



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

MAY 22 1992

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MEMORANDUM FOR: Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

FROM: Patricia G. Norry, Director
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON PROPOSED RULE ENTITLED
"UNANNOUNCED SAFEGUARDS INSPECTIONS"

The Office of Administration concurs on the draft proposed rule that would amend 10 CFR Parts 73 and 74 to apply a provision regarding the presence of safeguards inspectors at certain fuel cycle facilities. We have attached a marked copy of the proposed rule package that presents our comments.

We have forwarded a copy of the draft proposed rule to the Information and Records Management Branch, IRM, for their comment or concurrence concerning the paperwork management aspects of this rulemaking action. We have requested that they respond directly to you.

In order to assist you in preparing the list of documents centrally relevant to this draft proposed rule that is required by NRC's regulatory history procedures, you should place the designator "AE27-1" in the upper right-hand corner of each document concerning the rule that you forward to the Nuclear Document system.

If you have any questions concerning this matter, please contact Alice Katoski on 492-7758 or Michael Lesar on 492-7758.

Patricia G. Norry
Patricia G. Norry, Director
Office of Administration

Attachment: As stated

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MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Robert M. Bernero, Director
Office of Nuclear Material Safety and Safeguards

SUBJECT: UNANNOUNCED SAFEGUARDS INSPECTIONS RULEMAKING

Attached for your signature is a proposed rule to be published in the Federal Register that amends 10 CFR Part 73, "Physical Protection of Plants and Materials" and 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material" (Attachment 1). These amendments propose requirements to ensure that the presence of Nuclear Regulatory Commission (NRC) safeguards inspectors at certain fuel cycle facilities is not announced or otherwise communicated to licensees and contractor personnel without the expressed request to do so by the inspector. Affected facilities are limited to fuel cycle facilities using or possessing a formula quantity of strategic special nuclear material. The intent of the proposed rule is to increase the effectiveness of unannounced inspections and to enable a safeguard inspector to get a more accurate view of normal operations at affected facilities. Similar requirements for power reactor licensees were issued October 25, 1988 (53 FR 42939). This rulemaking is expected to have no economic impact on affected licensees, the NRC, or the public.

Backfit Analysis:

The staff has determined that a backfit analysis is not required for this proposed rulemaking because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

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Notices:

A notice to the Commission that the EDO has signed this rule is enclosed for inclusion in next Weekly Staff Notes (Attachment 2). The appropriate Congressional Committees will be notified (Attachment 3). A copy of the proposed rule will be sent to affected licensees.

Coordination:

The Office of Administration concurs in these amendments. The Office of the General Counsel has no legal objection.

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Attachments:

1. Federal Register Notice of Proposed Rulemaking
2. Draft Weekly Staff Notes Item
3. Draft Congressional Letter

Approved For Publication

(c)
The Commission delegated to the EDO (10 CFR 1.31(a)(3)) the authority to develop and promulgate rules as defined in the APA (5 U.S.C. 551 (4)) subject to the limitations in NRC ~~Manual Chapter 0103~~, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

Management Directive 9.17

The enclosed rule, entitled "Unannounced Safeguards Inspections" proposes to amend Parts 73 and 74 to ensure that the presence of NRC safeguards inspectors at certain fuel cycle facilities is not announced or otherwise communicated to licensees or contractor personnel without the expressed request to do so by the inspector.

This proposed rule does not constitute a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9 Subpart C concerning matters of policy. I, therefore, find that this rule is within the scope of my rulemaking authority and am proceeding to issue it.

Date

James M. Taylor
Executive Director for Operations

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WEEKLY REPORT TO THE COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS

Proposed Rule Signed by EDO

On _____, 1992, the Executive Director for Operations (EDO) approved a proposed rule that would amend 10 CFR Part 73, "Physical Protection of Plants and Materials" and 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material," by adding provisions to ensure that the presence of NRC safeguards inspectors at certain fuel cycle facility sites is not announced or otherwise communicated to licensees and contractor personnel without the expressed request to do so by the inspector. Affected sites are limited to fuel cycle facilities using or possessing formula quantities of strategic special nuclear material. The proposed rule will increase the effectiveness of unannounced safeguards inspections and enable a safeguards inspector to get a more accurate view of normal operations at affected facilities. Similar requirements for power reactor licensees were published in October 1988.

This constitutes notice to the commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this proposed rule for publication in the Federal Register.

Attachment 2

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*Note: FAN
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separately from
companion documents*

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

RIN 3150-AE27

Unannounced Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

Insert A
SUMMARY: The Nuclear Regulatory Commission (NRC) amended its regulations on October 25, 1988 (53 FR 42939) to require that the presence of NRC inspectors on nuclear power reactor sites is not widely communicated or broadcast to licensee and contractor personnel without the expressed request to do so by the inspector. This change allowed NRC inspectors to observe on-going activities as they are being performed without advanced notification of the inspection to licensee and contractor personnel. This proposed rule ^{will} require a similar provision be applied to the presence of safeguards inspectors at certain fuel cycle facilities.

DATES: Comments must be received on or before (90 days after publication). Comments received after this date will be considered if it is practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments or suggestions regarding the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received will be available in the NRC Public Document Room at 2120 L Street NW, ^(Lower Level) Washington, DC 20555. *for inspection and copying for a fee*

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: ^P This proposed rulemaking ^{will} applies to fuel cycle facilities using or possessing a formula quantity of strategic special nuclear

INSERT A

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its regulations concerning fuel cycle facilities.

The proposed rule would ensure that the presence of NRC safeguards inspectors at certain fuel cycle facilities is not announced or ^{widely} communicated to licensees and contractor personnel without an expressed request to do so by the inspector. The proposed rule would increase the effectiveness of unannounced ^{safeguards} inspections and enable an inspector to obtain a more accurate view of normal operations at affected facilities.

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material. The NRC proposes ~~that no access control measures or other means may be employed by the licensee or its contractor to intentionally give notice to other persons of the arrival and presence of an NRC safeguards inspector at a fuel cycle facility using or possessing a formula quantity of strategic special nuclear material, unless the licensee is specifically requested to do so by the NRC inspector.~~ *Proposed rule is* The ~~intent of these amendments~~ *ded* is to increase the effectiveness of unannounced inspections and to enable an inspector to get a more accurate view of normal operations at affected facilities.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed change is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the proposed rule.

Paperwork Reduction Act Statement

The proposed rule does not contain a new or amended information collection requirement subject to 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 3150-002, 3150-0123.

Regulatory Analysis

This proposed 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 inspections. *Proposed rule* The *made* rule makes it clear that NRC 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 potentially dangerous conditions and/or practices for corrective action and to ensure that licensees comply with laws, regulations, and orders administered by the NRC. This constitutes the regulatory analysis for this proposed rule.

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Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments being proposed ~~should~~ impose ~~no~~ additional cost on affected licensees. *would not* *any* *regardless of size*

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subject in ~~10 CFR Part 73~~

10 CFR Part 73 -

Criminal penalties,
Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, ~~Penalty,~~ Reporting and recordkeeping requirements, Security measures.

~~List of Subjects in 10 CFR Part 74~~

10 CFR Part 74 -

Criminal Penalties,
Accounting, Hazardous materials-transportation, Material control and accounting, Nuclear materials, Packaging and containers, ~~Penalty,~~ 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. 553, the NRC is proposing to adopt the following amendment to 10 CFR Parts 73 and 74.

PART 73--PHYSICAL PROTECTION OF PLANTS AND MATERIAL

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

< insert 1 >
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INSERT 1

~~PART 23 PHYSICAL PROTECTION OF PLANTS AND MATERIALS~~

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. 97-426, 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(E), and (h), 73.55(h)(2) and (4)(iii)(E), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

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P2. In §73.46, paragraph (d)(15) is added to read as follows:

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

* * * * *

P(d) * * *

P(15) The licensee ~~shall~~ ^{may} not announce or otherwise communicate to its employees or site contractors the arrival and presence of an NRC inspector unless specifically requested to do so by the NRC inspector.

* * * * *

~~10 CFR~~ PART 74 - MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

P3. The authority citation for Part 74 continues to read as follows:

< insert 2 >

P4. In §74.81, paragraph (d) is added to read as follows:

§74.81 Inspections.

* * * * *

P(d) At a fuel cycle facility using or possessing a formula quantity or more of strategic special nuclear material, the licensee ~~shall~~ ^{may} not announce or otherwise communicate to its employees or site contractors the arrival and presence of an NRC safeguards inspector unless specifically requested to do so by the inspector.

P Dated at Rockville, MD this _____ day of _____ 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

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Insert 2

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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§74.17, 74.31, 74.33, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§74.11, 74.13, 74.15, and 74.17 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

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DRAFT CONGRESSIONAL LETTER

MAY 13 1992

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed proposed amendment to the Commission's rules in 10 CFR Parts 73 and 74. The amendment, if adopted, would ensure that the presence of NRC safeguards inspectors at affected sites is not announced or otherwise communicated to licensees and contractor personnel without the expressed request to do so by the inspector. The sites affected are comprised of fuel cycle facilities using or possessing a formula quantity of strategic special nuclear material. The proposed rule will increase the effectiveness of unannounced safeguards inspections and will enable a safeguards inspector to get a more accurate view of normal operations at the facility. Similar requirements for power reactor licensees were published in October 1988. This proposed rule is expected to have no economic impact on affected licensees, the NRC, or the public.

Sincerely,

~~Robert M. Bernero
Office of Nuclear Material
Safety and Safeguards~~

*Dennis Rathbun, Director
Office of Congressional Affairs*

Note: The correspondence block for these letters should include Mr. Bernero and a block for the EDO

Attachment 3