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MAY 26 1992

OFFICE REVIEW OF DRAFT RULEMAK

- 1 -

MEMORANDUM FOR: Donnie H. Grimsley, Director
Division of Freedom of Information
and Publications Branch, ADM

Stuart A. Treby, Assistant General Counsel
for Rulemaking and Fuel Cycle, OGC

FROM: Robert F. Burnett, Director
Division of Safeguards
and Transportation, NMSS

SUBJECT: OFFICE REVIEW OF DRAFT PROPOSED RULEMAKING -
LICENSEES' ANNOUNCEMENTS OF SAFEGUARDS INSPECTIONS

The enclosed draft proposed rule is provided for your review, comment, and office concurrence or indication of no legal objection, as appropriate.

The amendments propose requirements to ensure that the presence of Nuclear Regulatory Commission 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. Similar requirements for power reactor licensees were issued October 25, 1988 (53 FR 42939).

Please provide your response by c.o.b. Friday, June 5, 1992. Staff contact is Priscilla A. Dwyer, 504-2478. Thank you.

Original Signed by
The Director

for Robert F. Burnett, Director
Division of Safeguards
and Transportation, NMSS

Enclosure:
As stated

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

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MAY 26 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

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

SUBJECT: LICENSEES' ANNOUNCEMENTS OF 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 safeguards 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).

Notices:

A notice to the Commission that the EDO has signed this rule is enclosed for inclusion in the 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

MAY 26 1992

DRAFT

Approved For Publication

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.

The enclosed rule, entitled "Licensees' Announcements of 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

MAY 26 1992

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 73 and 74
RIN

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Licensees' Announcements of Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

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 requires 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., Washington, DC 20555.

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: This proposed rulemaking applies to fuel cycle facilities using or possessing a formula quantity of strategic special nuclear 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. The intent of these amendments 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.

MAY 26 1992

DRAFT

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 .

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. The 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.

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.

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

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

List of Subject in 10 CFR Part 74

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.

MAY 26 1992

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIAL

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

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 shall 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

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

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

§74.81 Inspections.

* * * * *

(d) At a fuel cycle facility using or possessing a formula quantity or more of strategic special nuclear material, the licensee shall 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.

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

For the Nuclear Regulatory Commission.

James M. Taylor
Executive Director for Operations

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MAY 13 1992

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_x

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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

Attachment 3