

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

[NRC-2009-0558]

#### Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; discontinuation.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is discontinuing proposed Draft Regulatory Guide (DG), DG-5033, "Security Performance (Adversary) Characteristics for Physical Security Programs for 10 CFR Part 72 Licensees." This DG was intended to support a new rule that would contain security requirements for Independent Spent Fuel Storage Installations (ISFSIs). Because the scope of the rulemaking has changed and the rule will no longer include the new requirements that DG-5033 was intended to support, the staff is discontinuing development of DG-5033.

**DATES:** The discontinuation of DG-5033 takes effect on May 29, 2020.

**ADDRESSES:** Please refer to Docket ID NRC-2009-0558 when contacting the NRC about the availability of information regarding these documents. You may obtain publicly-available information related to these documents using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2009-0558. Address questions about NRC docket IDs in [regulations.gov](https://www.regulations.gov) to Jennifer Borges; telephone: 301-287-9127; email: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System*

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://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 email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced.

#### FOR FURTHER INFORMATION CONTACT:

Duane White, Office of Nuclear Security and Incident Response, telephone: 301-287-3627, email: [Duane.White@nrc.gov](mailto:Duane.White@nrc.gov), or Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-415-1699, email: [Mekonen.Bayssie@nrc.gov](mailto:Mekonen.Bayssie@nrc.gov). Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:** The NRC is discontinuing development of DG-5033, a non-public document containing Safeguards Information (SGI). This DG was intended to support a new rule that would include new security requirements for ISFSIs. On December 18, 2007, the Commission issued SRM-SECY-07-0148, "Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage" (ADAMS Accession No. ML073530119), which approved the staff's recommendation to develop new, risk informed, performance-based security requirements applicable to all ISFSI licensees to enhance existing security requirements. The Commission also approved the staff's recommendation to develop regulatory guidance (*i.e.*, DG-5033) for security scenarios for ISFSIs that would be bounded by the adversary characteristics supporting the design basis threat for radiological sabotage associated with power reactors. The staff developed DG-5033 in response and transmitted it to cleared stakeholders (*i.e.*, individuals who were subject to fingerprinting and criminal history records checks for access to SGI and had an established "need to know") for comment on March 21, 2011.

Subsequently, the Commission directed the staff in a non-public SRM for COMKLS-18-0003, "Fiscal Year 2020 Budget to the Commission," dated August 22, 2018, to reduce the scope of

the rulemaking and codify only the requirements of the security orders issued by the NRC following the terrorist attacks of September 11, 2001. As a result, the rule will no longer address security scenarios against which licensees would perform dose calculations and apply site specific radiological dose acceptance limits, which DG-5033 was intended to support. Therefore, the staff has determined that the development of DG-5033 is no longer warranted and is discontinued.

Dated: May 19, 2020.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2020-11202 Filed 5-28-20; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1141

[Docket No. FDA-2019-N-3065]

RIN 0910-A139

#### Tobacco Products; Required Warnings for Cigarette Packages and Advertisements; Delayed Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with an order issued by the U.S. District Court for the Eastern District of Texas, this action delays the effective date of the final rule ("Tobacco Products; Required Warnings for Cigarette Packages and Advertisements"), which published on March 18, 2020, from June 18, 2021, to October 16, 2021.

**DATES:** The effective date of the rule amending 21 CFR part 1141 published at 85 FR 15638, March 18, 2020, is delayed until October 16, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New

Hampshire Ave., Silver Spring, MD 20993-0002, 1-877-287-1373, [AskCTPRegulations@fda.hhs.gov](mailto:AskCTPRegulations@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111-31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.<sup>1</sup> Due to the COVID-19 pandemic and its impacts, on May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.<sup>2</sup> The court ordered that the new effective date of the final rule is postponed to October 16, 2021. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 120-day postponement of the effective date, until October 16, 2021, is required by court order in accordance with the court's authority to postpone a rule's effective date "on such conditions as may be required and to the extent

necessary to prevent irreparable injury" pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issue and implementation of regulations.

Dated: May 22, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020-11462 Filed 5-28-20; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF STATE

### 22 CFR Part 161

[Public Notice: 11070]

RIN 1400-AF02

### Environmental Protection: Regulations for Implementation of the National Environmental Policy Act (NEPA)

**AGENCY:** Department of State.

**ACTION:** Final rule with comments.

**SUMMARY:** The U.S. Department of State (Department) is issuing a final rule to update the Department's Regulations for Implementation of the National Environmental Policy Act (NEPA) to reflect a recent Executive Order that revised the process for the development and issuance of Presidential permits for certain facilities and land transportation crossings at the international boundaries of the United States.

**DATES:** This rule is effective July 13, 2020. Comments will be received until June 29, 2020.

**ADDRESSES:** Comments may be submitted at <https://www.regulations.gov> by searching for Docket Number DOS-2020-0013. Comments may also be submitted to M. Ross Alliston, NEPA Coordinator, at [AllistonMR@state.gov](mailto:AllistonMR@state.gov), or at Office of Environmental Quality and Transboundary Issues, U.S. Department of State, 2201 C Street NW, Room 2726, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** M. Ross Alliston, NEPA Coordinator, Office of Environmental Quality and Transboundary Issues, U.S. Department of State, 2201 C Street NW, Room 2726, Washington, DC 20520. (202) 647-4828, [AllistonMR@state.gov](mailto:AllistonMR@state.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The President of the United States has authority to require permits for cross-border infrastructure based on his Constitutional powers over foreign affairs and national security vested by

Article II of the Constitution. In Executive Orders 11423 and 13337, acting pursuant to the Constitution and the laws of the United States, including Section 301 of Title 3 of the United States Code, the President provided the Secretary of State the authority to receive applications for, and to issue or deny, Presidential permits for certain types of border facilities.

In 1968, under Executive Order 11423, President Lyndon B. Johnson designated and empowered the Secretary of State to receive applications and to issue permits for certain types of cross-border infrastructure. Executive Order 11423 also provided that, in the event of certain interagency disagreements, the President would make the final decision to issue or deny a permit. The types of infrastructure included: (i) Pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products, coal, minerals, or other products to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country; (iii) monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country; and (iv) bridges, to the extent that congressional authorization is not required.

In 2004, under Executive Order 13337, President George W. Bush revised the process to be followed by the Secretary of State in issuing Presidential permits for facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels while maintaining that, in the event of certain interagency disagreements, the President would make the final decision to issue or deny a permit. Because determinations regarding approval or denials of Presidential permits are Presidential actions, the requirements of NEPA, the National Historic Preservation Act of 1966, the Endangered Species Act of 1973, the Administrative Procedure Act, and other similar laws and regulations that do not apply to Presidential actions were inapplicable to such determinations, including determinations that were made by the Secretary of State or his delegate pursuant to Executive Order 11423 and 13337. However, as a matter of policy the Department of State conducted environmental reviews of Presidential permit applications consistent with NEPA in the course of preparing determinations pursuant to those Executive Orders.

On April 10, 2019, President Donald J. Trump issued Executive Order 13867,

<sup>1</sup> *R.J. Reynolds Tobacco Co. et al. v. United States Food and Drug Administration et al.*, No. 6:20-cv-00176 (E.D. Tex. filed April 3, 2020).

<sup>2</sup> *R.J. Reynolds Tobacco Co.*, No. 6:20-cv-00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.