



United States Government Accountability Office  
Washington, DC 20548

---

B-324617

April 4, 2013

The Honorable Barbara Boxer  
Chairman  
The Honorable David Vitter  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Fred Upton  
Chairman  
The Honorable Henry A. Waxman  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Nuclear Regulatory Commission; Physical Protection of Byproduct Material*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Nuclear Regulatory Commission, (NRC) entitled “Physical Protection of Byproduct Material” (RIN: 3150-AI12). We received the rule on March 21, 2013. It was published in the *Federal Register* as a final rule on March 19, 2013, with an effective date of May 20, 2013, and a compliance date of March 19, 2014. 78 Fed. Reg. 16,922.

The final rule establishes security requirements for the use and transport of category 1 and category 2 quantities of radioactive material. NRC considers these quantities to be risk significant and, therefore, to warrant additional protection. Category 1 and category 2 thresholds are based on the quantities established by the International Atomic Energy Agency (IAEA) in its Code of Conduct on the Safety and Security of Radioactive Sources, which the NRC endorses. The objective of this final rule is to provide reasonable assurance of preventing the theft or diversion of category 1 and category 2 quantities of radioactive material. The regulations also include security requirements for the transportation of irradiated reactor fuel that weighs 100 grams or less in net weight of irradiated fuel. The final rule affects any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material, any licensee that transports these materials using ground transportation, and any licensee that transports small quantities of irradiated reactor

fuel. The rule also considers a petition for rulemaking (PRM–71–13) submitted by the State of Washington that requested that NRC adopt the use of global positioning satellite tracking as a national requirement for vehicles transporting highly radioactive mobile or portable radioactive devices.

Enclosed is our assessment of NRC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that NRC complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Rebecca Schmidt  
Director, Office of Congressional Affairs  
Nuclear Regulatory Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
NUCLEAR REGULATORY COMMISSION  
ENTITLED  
"PHYSICAL PROTECTION OF BYPRODUCT MATERIAL"  
(RIN: 3150-AI12)

(i) Cost-benefit analysis

The NRC prepared a regulatory analysis on this final regulation examining the costs and benefits of the alternatives considered. Based on the regulatory analysis conducted for this action, NRC estimates the costs of the rule for affected licensees to be between \$358 million and \$488 million (7-percent and 3-percent discount rate over 20 years, respectively) total. NRC notes that the average licensee will have a one-time cost of approximately \$23,375 and an annual cost of approximately \$21,736 to fully implement the final rule. The full analysis is available for inspection in NRC's Public Document Room.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

NRC prepared a regulatory analysis of the impact of this final rule on small entities. NRC states that the final rule will affect about 300 NRC licensees and an additional 1,100 Agreement State licensees. According to NRC, affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, manufacturers and distributors, well loggers, and radiographers, some of which may qualify as small business entities as defined by 10 C.F.R. § 2.810. NRC believes that the selected alternative reflected in the final rule is the least burdensome, most flexible alternative that accomplishes NRC's regulatory objective.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

In its submission to the Comptroller General, NRC did not include an analysis of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

NRC published a proposed rule on June 15, 2010, for a 120-day public comment period that ended on October 13, 2010. 75 Fed. Reg. 33,902. After receiving

several requests to extend the comment period, NRC published an extension notice on October 8, 2010, that extended the public comment period until January 18, 2011. 75 Fed. Reg. 62,330. NRC received comments from 110 organizations and individuals, including states, licensees, industry organizations, individuals, and a federal agency.

#### Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

NRC states that the final rule contains new information collection requirements in 10 C.F.R. part 37 that were approved by the Office of Management and Budget (OMB) under approval number 3150-0214. NRC notes that the changes to 10 C.F.R. parts 20, 30, 32, 33, 34, 35, 36, 39, 51, 71, and 73 do not contain new or amended information collection requirements. According to NRC, the existing requirements were approved by the OMB under approval numbers 3150-0014, 3150-0017, 3150-0001, 3150-0015, 3150-0007, 3150-0010, 3150-0158, 3150-0130, 3150-0021, 3150-0008, and 3150-0002. NRC explains that the burden to the public for the information collections in 10 C.F.R. part 37 is estimated to average 1.7 hours per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

#### Statutory authorization for the rule

NRC states that the final rule is authorized by the Atomic Energy Act (42 U.S.C. §§ 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2273, 2282, 2297f); the Energy Reorganization Act (42 U.S.C. §§ 5841, 5842, 5846); the Government Paperwork Elimination Act (44 U.S.C. 3504 note); and the Energy Policy Act of 2005 (42 U.S.C. §§ 2014, 2021, 2021b, 2111).

#### Executive Order No. 12,866 (Regulatory Planning and Review)

In its submission to the Comptroller General, NRC did not include an analysis of the Order.

#### Executive Order No. 13,132 (Federalism)

In its submission to the Comptroller General, NRC did not include an analysis of the Order.