

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 73**

**[NRC-2014-0118]**

**RIN 3150-AJ41**

**Enhanced Security of Special Nuclear Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Revised regulatory basis; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comments on a draft revised regulatory basis to support a rulemaking that would update special nuclear material (SNM) physical protection requirements for fuel cycle facilities. The rule would establish generically applicable security requirements similar to those imposed by security orders issued by the NRC following the terrorist attacks of September 11, 2001.

**DATES:** Submit comments by April 1, 2019. Comments received after this date will be considered if it is practical to do so; however, the NRC is only able to ensure consideration of comments received on or before this date.

**ADDRESSES:** You may submit comments by 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.

- **E-mail comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.
- **Comments that contain proprietary or sensitive information:** Please contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document to determine the most appropriate method for submitting those comments.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Timothy Harris, Office of Nuclear Security and Incident Response, telephone: 301-287-3594, e-mail: [Timothy.Harris@nrc.gov](mailto:Timothy.Harris@nrc.gov); or Edward Lohr, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-0253, e-mail: [Edward.Lohr@nrc.gov](mailto:Edward.Lohr@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

## **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining Information and Submitting Comments**

#### **A. Obtaining Information**

Please refer to Docket ID NRC-2014-0118 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0118.
- **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).
- **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.

#### **B. Submitting Comments**

Please include Docket ID NRC-2014-0118 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to

remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons to not include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

Please note that the NRC will not provide formal written responses to each of the comments received on the draft revised regulatory basis. However, the NRC will consider all comments received in the development of the final regulatory basis.

## **II. Discussion**

On April 22, 2015, the NRC published in the *Federal Register* (ADAMS Accession No. ML14321A007) a regulatory basis for the “Rulemaking for Enhanced Security of Special Nuclear Material” proposed rule. The proposed rule would amend the requirements in part 73 of title 10 of the *Code of Federal Regulations* (10 CFR), “Physical Protection of Plants and Materials.” The Commission recently directed that resources be allocated for this rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders.

Consistent with this direction and the NRC’s rulemaking process, the staff has prepared a draft revised regulatory basis to describe and document the results of assessments and analyses performed by the NRC in support of the proposed rule for enhancing security for SNM. The draft revised regulatory basis document is available in ADAMS under Accession No. ML18332A053.

The 2015 regulatory basis set forth four objectives for the rulemaking: 1) make generically applicable physical protection measures similar to those imposed by security orders issued following the terrorist attacks of September 11, 2001 (post-9/11 security orders); 2) consider risk insights gained from new national laboratory studies, implementation and oversight experience, and international guidance; 3) improve consistency and clarity of SNM physical protection requirements; and 4) use a risk-informed and performance-based structure. The NRC now is pursuing only the first objective in the scope of the rulemaking.

### **III. Cumulative Effects of Regulations**

The cumulative effects of regulation (CER) describe the challenges that licensees or other impacted entities (such as Agreement State agency partners) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address specific issues). The NRC has implemented CER enhancements into the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from a proposed rule. In developing comments on the 2019 draft revised regulatory basis, consider the following questions:

1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed

requirements, including changes to programs, procedures, or the facility?

2) If current or projected CER challenges exist, what should be done to address this situation (e.g., if more time is required to implement the new requirements, what period of time would be sufficient, and why would such a time frame be necessary)?

3) Do other regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) by the NRC or other agencies influence the implementation of the potential proposed requirements?

4) Are there unintended consequences? Does a proposed rulemaking action create conditions that would be contrary to the purpose and objectives of the 10 CFR part 73 rulemaking? If so, what are the consequences and how should they be addressed?

5) Please consider providing information on the estimates of the costs and benefits of a proposed rulemaking action, which can be used to support any additional regulatory analysis by the NRC.

#### **IV. Availability of Documents**

The documents identified in this *Federal Register* notice are available to interested persons through one or more of the methods listed in the SUPPLEMENTARY INFORMATION section of this document.

The NRC may post additional materials related to this rulemaking activity to the Federal rulemaking website at [www.regulations.gov](http://www.regulations.gov) under NRC-2014-0118. These documents will inform the public of the current status of this activity and/or provide additional material for use at future public meetings.

The Federal rulemaking website allows you to receive alerts when changes or

additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2014-0118); 2) click the “Sign up for E-mail Alerts” link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

## **V. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published in the *Federal Register* on June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 26th day of February, 2019.

For the Nuclear Regulatory Commission.

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Theresa V. Clark, Deputy Director,  
Division of Rulemaking,  
Office of Nuclear Material Safety and Safeguards.