

Union of Concerned Scientists' Comments on the "Revised Regulatory Basis—Draft for Public Comment" for the Rulemaking for Enhanced Security of Special Nuclear Material

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The Union of Concerned Scientists (UCS) strongly opposes the drastic and wholly unwarranted reduction in scope proposed by the January 2019 draft revised regulatory basis for the pending rulemaking for enhanced security of special nuclear material referenced by the March 1, 2019 notice in the Federal Register. Of the four objectives for the rulemaking put forward in the 2015 final regulatory basis, the draft revised regulatory basis would retain only the first: to “make generically applicable physical protection measures similar to those imposed by the post-9/11 security orders.” Implementation of the three other objectives, including improving “consistency and clarity of SNM physical protection requirements” and using “a risk-informed and performance-based structure,” would be discontinued. The NRC has not provided any public rationale for this action.

UCS notes that the NRC’s current regulatory regime for the physical protection of SNM, including nuclear weapon-usable materials not currently classified as strategic SNM, is a patchwork of prior rulemaking actions dating back many decades. As such, it is badly outdated and contains major gaps and inconsistencies. Therefore, it does not provide an adequate basis for the application of appropriate physical protection measures commensurate with SNM risk in the context of current and future threats. While generic codification of requirements currently imposed only through orders is necessary, it is far from sufficient to remedy these problems. A comprehensive and updated rulemaking package, informed by the best available threat and vulnerability information and analysis available today, is essential.

The regulatory landscape is also changing. New reactor and fuel cycle facility applications may be on the near horizon that could well require production, possession and use of SNM in forms and quantities not adequately addressed (or addressed at all) in the current regulatory regime. These include the production and use of Category II quantities of high-assay low-enriched uranium (HALEU), as well as mixtures of weapon-usable actinides separated by alternate reprocessing techniques. Failing to address situations not explicitly included in the rules will result in an increased need for applicants and licensees to seek exemptions, which not only is bad regulatory practice but also shields decision-making processes from public scrutiny. It also creates regulatory uncertainty for the applicants.

UCS did take issue with some of the elements of the final regulatory basis, including the potential reduction of security requirements for diluted SNM. Nevertheless, these concerns are best addressed through a transparent and public rulemaking process. We believe that the 2015 final regulatory basis contained several important provisions that are critical for the NRC to carry

out its statutory responsibility to assure the common defense and security. We urge the Commission to discard the January 2019 draft revision and move forward with a rulemaking consistent with the 2015 final regulatory basis.

Thank you for consideration of our views.

Sincerely,

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