



RULEMAKING ISSUE **(Affirmation)**

October 30, 2019

SECY-19-0109

FOR: The Commissioners

FROM: Margaret M. Doane
Executive Director for Operations

SUBJECT: DIRECT FINAL RULE—SOCIAL SECURITY NUMBER FRAUD PREVENTION
(NRC-2018-0303; RIN 3150-AK27)

PURPOSE:

The purpose of this paper is to obtain Commission approval to publish a direct final rule and companion proposed rule that will amend the U.S. Nuclear Regulatory Commission's (NRC) regulations to minimize the circumstances under which inclusion of an individual's Social Security account number (SSN) is necessary on a document sent through the mail and clarify how this information is to be protected. This rulemaking is to comply with the Social Security Number Fraud Prevention Act of 2017 (the Act) (Public Law 115-59, enacted September 15, 2017).

BACKGROUND:

The President signed the Act into law on September 15, 2017, to reduce the risk of identity theft by directing agencies to "issue regulations specifying the circumstances under which inclusion of a social security account number on a document sent by mail is necessary."¹ The Act restricts the inclusion of an SSN on any document sent by mail "unless the head of the agency determines that the inclusion of the SSN on the document is necessary."² When the SSN is necessary, the Act directs agencies to issue regulations that include instructions for the partial redaction of SSNs where feasible and a requirement that SSNs not be visible on the outside of

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¹ Public Law 115-59, Section 2(b)

² Public Law 115-59, Section 2(a)

any package sent by mail.³ The agency must issue these regulations no later than 5 years after the date of enactment of the Act.

DISCUSSION:

The Act only applies to regulations that require written communications that include an SSN to be sent or received by mail by the NRC. It does not apply to regulations that only require licensees to validate an individual's SSN, because those written communications would not include an SSN. If inclusion of an SSN is not necessary, then the NRC would need to amend each associated regulation to remove the inclusion of the SSN in the required documents. If inclusion of an SSN is necessary, the NRC must consider whether partial redaction of the SSN is feasible and amend the regulations accordingly to meet the "requirement that social security account numbers not be visible on the outside of any package sent by mail."⁴

To comply with the Act, the staff examined whether an SSN is necessary in any of the regulations that require written communications to or from the NRC. The staff was able to take advantage of a similar review to reduce use of SSNs conducted several years ago, needing only to confirm that review continued to be valid and add a review of NRC regulations. Based on its review, the staff has concluded that currently, in all instances where the NRC requires a full or partial SSN to be included in written communications, this information is necessary for identity confirmation. Reasons for this include instances when individuals have similar or identical names and where outside factors require the NRC to collect either a full or partial SSN, as when required by law or when no adequate substitute is available. The NRC already requests an SSN be partially redacted in documents sent by mail, whenever feasible. Therefore, the NRC concluded that no changes to its regulations are needed to reduce the inclusion of a full or partial SSN. However, the staff did identify the following regulations where clarifying language is needed to provide adequate instructions for ensuring an SSN is not visible on the outside of any package sent by mail and to satisfy the requirements of the Act:

- In Part 9 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Public Records," a new Subpart E is needed to satisfy the Act's requirement for agencies to issue new regulations concerning the use of SSNs in documents sent by mail.
- In 10 CFR 20.2203, "Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits," and 10 CFR 25.17, "Approval for Processing Applicants for Access Authorization," the regulations appropriately require the submittal of SSNs. The NRC needs to revise the language to ensure SSNs will not be visible on the outside of any package sent by mail.
- In 10 CFR 35.3045, "Report and Notification of a Medical Event," and 10 CFR 35.3047, "Report and Notification of a Dose to an Embryo/Fetus or a Nursing Child," the NRC needs to replace "social security number or identification number" with "identification number," to ensure that licensees are not using an SSN when an identification number is available that may not be an SSN when identifying patients.

In compliance with the Act, the staff has proactively modified all applicable forms to include instructions that SSNs must not be visible on the outside of any package sent by mail.

³ Public Law 115-59, Section 2(b)(1)-(2)

⁴ Public Law 115-59, Section 2(b)(2)

The staff is using the direct final rule process for this action because the amendments are required by statute, are noncontroversial, and are unlikely to invoke public comment resulting in a significant change to the NRC's proposal. The direct final rule process allows an agency to issue the final rule in parallel with the proposed rule. If no significant and adverse comments are received on the proposed rule, the direct final rule can become effective without further formal action. If a significant and adverse comment is received, the staff will withdraw the final rule, respond to the comment, make any appropriate revisions, and issue the final rule. Accordingly, the time and associated schedule to issue a direct final rule is shorter than those of a standard rule. Because this rulemaking is required by the Act, the staff considered issuing these amendments as a final rule without opportunity for comment under a good cause exemption. Ultimately, however, the Act affords agencies enough discretion in its implementation that the staff is proposing the direct final rule process to allow the public an opportunity to comment on the specific approach being taken to comply with the Act.

RECOMMENDATIONS:

The staff recommends that the Commission:

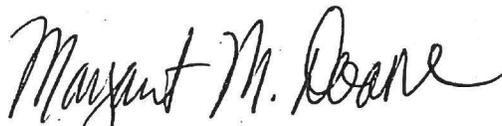
- (1) Approve the enclosed direct final rule and companion proposed rule for publication in the *Federal Register*.
- (2) Note the following:
 - a. The staff will inform the appropriate congressional committees.

RESOURCES:

This direct final rule results in no incremental costs to licensees or the public. It also results in no incremental costs to the NRC, beyond those necessary to prepare and issue this direct final rule and makes changes to NRC forms, which are considered costs that have already been incurred, cannot be recovered, and for which there is no value in some alternative use.

COORDINATION:

The Office of Nuclear Material Safety and Safeguards prepared this paper in coordination with the Office of the Chief Information Officer. The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Financial Officer has reviewed this paper and has no objections.



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for Operations

Enclosures:

1. Direct final rule
2. Companion proposed rule

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[NRC-2018-0303] (RIN 3150-AK27); DATED: OCTOBER 30, 2019**

ADAMS Accession Nos:

ML19197A039 (Package); ML19197A128 (SECY); ML19197A126 (Direct Final FRN);
ML19197A127 (Proposed Rule FRN)

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