originally containing SGI-M must be removed from the SGI category in accordance with § 73.23(h) when the information no longer meets the criteria for designation as SGI as defined by 10 CFR part 73. The authority to determine that a document or other matter may be decontrolled must be exercised only by the NRC, or with NRC approval, or in consultation with the individual or organization that made the original SGI determination, in accordance with § 73.23(h). By issuance of this direct final rule, the NRC is approving the decontrol of the security-related information for licensees of panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to category 2 quantities of concern; licensees that transport irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel; and licensees that transport source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of radioactive material.

NRC licensees may decontrol their SGI-M once this direct final rule is effective and the orders have been rescinded. Agreement State licensees will continue to be subject to the SGI-M provisions of the orders until the NRC rescinds the orders after the Agreement State adopts the provisions of 10 CFR part 37. Once an Agreement State adopts 10 CFR part 37 and the provisions are effective in the State, the NRC will rescind all security orders for the licensees in that State. At that time the licensees may decontrol SGI-M in their possession.

To decontrol the security-related information that is currently designated as SGI-M, the licensee should draw a horizontal line through the SGI designation on each page of the document and initial adjacent to the horizontal line. The NRC does not expect a licensee to find all documents designated as SGI-M that may be in storage solely for the purpose of decontrolling the documents. Instead, as those documents are removed from storage for use, the licensee can decontrol the document at that time. Instead of decontrolling a document, the licensee may also destroy the document in accordance with § 73.23(i) once the document is no longer needed. Additional information on the decontrol of SGI is available in Section 9 of Regulatory Guide 5.79, "Protection of Safeguards Information."

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).

**Attachment 2 – Direct Final Rule with Additional Proposed Staff Changes
(Strike out text would be deleted; bolded text would be retained)**

E. Will Documents Now Designated SGI-M Still Have to be Protected as SGI-M?

~~Documents must be marked and protected as SGI-M until they are removed from the SGI category (decontrolled). Documents or other matter originally containing SGI-M must be removed from the SGI category in accordance with § 73.23(h) when the information no longer meets the criteria for designation as SGI as defined by 10 CFR part 73. The authority to determine that a document or other matter may be decontrolled must be exercised only by the NRC, or with NRC approval, or in consultation with the individual or organization that made the original SGI determination, in accordance with § 73.23(h). By issuance of this direct final rule, the NRC is approving the decontrol of the security related information for licensees of panoramic and underwater irradiators that possess greater than 370 TBq (10,000 Ci) of byproduct material in the form of sealed sources; manufacturers and distributors of items containing source, byproduct, or special nuclear material in greater than or equal to category 2 quantities of concern; licensees that transport irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel; and licensees that transport source, byproduct, or special nuclear material in greater than or equal to category 1 quantities of radioactive material.~~

~~NRC licensees may decontrol their SGI-M once this direct final rule is effective and the orders have been rescinded.~~ **Agreement State licensees will continue to be subject to the SGI-M provisions of the orders until the NRC rescinds the orders after the Agreement State adopts the provisions of 10 CFR part 37. Once an Agreement State adopts 10 CFR part 37 and the provisions are effective in the State, the NRC will rescind all security orders for the licensees in that State. At that time the licensees may decontrol SGI-M in their possession.**

To decontrol the security-related information that is currently designated as SGI-M, the licensee should draw a horizontal line through the SGI designation on each page of the document and initial adjacent to the horizontal line. The NRC does not expect a licensee to find all documents designated as SGI-M that may be in storage solely for the purpose of decontrolling the documents. Instead, as those documents are removed from storage for use, the licensee can decontrol the document at that time. ~~Instead of decontrolling a document, the licensee may also destroy the document in accordance with § 73.23(i) once the document is no longer needed.~~ Additional information on the decontrol of SGI is available in Section 9 of Regulatory Guide 5.79, “Protection of Safeguards Information.”

~~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).~~

Attachment 3 – Resulting Direct Final Rule Section E Text After Additional Proposed Staff Changes (Bolded text shows additional changes from the original text; underlined text was moved from the end of Section E to the beginning of Section E.)

E. Will Documents Now Designated SGI-M Still Have to be Protected as SGI-M?

The SGI-M security Orders, security plans required by the Orders, and any other SGI-M information 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). To decontrol the part 37 security-related information that is currently designated as SGI-M, the licensee should draw a horizontal line through the SGI designation on each page of the document and initial adjacent to the horizontal line.

Agreement State licensees will continue to be subject to the SGI-M provisions of the orders until the NRC rescinds the orders after the Agreement State adopts **regulations compatible to** the provisions of 10 CFR part 37. Once an Agreement State adopts **regulations compatible to** 10 CFR part 37 and the provisions are effective in the State, the NRC will rescind **relevant** security orders for the licensees in that State. At that time the licensees may **destroy** SGI-M in their possession.

The NRC does not expect a licensee to find all documents designated as SGI-M that may be in storage solely for the purpose of **destroying** the documents. Instead, as those documents are removed from storage for use, the licensee can destroy the document at that time. Additional information on the decontrol and destruction of SGI is available in Section 9 of Regulatory Guide 5.79, "Protection of Safeguards Information."