

PDR

NOV 23 1992

MEMORANDUM FOR: David C. Williams
Inspector General

FROM: Theodore S. Sherr, Chief
Domestic Safeguards Branch
Division of Safeguards
and Transportation, NMSS

SUBJECT: PROPOSED RULEMAKING - LICENSEES' ANNOUNCEMENTS
OF SAFEGUARDS INSPECTIONS

The enclosed proposed rule was forwarded to the Rules and Directives Review Branch, Division of Freedom of Information and Publication Services, ADM on October 21, 1992 for publication in the Federal Register. It is provided for your information. Staff contact is Priscilla A. Dwyer, 504-2478.

Original Signed by
Theodore S. Sherr

Theodore S. Sherr, Chief
Domestic Safeguards Branch
Division of Safeguards
and Transportation, NMSS

Enclosure: as stated

DISTRIBUTION:
SGTR r/f & c/f
PDwyer
BMendelsohn

SGDB
PDwyer
10/27/92

SGDB
BMendelsohn
10/23/92

SGDB
TSherr
10/27/92

9212310177 921023
PDR PR
73 MISC PDR

DF03

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

RIN 3150 - AE27

Licensees' Announcements of Safeguards Inspections

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission 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 licensee 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 a safeguards inspector to obtain a more accurate view of affected facilities.

DATES: Comments must be received on or before (90 days from date of 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 for inspection and copying for a fee in the NRC Public Document Room at 2120 L Street, NW. (Lower Level), 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 would apply to fuel cycle facilities authorized to use or possess a formula quantity of strategic special nuclear material. The NRC proposes to 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 an affected facility unless the licensee is specifically requested to do so by the NRC safeguards inspector. The proposed rule is intended to increase the effectiveness of unannounced safeguards inspections and to enable a safeguards inspector to get a more accurate view of normal operations at affected facilities. The rule is needed for safeguards inspections because of the quickness by which most safeguards degradations can typically be compensated after announcement of an inspector's presence (e.g., through the posting of a security officer) thus frustrating the effectiveness of the inspection. These proposed amendments are intended only to impose procedural changes to the way a licensee responds to the presence of an NRC safeguards inspector at affected fuel cycle facilities. It is anticipated that there will be minimal or no cost associated with implementation of these proposed amendments. The NRC may, in the future, consider the need for similar requirements for safety inspections at affected sites.

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 (see 53 FR 42939, 42940, October 25, 1988), the NRC expects to reserve enforcement action only for significant intentional violations of the prohibition. For example, the NRC recognizes the possibility of inadvertent communication of an inspector's presence. An honest response by an employee to an innocent inquiry that he 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. Similarly, the NRC recognizes the possibility that some communication of an inspector's presence may even on occasion be necessary. 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, 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 reasons.

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

This 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 numbers 3150-002 and 3150-0123.

Regulatory Analysis

This proposed rule would 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 fuel cycle facilities. The proposed rule would make 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 the NRC. It is anticipated that this proposed rule, if promulgated, would impose procedural changes only on affected licensees at minimal or no cost. 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 would not impose additional 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 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 on nuclear power plant licensees. This proposed rule affects only fuel cycle facilities that use or possess a formula quantity of strategic special nuclear material and is anticipated to impose 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. 553, the NRC is proposing to adopt the following amendment to 10 CFR Parts 73 and 74.

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).

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)(B), and (h), 73.55 (h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161c, 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

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 inspector.

* * * * *

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

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 purpose 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)).

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

§74.81 Inspections.

* * * * *

(d) At a fuel cycle facility authorized to use or possess a formula quantity or more of strategic special nuclear material, 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 inspector.

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

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.