

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: APRIL 22, 1993

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SECRETARIAT RECORD COPY

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - -

AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, April 22, 1993

The Commission met in open session,
pursuant to notice, at 2:30 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

2:31 p.m.

CHAIRMAN SELIN: First, I'd like to congratulate the Secretary on finally figuring out how to get a crowd for an affirmation session.

SECRETARY CHILK: We want to give everybody a big thrill.

CHAIRMAN SELIN: We're going to start with an affirmation session, then we'll move on to the afternoon's presentation.

Mr. Chilk?

SECRETARY CHILK: The item before the house, Mr. Chairman, is SECY-93-085, Licensee's Announcement of Safeguard Inspections Rulemaking.

The Commission in this paper is being asked to act on a final rule which prohibits licensees at facilities using or possessing a formula quantity of strategic special nuclear material in an unirradiated form, announcing or otherwise communicating to its employees or site contractors the arrival or presence of an NRC safeguards inspector unless it's specifically requested to do so by the safeguards inspector.

All Commissioners have approved this rule.

Would you please affirm your votes?

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1 CHAIRMAN SELIN: Aye.

2 COMMISSIONER ROGERS: Aye.

3 COMMISSIONER CURTISS: Aye.

4 COMMISSIONER REMICK: Aye.

5 COMMISSIONER de PLANQUE: Aye.

6 SECRETARY CHILK: I have nothing further.

7 CHAIRMAN SELIN: Thank you.

8 The affirmation session is adjourned.

9 (Whereupon, at 2:33 p.m., the above-
10 entitled matter was adjourned.)

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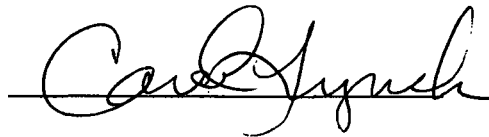
This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: APRIL 22, 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.



Reporter's name: Peter Lynch

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RULEMAKING ISSUE

(Affirmation)

April 1, 1993

SECY-93-085

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: LICENSEES' ANNOUNCEMENTS OF SAFEGUARDS
INSPECTIONS RULEMAKING

PURPOSE:

To obtain Commission approval of a notice of final rulemaking.

BACKGROUND:

On November 3, 1992 (57 FR 49656), following Commission approval (SECY 92-326), a notice of proposed rulemaking regarding licensees' announcements of safeguards inspections was published for public comment. The purpose of the proposed rule was to ensure that the presence of Nuclear Regulatory Commission safeguards inspectors at certain facilities required to maintain safeguards is not announced or otherwise communicated to licensees and contractor personnel without an expressed request to do so by the safeguards inspector. The proposed rule would increase the effectiveness of unannounced safeguards inspections and enable a safeguards inspector to obtain a more accurate view of operations at affected facilities. Affected facilities are those that possess a formula quantity of strategic special nuclear material, in unirradiated form. Two such facilities currently are licensed by the NRC. Similar regulations are in place for power reactor sites under 10 CFR 50.70(b)(4) (53 FR 42939).

Contact:
Priscilla Dwyer, NMSS
504-2478

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

DISCUSSION:

Affected licensees sent no comments on the proposed rulemaking. One letter of comment was received from a concerned citizen who supported the use of unannounced inspections. Minor clarification has been made to the text that describes affected facilities. Implementation of this final rulemaking is anticipated to have no economic impact on affected licensees, the public, or NRC. The notice of final rulemaking iterates the Commission's position, as stated previously under the notice of proposed rulemaking, that NRC expects to reserve enforcement action only for significant intentional violations of the amendment.

COORDINATION:

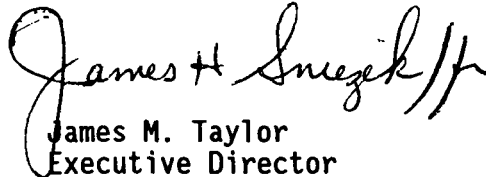
The Office of the General Counsel has reviewed this paper and has no legal objection.

RECOMMENDATIONS:

That the Commission:

1. Approve the notice of final rulemaking (Enclosure 1).
2. Certify that this rule change will not have a significant impact on a substantial number of small entities in order to satisfy the requirements of the Regulatory Flexibility Act [5 U.S.C. 605(b)].
3. Note:
 - a. The final rule change does not constitute a backfit under 10 CFR 50.109 because it does not affect facilities licensed under Part 50; therefore, a backfit analysis is not required.
 - 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. Neither a regulatory analysis nor an environmental assessment has been prepared as there is anticipated to be no economic or environmental impact on affected licensees, the public, or NRC, as a result of rule implementation.

- e. Appropriate Congressional committees will be notified (Enclosure 2).
- f. The Office of Public Affairs concurs that a public announcement is not needed.


James M. Taylor
Executive Director
for Operations

Enclosures:

- 1. Federal Register
Notice of Final Rulemaking
- 2. Draft Congressional Letters

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Monday, April 19, 1993.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, April 12, 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 April 19, 1993. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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ENCLOSURE 1

FEDERAL REGISTER NOTICE OF FINAL RULEMAKING

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 73 and 74
RIN 3150 - AE27
Licensees' Announcements of Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations concerning safeguards inspections at facilities that possess a formula quantity of strategic special nuclear material in unirradiated form. The purpose of the rule is to ensure that the presence of NRC safeguards inspectors at affected facilities is not announced nor widely communicated to licensee and contractor personnel without the expressed request to do so by the safeguards inspector. The rule will increase the effectiveness of unannounced safeguards inspections and enable a safeguards inspector to obtain a more accurate view of operations at the facility.

EFFECTIVE DATE: (30 days after publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2478.

SUPPLEMENTARY INFORMATION:

Background

The Commission is concerned that the effectiveness of unannounced safeguards inspections at certain facilities required to maintain safeguards may be diminished by the announcement or other communication of the presence of a safeguards inspector on-site, without the expressed request of the safeguards inspector. On November 3, 1992 (57 FR 49656), the Commission

published a proposed rule that would prohibit a licensee or its contractors from using an access control measure or other means to intentionally give notice to other persons of the arrival or presence of an NRC safeguards inspector at facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Similar requirements are in place for power reactor sites as required by 10 CFR 50.70(b)(4).

Safeguards inspections are comprised of material control and accounting inspections, and physical security inspections. The proposed rule was limited to safeguards inspections due to the expediency by which most safeguards degradation can typically be compensated for after the announcement of the presence of an NRC safeguards inspector, such as, by the posting of a security officer. The proposed amendment would impose only procedural changes and is expected to have no economic impact on affected licensees or the public. Violation of these rules may subject a person to the criminal penalties in section 223 of the Atomic Energy Act of 1954, as amended. Notwithstanding, the Commission reiterates the position stated in the notice of proposed rulemaking regarding enforcement action.

As the NRC said when it promulgated 10 CFR 50.70(b)(4), which prohibits nuclear power reactor licensees from communicating the arrival or presence of an NRC inspector unless asked to do so by the inspector:

Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action [only] for significant intentional violations of the [prohibition]. An honest response by an employee to an innocent inquiry that he [or] she just saw an NRC inspector is not [proscribed by] the rule. Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector. (53 FR 42940; October 25, 1988).

Similarly, the NRC recognizes the possibility that some communication of an inspector's presence may even be necessary on occasion. For instance, the person directly in charge of an area being inspected may need to inform certain other people, perhaps higher-level managers, that, because of the inspection, he or she cannot attend a previously scheduled meeting. An employee would not be required by the rule to cancel previous engagements

without giving timely and sufficient reason.

Public Comment on the Proposed Rule

The 90-day public comment period for the rule expired on February 1, 1993. Affected licensees sent no comments on the proposed amendment. One letter of comment was received from a concerned citizen. The concerned citizen recommended strengthening the rule to prohibit the announcement of inspections by anyone, not just the licensee, and cited what were considered to be general violations of the existing prohibition contained in 10 CFR 50.70 (b)(4). The Commission notes that the comment appears to focus on inspections at power reactor sites, as opposed to the facilities affected by the rule, that is, facilities possessing a formula quantity of strategic special nuclear material in unirradiated form. Further, announced inspections are conducted as part of an overall inspection program. There are many occasions when it is proper and necessary that a licensee have advance notice of an inspection. Notice of these inspections may be widely communicated. The Commission's regulatory authority for prohibiting the announcement of an inspection does not extend beyond its licensees and its own employees. The extension of this authority, as suggested by the comment, is not within the Commission's Federal mandate.

One change has been made to the rule's text published for comment. The Commission has clarified the text that describes those facilities affected by amendments to 10 CFR 74.81. No other changes have been made to the proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this amendment is the type of action described in categorical exclusion 10 CFR 55.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final rule.

Paperwork Reduction Act Statement

This final rule contains no new nor 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 numbers 3150-002 and 3150-0123.

Regulatory Analysis

This final rule will have no significant impact on State and local governments and geographical regions. It may have an impact on health, safety, and the environment, but only in the sense of preventing adverse impacts on health, safety, and the environment through more effective safeguards inspections at affected facilities. The final rule makes it clear that NRC safeguards inspectors are to have a realistic picture of the actual conditions at a site during the inspection process and, therefore, be better able to identify conditions and/or practices for corrective action, and to ensure that licensees comply with laws, regulations, and orders administered by NRC. The final rule imposes procedural changes only on affected licensees at minimal or no cost. This constitutes the regulatory analysis for the final rule.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final amendments will not impose significant cost on any affected licensees regardless of size.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because affected facilities are not licensed under 10 CFR Part 50 and, therefore, a backfit analysis is not required. This final

rule affects only those facilities that possess a formula quantity of strategic special nuclear material in unirradiated form and imposes only procedural changes at minimal or no cost to the licensee.

List of Subjects

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

10 CFR Part 74 - Accounting, Criminal penalties, Hazardous materials - transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set out in the preamble and under 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.

1. The authority citation for Part 73 continues to read as follows:

Part 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIAL

* * * * *

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 §73.46, paragraph (d)(15) is added to read as follows:

§73.46. Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(d) * * *

(15) The licensee may not announce or otherwise communicate to its employees or site contractors the arrival or presence of an NRC safeguards inspector unless specifically requested to do so by the NRC safeguards inspector.

* * * * *

3. The authority citation for Part 74 continues to read as follows:

Part 74 - MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

* * * * *

AUTHORITY: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

4. In §74.81, paragraph (d) is added to read as follows:

§74.81 Inspections.

* * * * *

(d) At a facility using and possessing a formula quantity of strategic special nuclear material in unirradiated form, the licensee may not announce or otherwise communicate to its employees or site contractors the arrival or

presence of an NRC safeguards inspector unless specifically requested to do so by the safeguards inspector.

Dated at Rockville, MD this _____ day of _____ 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission

ENCLOSURE 2
CONGRESSIONAL LETTERS



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission is sending the enclosed amendments to 10 CFR Parts 73 and 74 to the Office of the Federal Register for publication as a final rule. The purpose of the amendments is to ensure that the presence of safeguards inspectors at certain sites licensed by NRC is not announced nor widely communicated to licensees and contractor personnel without the expressed request to do so by the inspector. Affected facilities are those possessing a formula quantity of strategic special nuclear material, in unirradiated form. Similar requirements have been in place at power reactor sites since October of 1988. Implementation of the amendments is expected to have no economic impact on affected licensees, the public, or NRC.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Amendments to
Parts 73 & 74

cc: Representative Barbara Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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 is sending the enclosed amendments to 10 CFR Parts 73 and 74 to the Office of the Federal Register for publication as a final rule. The purpose of the amendments is to ensure that the presence of safeguards inspectors at certain sites licensed by NRC is not announced nor widely communicated to licensees and contractor personnel without the expressed request to do so by the inspector. Affected facilities are those possessing a formula quantity of strategic special nuclear material, in unirradiated form. Similar requirements have been in place at power reactor sites since October of 1988. Implementation of the amendments is expected to have no economic impact on affected licensees, the public, or NRC.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Amendments to
Parts 73 & 74

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Nuclear Regulatory Commission is sending the enclosed amendments to 10 CFR Parts 73 and 74 to the Office of the Federal Register for publication as a final rule. The purpose of the amendments is to ensure that the presence of safeguards inspectors at certain sites licensed by NRC is not announced nor widely communicated to licensees and contractor personnel without the expressed request to do so by the inspector. Affected facilities are those possessing a formula quantity of strategic special nuclear material, in unirradiated form. Similar requirements have been in place at power reactor sites since October of 1988. Implementation of the amendments is expected to have no economic impact on affected licensees, the public, or NRC.

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

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Amendments to
Parts 73 & 74

cc: Senator Alan K. Simpson