

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: FEBRUARY 9, 1993

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - -

AFFIRMATION/DISCUSSION AND VOTE

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, February 9, 1993

The Commission met in open session,
pursuant to notice, at 4:34 p.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner
E. GAIL de PLANQUE, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

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P-R-O-C-E-E-D-I-N-G-S

4:34 p.m.

CHAIRMAN SELIN: This is an affirmation session. We have one item to come before us this afternoon.

Mr. Secretary?

SECRETARY CHILK: Mr. Chairman, the item is SECY-93-003, Clarification of Physical Protection Requirements at Fixed Sites.

The Commission is being asked to approve the final amendments to its physical protection requirements for fixed sites. The amendments make it clear that the Commission's regulations do not require protection against both radiological sabotage and the theft of special nuclear materials at all facilities. The amendment also adds a requirement for protection against radiological sabotage at non-power reactors operating at or above two megawatts thermal power where deemed necessary.

All Commissioners have approved the amendments.

Would you please affirm your vote?

CHAIRMAN SELIN: Aye.

COMMISSIONER ROGERS: Aye.

COMMISSIONER CURTISS: Aye.

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1 COMMISSIONER REMICK: Aye.

2 COMMISSIONER de PLANQUE: Aye.

3 SECRETARY CHILK: I have nothing further.

4 CHAIRMAN SELIN: Thank you.

5 (Whereupon, at 4:35 p.m., the above-
6 entitled matter was concluded.)

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PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: FEBRUARY 9, 1993

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.

Carol Lynch

Reporter's name: PETER LYNCH

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RULEMAKING ISSUE

(Affirmation)

January 13, 1993

SECY-93-003

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: CLARIFICATION OF PHYSICAL PROTECTION REQUIREMENTS AT FIXED SITES

Purpose: To obtain Commission approval to publish a notice of final rulemaking.

Background: On May 29, 1992, the Commission published, for public comment, a proposed rule clarifying the physical protection requirements at fixed sites. The proposed rulemaking amended the wording of § 73.40(a) to make it clear that if a licensee satisfies the specific requirements in Part 73 that apply to its specific class of facility, material, or activity, then the general need for physical protection is satisfied. The proposed rulemaking also added to § 73.60 a requirement for protection against radiological sabotage at nonpower reactors operating at or above 2 megawatts thermal where deemed necessary. It should be noted that current nonpower reactor licensees who have been identified as possibly being vulnerable to radiological sabotage are already voluntarily implementing measures to provide the necessary physical protection.

Discussion: The public comment period that expired on August 12, 1992, resulted in only one comment being received. The commenter, Louisiana Energy Services (LES), agreed with the proposed rulemaking. However, LES asked if a uranium enrichment facility that possesses only special nuclear material of low strategic significance, which meets the requirements of

CONTACT:
S. Frattali, RES
492-3773

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

§§ 73.67(a), (f), and (g) would comply with the proposed § 73.40(a). This question was addressed in the public comment section of the Federal Register Notice by agreeing that the facility would be in compliance. There are no changes in the regulatory requirements of this final rule from those published as the proposed rule.

Coordination: Resources to conduct the final rulemaking are included in the FY 1992-1996 Five-Year Plan, and no additional resources will be required to implement this rulemaking.

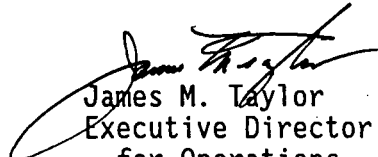
The Office of the General Counsel has reviewed this paper and has no legal objection.

Recommendation: That the Commission:

1. Approve publication of the final amendments (Enclosure A) in the Federal Register.
2. Certify that this final rule will not have a significant economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This certification is included in the Federal Register Notice.
3. Note that:
 - a. No backfit analysis was prepared since the amendment to § 73.40(a) does not impose additional requirements on any existing power reactor licensee and the amendment to § 73.60 applies only to nonpower reactors. The backfit rule, 10 CFR 50.109, applies only to power reactor licensees (see 50 FR 38097, 09/20/85).
 - b. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act.
 - c. The final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act.
 - d. A Regulatory Analysis (Enclosure B) and an Environmental Assessment (Enclosure C) have been

prepared and will be placed in the NRC Public Document Room.

- e. The appropriate congressional committees will be informed (Enclosure D).
- f. A public announcement will be issued (Enclosure E).


James M. Taylor
Executive Director
for Operations

Enclosures:

- A. Federal Register Notice of Final Rulemaking
- B. Regulatory Analysis
- C. Environmental Assessment
- D. Draft Congressional Letters
- E. Draft Public Announcement

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, January 29, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, January 22, 1993, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of February 1, 1993. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Enclosure A
Federal Register Notice of
Final Rulemaking

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN: 3150-AE08

Clarification of Physical Protection Requirements
at Fixed Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its general physical protection requirements for fixed sites. This action is necessary to clarify the Commission's regulatory intent. This amendment makes it clear that the Commission's regulations do not require protection against both radiological sabotage and theft of special nuclear material (SNM) at all facilities. The Commission is also adding a requirement that nonpower reactor licensees, who operate at or above 2 megawatts thermal, protect against radiological sabotage where deemed necessary.

EFFECTIVE DATE: [30 days after publication in the Federal Register]

ADDRESSES: The final regulatory analysis and environmental assessment for the rule is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.

SUPPLEMENTARY INFORMATION:

Background

The Commission is concerned that its regulations regarding physical protection requirements could be interpreted as requiring protection against both radiological sabotage and theft of special nuclear material at all fixed sites. The Commission is clarifying the language of the current rule to prevent this interpretation. Additionally, the Commission is concerned that for some nonpower reactors authorized to operate at or above 2 megawatts thermal, the possibility of sabotage leading to a significant radiological release, though remote, should not be discounted. The Commission has decided to add a requirement to its regulations to address this issue. The Commission published a proposed rule in the Federal Register on May 29, 1992 (57 FR 22670), to address these concerns. The proposed rule clarified the physical protection requirements at fixed sites by amending the wording of § 73.40(a) to make it clear that if a licensee satisfies the specific requirements in Part 73 that apply to its specific class of facility, material, or activity, then the general need for physical protection is satisfied. The proposed rule also added an explicit requirement to § 73.60 for protection against radiological sabotage where deemed necessary. It should be noted that those nonpower reactor licensees currently operating at or above 2 megawatts thermal, who have been identified as possibly being vulnerable to radiological

sabotage, are voluntarily implementing additional measures to provide physical protection against radiological sabotage. The 75-day public comment period expired on August 12, 1992. One comment was received.

Public Comment on the Proposed Rule

The commenter supported the proposed rule. There are no changes in the regulatory requirements of this final rule from those published as the proposed rule. In addition, the commenter interpreted the proposed rule to mean that if the physical protection system for a uranium enrichment facility that possessed only special nuclear material of low strategic significance satisfied the requirements of §§ 73.67(a),(f),and (g), then the requirements of § 73.40(a) would be satisfied.

The Commission agrees that this interpretation is correct.

There was no public comment on the amendment to § 73.60 requiring additional protection for nonpower reactors.

This rule is issued pursuant to Sections 161 b and i of the Atomic Energy Act of 1954, as amended.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The amendment to § 73.40(a)

clarifies that the Commission's regulations do not require protection against both radiological sabotage and theft of special nuclear material at all facilities, which simply codifies existing NRC practice. Consequently, no environmental impacts are associated with this amendment. The amendment to § 73.60 requires certain nonpower reactor licensees, who operate at or above 2 megawatts thermal, to protect against radiological sabotage where deemed necessary. Facilities affected by the amendment to § 73.60 are already voluntarily implementing this requirement, and therefore, no consequences to the environment will occur due to this rulemaking. The amendment to § 73.60 also requires future nonpower reactor licensees to provide physical protection against radiological sabotage if an analysis of the reactor's characteristics and fuel used therein indicates that such protection is necessary. For a future licensee, any environmental impacts associated with this requirement will be included in the Environmental Impact Statement prepared in support of that license application. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available from Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.

Paperwork Reduction Act Statement

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Dr. Sandra D. Frattali, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-3773.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. There is no economic impact on any current or future licensee except for certain nonpower reactor licensees. However, nonpower reactor licensees do not fall within the scope of "small entities" set forth in Section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because the amendment to § 73.40(a) does not impose requirements on existing nuclear power reactor licensees, and the amendment to § 73.60 applies only to nonpower reactors. Therefore, a backfit analysis was not prepared for this final rule.

List of Subjects in 10 CFR Part 73

Part 73 - Criminal Penalties, Hazardous materials - transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 73.

PART 73--PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:
AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.40, paragraph (a) is revised to read as follows:

§ 73.40 Physical protection: General requirements at fixed sites.

(a) Each licensee shall provide physical protection at a fixed site, or contiguous sites where licensed activities are conducted, against radiological sabotage, or against theft of special nuclear material, or against both, in accordance with the applicable sections of this Part for each specific class of facility or material license. If applicable, the licensee shall establish and maintain physical security in accordance with security plans approved by the Nuclear Regulatory Commission.

* * * * *

3. In § 73.60, the section heading is revised and paragraph (f) is added to read as follows:

§73.60 Additional requirements for physical protection at nonpower reactors.

* * * * *

(f) In addition to the fixed-site requirements set forth in this section and in § 73.67, the Commission may require, depending on the individual facility and site conditions, any alternate or additional measures

deemed necessary to protect against radiological sabotage at nonpower reactors licensed to operate at or above a power level of 2 megawatts thermal.

Dated at Rockville, Maryland, this _____ day of _____, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.

Enclosure B
Regulatory Analysis

REGULATORY ANALYSIS
CLARIFICATION OF PHYSICAL PROTECTION REQUIREMENTS
AT FIXED SITES

STATEMENT OF THE PROBLEM

The amendments address two issues:

1) Section 73.40(a) is intended to be a general statement of the need for physical protection at fixed sites as it may relate to radiological sabotage, theft of special nuclear material (SNM), or both. The specific physical protection requirements for each class of licensed facility, material, or activity are provided in other sections of Part 73. The present language of § 73.40(a) was interpreted by an Atomic Safety and Licensing Board (ASLB) during the hearing to relicense the research reactor at the University of California, Los Angeles (UCLA), as requiring protection against both theft of SNM and radiological sabotage at all fixed sites, which was not the Commission's intent.

2) A study by Los Alamos National Laboratory (LANL) in 1987, "Nonpower Reactor Sabotage Study (U)," LA-CP-87-27, concluded that for certain nonpower reactors authorized to operate at or above 2 megawatts thermal, the possibility of sabotage leading to a significant radiological release, though remote, should not be discounted.

OBJECTIVES

The amendment to § 73.40(a) clarifies that the physical protection requirements for each class of licensed facility or material are provided in other sections of Part 73.

The rulemaking also amends § 73.60 to explicitly require that nonpower reactor licensees who operate at or above a power level of 2 megawatts thermal protect against radiological sabotage where deemed necessary.

ALTERNATIVES TO RULEMAKING

Two alternatives were considered for both issues as follows:

§ 73.40(a)

- 1) Retaining the status quo.
- 2) Rulemaking to clarify the intent of the rule.

§ 73.60

- 1) Retaining the status quo.
- 2) Rulemaking to require certain nonpower reactors to protect against radiological sabotage.

CONSEQUENCES

§ 73.40(a)

By taking no action, the Commission's intent with regard to fixed site physical protection would continue to be subject to the ASLB strict interpretation in future licensing actions. Clarifying the language of § 73.40(a) places no additional burden on current or future licensees because the amendment merely codifies the policy that the NRC is already pursuing.

Therefore, alternative 2, issuing a clarifying amendment to § 73.40(a), should be implemented. The cost to the Commission is negligible and by clarifying the regulation's intent, staff and licensee time can be saved in future licensing or relicensing actions.

§ 73.60

Those nonpower reactor licensees currently operating at or above 2 megawatts thermal, whose facilities have been determined to be vulnerable to radiological sabotage, are voluntarily implementing the specific recommendations of the 1987 LANL study to protect against radiological sabotage at their sites. However, current regulations have no requirements applicable to future licensees for such protection. The amendment to § 73.60 assures the continuance of the physical protection practices of these nonpower reactor licensees and provides the regulatory basis for requiring future nonpower reactor licensees to provide physical protection against radiological

sabotage if an analysis of the reactor's characteristics and fuel used therein indicates that such protection is necessary.

Neither of the options presented for § 73.60 cause any new or additional resource expenditures by current licensees that operate at or above 2 megawatts thermal. Thus, there is no burden associated with either option.

Alternative 2 should be implemented since it provides a regulatory basis for continued protection against radiological sabotage by nonpower reactor licensees, where deemed necessary by the NRC.

The cost of requiring radiological sabotage protection at a new nonpower reactor facility is difficult to estimate since it is predicated on a site specific analysis. The NRC has determined that the one time cost of the actions taken to date by similar licensees range from approximately \$3,000 to \$20,000. There are no known annual operating costs directly attributed to these measures, but through general discussions with selected licensees, the operating costs are considered to be nominal since they are procedural in nature. The benefit to the public is not quantifiable, but is potentially significant.

DECISION RATIONALE

Although there will be no immediate effects on the public due to amending § 73.40(a), taking no action would continue the possibility of an interpretation which is contrary to the Commission's regulatory intent.

Those nonpower reactor licensees who are currently operating at or above 2 megawatts thermal identified in the 1987 LANL study are voluntarily protecting against radiological sabotage. Therefore, amending § 73.60 has no immediate effect on either the public or those nonpower reactor licensees. However, notwithstanding the voluntary commitments made by the nonpower licensees to date, a regulatory basis is needed to assure adequate protection by future applicants.

There is no impact on occupational exposure associated with this rulemaking.

NRC RESOURCES AND TIMETABLE FOR THE RULEMAKING

No need for additional resources is anticipated after the rule is promulgated.

The rule becomes effective 30 days after publication in the Federal Register.

Enclosure C
Environmental Assessment

ENVIRONMENTAL ASSESSMENT AND FINDING OF NO SIGNIFICANT IMPACT
CLARIFICATION OF PHYSICAL SECURITY REQUIREMENTS
AT FIXED SITES

IDENTIFICATION OF ACTION

1. Amend Section 73.40(a) of 10 CFR Part 73 to clarify that the physical protection requirements for each class of licensed facility or material are provided in other sections of Part 73.
2. Amend Section 73.60 of 10 CFR Part 73 to explicitly require that nonpower reactor licensees who operate at or above a power level of 2 megawatts thermal protect against radiological sabotage where deemed necessary.

NEED FOR ACTION

1. Section 73.40(a) is intended to be a general statement of the need for physical protection at fixed sites as it may relate to radiological sabotage, theft of special nuclear material (SNM), or both. The specific physical protection requirements for each class of licensed facility, material, or activity are provided in other sections of Part 73. The current language of § 73.40(a) was interpreted by an Atomic Safety and Licensing Board (ASLB) during the hearing to relicense the research reactor at the University of California, Los Angeles, as requiring protection against both theft of SNM and radiological sabotage at all fixed sites, which was not the Commission's intent.

2. A study by Los Alamos National Laboratory in 1987, "Nonpower Reactor Sabotage Study (U)," LA-CP-87-27, concluded that for certain nonpower reactors authorized to operate at or above 2 megawatts thermal, the possibility of sabotage leading to a significant radiological release, though remote, should not be discounted.

ENVIRONMENTAL IMPACTS OF ACTION

1. The amendment to § 73.40(a) makes clear that the Commission's regulations do not require protection against both radiological sabotage and theft of SNM at all facilities. This action simply codifies existing NRC practice and will not require a change to any license. Consequently, adoption of this amendment has no environmental impact.
2. The amendment to § 73.60 requires that nonpower reactor licensees who operate at or above 2 megawatts thermal protect against radiological sabotage where deemed necessary by the NRC. Facilities affected by this amendment are already voluntarily implementing measures to protect against radiological sabotage, and therefore, no consequences to the environment will occur due to this amendment. The amendment to § 73.60 also requires future nonpower reactor licensees to provide physical protection against radiological sabotage if an analysis of the reactor's characteristics and fuel used therein indicates that such protection is necessary. For a future licensee, any environmental impact associated with this requirement would be included in the Environmental Impact Statement prepared in support of that license application.

ALTERNATIVES TO THE PROPOSED ACTION

The only alternative considered by the NRC is to retain the status quo, which has no environmental impact.

ALTERNATIVE USE OF RESOURCES

No need for additional resources is anticipated after the rule is promulgated.

AGENCIES AND PERSONS CONTACTED

No agencies or persons outside the NRC were contacted in connection with the preparation of this environmental assessment.

FINDING OF NO SIGNIFICANT IMPACT

Based on the foregoing environmental assessment, the Commission concludes that this rulemaking entitled "Clarification of Physical Security Requirements at Fixed Sites" will not have a significant incremental effect on the quality of the human environment. The amendment clarifies that the Commission's regulations do not require protection against both radiological sabotage and theft of special nuclear material at all facilities, which simply codifies existing NRC practice. Consequently, no environmental impacts are associated with this amendment. It also requires that nonpower reactor licensees who operate at or above 2 megawatts thermal protect against radiological sabotage

where deemed necessary by the NRC. Facilities affected by this amendment are already voluntarily implementing this requirement and, therefore, no consequences to the environment will occur due to this rulemaking. Based on a finding of no significant impact, the Commission has, therefore, determined not to prepare an environmental impact statement for this rulemaking.

Enclosure D

Draft Congressional Letters

Chairman
Subcommittee on Energy and the Environment
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) is sending the enclosed amendments to 10 CFR Part 73 to the Office of the Federal Register for publication as a final rule. One amendment to § 73.40(a) will clarify the Commission's regulatory intent with regard to the general physical protection requirements for fixed sites. Another amendment to § 73.60 will provide a regulatory basis for requiring protection against radiological sabotage, where deemed necessary, at nonpower reactors operating at or above 2 megawatts thermal.

These amendments place no additional requirements on current licensees.

These amendments will be effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Ranking Minority

*See attached for previous concurrences

Offc:	RDB:DRA*	RDB:DRA*	RDB:DRA*	DD:DRA:RES	D:DRA:RES	DD:GIR:RES	D:RES
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Date:	10/6/92	10/7/92	10/14/92	/ /92	/ /92	/ /92	/ /92

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The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) is sending the enclosed amendments to 10 CFR Part 73 to the Office of the Federal Register for publication as a final rule. One amendment to § 73.40(a) will clarify the Commission's regulatory intent with regard to the general physical protection requirements for fixed sites. Another amendment to § 73.60 will provide a regulatory basis for requiring protection against radiological sabotage, where deemed necessary, at nonpower reactors operating at or above 2 megawatts thermal.

These amendments place no additional requirements on current licensees.

These amendments will be effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Representative Carlos J. Moorhead

*See attached for previous concurrences

Offc:	RDB:DRA*	RDB:DRA*	RDB:DRA*	DD:DRA:RES	D:DRA:RES	DD:GAP:RES	D:RES
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SFrattali

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) is sending the enclosed amendments to 10 CFR Part 73 to the Office of the Federal Register for publication as a final rule. One amendment to § 73.40(a) will clarify the Commission's regulatory intent with regard to the general physical protection requirements for fixed sites. Another amendment to § 73.60 will provide a regulatory basis for requiring protection against radiological sabotage, where deemed necessary, at nonpower reactors operating at or above 2 megawatts thermal.

These amendments place no additional requirements on current licensees.

These amendments will be effective 30 days after publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Senator Alan K. Simpson

*See attached for previous concurrences.

Offc:	RDB:DRA*	RDB:DRA*	RDB:DRA*	DD-DRA:RES	D:DRA:RES	DD-DRA:RES	D:RES
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Enclosure E
Draft Public Announcement

NRC AMENDS PHYSICAL PROTECTION REQUIREMENTS FOR FIXED SITES

The Nuclear Regulatory Commission is amending its regulations governing physical protection at fixed sites to:

(1) make it clear that the regulations do not require protection against both radiological sabotage and theft of special nuclear material at all facilities; and

(2) add a requirement that licensees who operate nonpower reactors at power levels of two megawatts thermal or above protect against radiological sabotage when deemed necessary.

The clarifying amendment was needed because a NRC Atomic Safety and Licensing Board ruled, in a licensing hearing, that the general physical protection requirements of Part 73 of the Commission's regulations require all fixed site licensees to protect against both radiological sabotage and theft of special nuclear material.

At present, detailed physical protection requirements are provided in other sections of Part 73 for each class of licensed facility, material or activity, including the transportation of both unirradiated and irradiated special nuclear material. The specific requirements of Part 73 do not necessarily require protection against both radiological sabotage and theft of special nuclear material.

Because the Licensing Board interpretation could unnecessarily require some licensees to provide physical protection measures not warranted by their particular licensed facility, material or activity, a clarification of Part 73 was necessary.

Previously, the Commission's regulations pertaining to nonpower reactors contained requirements only for protection against theft and diversion of special nuclear material. The Commission believes that, while the possibility of sabotage leading to a release of radioactive material is remote, it should not be discounted and that a requirement for physical protection against such an act should be included in its regulations. Currently, those nonpower reactor facilities licensed to operate at or above two megawatts thermal, which have been identified as possibly being vulnerable to radiological sabotage, are voluntarily implementing additional measures to provide physical protection against such events.

The amendments to Part 73 of the Commission's regulations will become effective on (date).