



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

DEC 17 1992

MEMORANDUM FOR: NUDOCS  
M/S P1-37

FROM: Priscilla A. Dwyer  
Sr. Safeguards Technical Analyst  
Domestic Safeguards Branch  
Division of Safeguards  
and Transportation, NMSS

SUBJECT: REGULATORY HISTORY FOR PROPOSED RULE

The enclosed documents comprise the regulatory history for the proposed rule "Licensees' Announcements of Safeguards Inspections" (57 FR 49656). The rulemaking affects Parts 73 and 74. All of these documents should be placed in the Public Document Room. Please forward a completed index to me at mail stop 4E4. Thank you.

Priscilla A. Dwyer  
Sr. Safeguards Technical Analyst  
Domestic Safeguards Branch  
Division of Safeguards  
and Transportation, NMSS

Enclosures:  
as stated



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
101 MARIETTA STREET, N.W.  
ATLANTA, GEORGIA 30323

MAY 26 1992

AE27-1 002  
PDR

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

FROM: Douglas M. Collins, Chief  
Nuclear Materials Safety  
and Safeguards Branch  
Division of Radiation Safety  
and Safeguards, RII

SUBJECT: REVISION OF PROPOSED RULE ON UNANNOUNCED  
SAFEGUARDS INSPECTIONS

We have completed our review of the proposed subject rule without comment. We appreciate the opportunity to review and provide comment and should further actions be required on this subject, please contact David McGuire at (404) 331-5545.

*Douglas M. Collins*

Douglas M. Collins

cc: P. A Dwyer, SGDB/SGTR

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U/I 23 1992

AE27-1 003  
PDR

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

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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.



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.

## 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 (c)).

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.

\* \* \* \* \*

OCT 23 1992

RED-1 004  
PDR

MEMORANDUM FOR: David A. Ward, Chairman  
Advisory Committee on Reactor Safeguards

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

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

RIN 3150 - AE27

Licensees' Announcements of Safeguards Inspections

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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 (c)).

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.

OCT 23 1992

AE27-1 004  
PDR

MEMORANDUM FOR: David A. Ward, Chairman  
Advisory Committee on Reactor Safeguards

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

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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.

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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.

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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

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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 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:

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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).

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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. Chitk,  
Secretary of the Commission.





OFFICE OF THE  
SECRETARY

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

October 16, 1992

PDR  
AE27-1  
Action: Bernero, NMSS  
Cys: Taylor  
Snizek  
Thompson  
Blaha  
Dwyer, NMSS  
Meyer, ADM  
Shelton, IRM  
005

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations  
FROM: Samuel J. Chilk, Secretary  
SUBJECT: SECY-92-326 - LICENSEE'S ANNOUNCEMENTS OF  
SAFEGUARDS INSPECTIONS RULEMAKING

This is to advise you that the Commission (with all Commissioners agreeing) has approved the publication of the proposed rule subject to:

- 1) Adding the following paragraph to the draft FRN after the first paragraph of the Supplementary Information:

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 Fed. Reg. 42939, 42940, Oct. 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.

NOTE: THIS SRM, THE SUBJECT SECY PAPER AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE IN 10 WORKING DAYS FROM THE DATE OF THIS SRM.

9211050268 2ff

- 2) Revise the first sentence of the Backfit Analysis as follows:

"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).~~ on nuclear power plant licensees.

The FRN should be modified, reviewed by the Regulatory Publication Branch, Adm. and forwarded for signatures and publication.

(EDQ)- (NMSS)

(SECY Suspense: 10/30/92)

9200116

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque  
OGC

A227-1  
PDR 606



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555

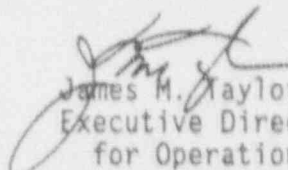
May 15, 1992

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

FROM: James M. Taylor  
Executive Director for Operations

SUBJECT: APPROVAL OF REQUEST TO INITIATE RULEMAKING WITH  
RESPECT TO UNANNOUNCED SAFEGUARDS INSPECTIONS

This memorandum is in response to your April 21, 1992 request for approval to initiate a rulemaking to amend 10 CFR Part 73, "Physical Protection of Plants and Material" and 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material." Approval is hereby granted to initiate the subject rulemaking. The proposed schedule for publication of the Final Rule is eight months from when approval is obtained to initiate the rulemaking. Please inform me promptly if circumstances arise which jeopardize your ability to complete this rulemaking on that schedule.

  
James M. Taylor  
Executive Director  
for Operations

cc: H. Thompson  
J. Blaha  
K. Stablein

9212310007 p.

A227-1 007  
PDR

October 30, 1992

MEMORANDUM FOR: File

FROM: Priscilla A. Dwyer  
Sr. Safeguards Technical Analyst  
Domestic Safeguards Branch  
Division of Safeguards  
and Transportation, NMSS

SUBJECT: COMMENTS PREVIOUSLY RECEIVED FROM R. FONNER ON PROPOSED  
RULEMAKING

This documents hand-written comments received from R. Fonner in late May of 1992 on the draft proposed rulemaking on unannounced safeguards inspections. In his comments, R. Fonner revised the next to last sentence of the Supplementary Information section of the Federal Register Notice. The sentence previously read: "The scope of the rulemaking is limited to safeguards inspections because of the immediacy by which most safeguards degradations can typically be compensated (e.g., through the posting of a security officer)." The sentence, revised per Fonner, reads: "The rule is needed for safeguards inspections because of the quickness by which most safeguards degradations can typically be compensated after announcing the inspector's presence (e.g., through the posting of a security officer) thus frustrating the effectiveness of the inspectors."

Priscilla A. Dwyer  
Sr. Safeguards Technical Analyst  
Domestic Safeguards Branch  
Division of Safeguards  
and Transportation, NMSS

9212310008 12





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

MAY 22 1992

PDR AE27-1 008

*SDB*

*Burnett*

*BTM*

*Dwyer*

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 492-7928 or Michael Lesar on 492-7758.

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

Attachment: As stated

9212310132

13pp

**DRAFT**

**MAY 13 1992**

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).

**DRAFT**

**DRAFT**

**MAY 18 1992**

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

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, 036, 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

**DRAFT**

DRAFT

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



[7590-01]  
**DRAFT**

MAY 18 1992

*Note: FRN  
should be removed  
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 <sup>will</sup> 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, <sup>(lower level)</sup> 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:** <sup>P</sup> This proposed rulemaking <sup>will</sup> 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 communicated <sup>widely</sup> to licensees and contractor personnel without an expressed request to do so by the inspector. The proposed rule would increase the effectiveness of unannounced <sup>safeguards</sup> inspections and enable an inspector to obtain a more accurate view of normal operations at affected facilities.

Final copy my insert. 12/14/79



**DRAFT**

MAY 13 1992

*to prohibit a licensee  
OK its contractor from  
using an*

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

*proposed*  
*rule*  
*made*

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 *proposed* rule *made* 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.

**DRAFT**

**MAY 13 1992**

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, *regardless of size*  
*would not* *any*

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, *77* 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 >*

LIC ANNOUN OF INSPEC OF MEMO

INSERT 1

~~PART 73 - 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. 97-425, 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(c)).

**DRAFT**

**MAY 13 1992**

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~~<sup>may</sup> 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.

\* \* \* \* \*

2-10 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~~<sup>may</sup> 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.

LIC-ANNOU OF-INSPEC OF MEMO

67  
11

## 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)).



**DRAFT**

DRAFT CONGRESSIONAL LETTER

MAY 18 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 Rothbun, Director*  
*Office of Congressional Affairs*

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

Attachment 3

AE27-1  
PDR 009

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

DISTRIBUTION:  
SGDB r/f  
PDwyer  
BMendelsohn

SGDB <i>PD</i>	SGDB <i>for</i>	SGDB <i>SL</i>	SGTR	SGTR
PDwyer:pag	BMendelsohn	TSherr	ETenEyck	RBurnett
5/26/92	5/26/92	5/26/92	5/ /92	5/ /92

9212310140 8pp



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

DRAFT

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

**DRAFT**

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

**DRAFT**

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 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

**DRAFT**

DRAFT

MAY 19 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

**DRAFT**

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

AE37-1  
PDR 610

REVIEW OF PROPOSED RULEMAKING

- 1 -

MAY 26 1992

MEMORANDUM FOR: Thomas M. Collins, Chief  
Nuclear Materials Safety  
and Safeguards Branch  
Division of Radiation Safety  
and Safeguards, RII

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

SUBJECT: REVIEW OF PROPOSED RULEMAKING

Enclosed for your review and comment is a draft proposed rulemaking to amend 10 CFR Parts 73 and 74. The purpose of the proposed rule is to ensure that the presence of NRC safeguards inspectors at Category I 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. Similar requirements for power reactor licensees were published in October 1988. Please provide your comments to Priscilla A. Dwyer, SGDB/SGTR by c.o.b., Friday, June 5, 1992.

Original Signed by  
Theodore S. Sherr

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

Enclosure:  
As stated

DISTRIBUTION:  
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5/24/92

9301040069 8pp.





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

**DRAFT**

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

**DRAFT**

Approved For Publication

MAY 26 1992

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

**DRAFT**

NUCLEAR REGULATORY COMMISSION  
10 CFR Parts 73 and 74  
RIN

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

**DRAFT**

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIAL

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



**DRAFT**

DRAFT

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<sub>g</sub>

**DRAFT**

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



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

OCT 01 1992

NOTE TO: File

FROM: Priscilla A. Dwyer  
Senior Safeguards Technical Analyst  
SGDB/SGTR

SUBJECT: TELEPHONE CONVERSATION WITH COMMISSION STAFF

I was contacted by Josie Piccone of Commissioner DePlanck's staff on September 30, 1992 to discuss our Licensees' Announcements of Safeguards Inspections rulemaking. Her primary questions were - why a rule for two licensees (as opposed to license amendments or orders) - and why did the rule go to the Commission because it doesn't seem to be a major policy issue. I responded to the first question consistent with the responses we had given the EDO's office on the same question. With respect to the second question, I acknowledged that the package had originally been prepared for the EDO's signature but had been revised in response to the EDO's request to obtain Commission approval for the rulemaking.

Priscilla A. Dwyer  
Senior Safeguards Technical Analyst  
SGDB/NMSS

cc; B. Mendelsohn, SGDB  
T. Sherr, SGDB

9212310183 1p.

October 7, 1992

NOTE TO: File

FROM: Priscilla A. Dwyer,  
Sr. SG Technical Analyst  
Requirements and Oversight Section  
SGDB/SGTR

SUBJECT; TELEPHONE CONVERSATION WITH COMMISSION STAFF

Steve Crockett of Commissioner Remick's office called me on October 7, 1992 to discuss the Licensees' Announcements of Safeguards Inspections rulemaking. He requested clarification on how the proposed would be applied. The example he cited was a secretary telling phone callers that her boss was unavailable to take calls because her boss was with an NRC inspector. Steve wanted to know if this would be prohibited under the proposed regulation. In response, I described the actual incident at UNC that prompted the initiation of the rulemaking and stated that we recognize that some individuals need to know about the inspections but our intent is to prohibit the intentional and wide broadcast or dissemination of information concerning the presence of an NRC inspector on site.

Priscilla A. Dwyer  
Sr. SG Technical Analyst  
Requirements and Oversight Section  
SGDB.SGTR

cc: B. Mendelsohn, SGDB  
T. Sherr, SGDB

9212316178 1p.

AE 27-1  
**DRAFT**

PDR  
FEB 28 1991

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 73 and 74

Licensee Announcements of Inspections at Fuel Cycle Facilities  
Using or Possessing Formula Quantities of  
Strategic Special Nuclear Material

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 an inspector at certain fuel cycle facilities.

DATES: Comments must be received on or before (45 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:



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 a NRC 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.

#### 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 will make 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.

**DRAFT**

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 because these amendments do not impose requirements on 10 CFR Part 50 licensees.

#### List of Subjects 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 Subjects 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.

FEB 28 1991

**DRAFT**

PART 73--PHYSICAL PROTECTION OF PLANTS AND MATERIAL

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 inspector unless specifically requested to do so by the NRC inspector.

**DRAFT**

FEB 28 1991

Dated at Rockville, MD this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor  
Executive Director  
for Operations

FEB 28 1991

DRAFT

WEEKLY REPORT TO THE COMMISSION  
OFFICE OF NUCLEAR REGULATORY RESEARCHProposed Rule Signed by EDO

On \_\_\_\_\_, 1991, the Executive Director for Operations 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 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 inspections and enable an inspector to get a more accurate view of normal operations at affected facilities. Similar requirements for power reactor licensees were published in October 1988.

Attachment 2



**DRAFT**

FEB 28 1991

DRAFT CONGRESSIONAL LETTER

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 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 inspections and will enable an 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,

Eric S. Beckjord, Director  
Office of Nuclear Regulatory Research

Attachment 3

ENCLOSURE 3

examination shall be \$21.16 per hour for base time and \$24.68 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and \$43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

#### PART 352—(AMENDED)

B. The authority citation for Part 352 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

B. Section 352.5(c) would be revised to read as follows:

##### § 352.5 Fees and charges.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of \$21.16 per hour for base time, \$24.68 per hour for overtime including Saturdays, Sundays, and holidays, and \$43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

#### PART 354—(AMENDED)

10. The authority citation for Part 354 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

11. Section 354.101 (b) and (c) would be revised to read as follows:

##### § 354.101 On a fee basis.

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be \$21.16 for base time and \$24.68 for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be \$43.80 per

hour for that part which is not covered under the base time, overtime, and/or holiday costs.

#### PART 355—(AMENDED)

12. The authority citation for Part 355 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

13. Section 355.12 would be revised to read as follows:

##### § 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be \$21.16 per hour for base time, \$24.68 per hour for overtime, including Saturdays, Sundays, and holidays, and \$43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the costs of the inspection service furnished.

#### PART 362—(AMENDED)

14. The authority citation for Part 362 would be revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17(g) and (i), 2.55.

15. Section 362.5(c) would be revised to read as follows:

##### § 362.5 Fees and charges.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of \$21.16 per hour for base time, \$24.68 per hour for overtime including Saturdays, Sundays, and holidays, and \$43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

#### PART 381—(AMENDED)

16. The authority citation for Part 381 would be revised to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17(g) and (i), 2.55.

17. Section 381.38(a) would be revised to read as follows:

##### § 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service \$24.68 per hour per Program employee to reimburse the

Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

Done at Washington, DC, on March 8, 1988.

Ronald J. Frucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 88-5958 Filed 3-17-88; 8:45 am]

BILLING CODE 5410-01-01

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

#### Licensee Announcements of Inspectors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend its regulations to ensure that the presence of NRC inspectors on power reactor sites is not announced or otherwise communicated to licensee and contractor personnel without the expressed request to do so by the inspector. This change will allow the NRC inspectors, badged at the facility, to observe ongoing activities as they are being performed without advanced notification of the inspection to licensee and contractor personnel. There is a need for this change because of the possible altering of attention and performance levels of a licensee and/or its contractors when the licensee is aware of NRC surveillance. Past incidences where site and/or contractor personnel have been notified of NRC's presence onsite have heightened concern in this area.

**DATE:** Submit comments by April 18, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H Street NW., Washington, DC 20555, between 7:30 a.m. and 4:15 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: George Barber, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-1206.

**SUPPLEMENTARY INFORMATION:** This proposed rule is intended to ensure that NRC inspectors be granted immediate and unannounced access (i.e., unfettered access equivalent to access provided regular plant employees) to licensed facilities, following proper identification and compliance with applicable access control procedures. The NRC proposes that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of a NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities where the ability of properly badged NRC inspectors to inspect and assess—on an unannounced basis—activities related to the license or construction permit was compromised by the licensee employees or contractor employees who informed others at the facility of the presence of the NRC inspectors. The proposed change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate access to ongoing activities as these activities are being performed without accompaniment and without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors would not be on site.

#### Environment 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 this 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 3150-0011.

#### Regulatory Analysis

This proposed rule will have no significant impact on state and local governments and geographical regions. It may have significant 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 intent of the rule is to clarify that NRC inspectors are to have a realistic picture of the actual conditions at a site, 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

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule applies only to licensees authorized to construct or operate nuclear power reactors, who are not small business entities within the meaning of the act or implementing regulations. Therefore, a regulatory flexibility analysis has not been prepared.

#### Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because this amendment is not within the definition of backfitting, as set out in 10 CFR 50.109(a)(1).

#### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

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 Part 50.

#### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 162, 163, 165, 169, 65 Stat. 936, 937, 938, 946, 953, 954, 955, 956, as amended; sec. 234, 63 Stat. 1244 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2202, 2233, 2236, 2239, 2287); sec. 201, as amended, 202, 206, 66 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under sec. 101, 106, 66 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 63 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.25, 50.35, and 50.56 also issued under sec. 165, 66 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.35a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 63 Stat. 853 (42 U.S.C. 4332). Section 50.34 and 50.54 also issued under sec. 204, 66 Stat. 1245 (42 U.S.C. 5844). Sections 50.56, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.76 also issued under sec. 122, 66 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 66 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 106, 66 Stat. 936, as amended (42 U.S.C. 2136). Appendix F also issued under sec. 167, 66 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 66 Stat. 956, as amended (42 U.S.C. 2273), §§ 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161(b), 66 Stat. 945, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c), and 50.54 are issued under sec. 161(i), 66 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.76 are issued under sec. 161(o), 66 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.70, paragraph (b)(4) is added to read as follows:

#### § 50.70 Inspections.

(b) \* \* \*

(4) The licensee or construction permit holder shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested to do so by the NRC inspector.

Dated at Bethesda, MD, this 9th day of March 1988.

For the Nuclear Regulatory Commission,

Victor Stallo, Jr.,

Executive Director for Operations.

[FR Doc. 88-3983 Filed 3-17-88; 8:45 am]

BILLING CODE 7550-01-80



purchase of Class B stock and cash purchases for Class B stock were \$10,394,950. Rescissions of loan funds advanced for Class E stock amounted to \$1,592,799. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was \$6,802,151 (\$10,394,950—\$1,592,799). The total amount received by the Bank in Fiscal Year 1988 from the issuance of Class C stock was \$16,976.

The Bank did not issue debentures or any other obligations during Fiscal Year

1988. Subsequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of Fiscal Year 1988 loan advances over amounts received from issuance of Class A, B, and C stocks and debentures and other obligations amounted to \$82,167,226. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost

of money rate is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost of money rates for fiscal year 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100-203, and are listed in 7 CFR 1610.10(c) and Table 2 herein.

Harold V. Hunter,

Governor.

October 20, 1988.

TABLE 1.—RURAL TELEPHONE BANK FY 1988 COST OF MONEY RATE

Source of bank funds	Amount	Cost rate	Amount X cost rate	(Amount X rate)/Advances (percent)
FY 1988 issuance of Class A Stock	\$26,710,000	2.00	\$534,200	0.480
FY 1988 issuance of Class B Stock	6,802,151	0.00		.000
FY 1988 issuance of Class C Stock	16,976	0.50	1,443	.001
FY 1988 issuance of Debentures and Other Obligations	82,167,226	0.55	45,191,974	4.495
Excess of Total Advances Over 1988 Issuances	116,896,353			4.96
Total FY 1988 Advances				5.00
Calculated Cost of Money Rate				
Minimum Cost Rate Allowable				

TABLE 2.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances X Cost rate	(Advances X Cost rate)/Total advances (percent)
1974	5.01	\$111,022,574	\$5,562,231	0.36
1975	5.85	190,863,187	7,643,787	.50
1976	5.33	99,915,066	5,325,473	.35
1977	5.00	80,907,425	4,045,371	.26
1978	5.87	142,297,190	8,352,845	.54
1979	5.90	130,540,067	7,741,026	.50
1980	6.10	109,944,235	6,605,483	.51
1981	5.45	148,599,372	8,097,501	.51
1982	6.38	112,252,127	7,162,275	.61
1983	6.99	80,402,836	5,578,858	.67
1984	6.55	90,450,549	5,924,511	.63
1985	6.00	72,583,394	4,354,970	.57
1986	6.00	71,852,363	4,311,140	.57
1987	6.00	51,974,938	3,119,699	.57
Total Advances		1,536,365,353		6.96
Cost of Money Rate				

[FR Doc. 88-24656 Filed 10-24-88; 8:45 am]  
BILLING CODE 3410-15-M

# NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 50

### Licensee Announcements of Inspectors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to ensure 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 will allow the NRC inspectors, badged at the facility, to observe ongoing activities as they are being performed without advanced notification of the inspection to licensee and contractor



...of the possible altering  
licensee and/or its contractors when the  
Past occurrences where site end/or  
contractor personnel have been notified  
of NRC's presence on site have  
heightened concern in this area.

**EFFECTIVE DATE:** October 25, 1988.  
**FOR FURTHER INFORMATION CONTACT:**  
George Barber, Office of Nuclear  
Reactor Regulation, U.S. Nuclear  
Regulatory Commission, Washington,  
DC 20555, Telephone (301) 492-1234.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

By clarifying the meaning and intent of 10 CFR 50.70(b)(3), this final rule should ensure that NRC inspectors will be granted immediate and unannounced access to licensee facilities so as to provide the inspector with unfettered access equivalent to that provided a regular plant employee following proper identification and compliance with applicable access control procedures. This rule provides that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities where NRC inspectors to inspect and access, on an unannounced basis, activities related to the license or construction permit when licensee employees or contractor employees were present at the facility of the NRC inspectors. This change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate, unescorted access to being performed as these activities are ongoing activities without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors not be on site.

**Summary of Comments**

On March 18, 1988, the Commission published in the Federal Register [53 FR 10000] a notice of proposed rulemaking for the announcement of the Commission's intent on the proposed rule. The notice specified closing date for comments as April 18, 1988. After April 18, 1988, comments will be accepted on a case-by-case basis.

were received. All 32 letters of comments were considered in NRC's review of this final rule. The comments are discussed below.

**Comment.** A majority of the commenters believed the rule was unnecessary and characterized it as being too broad and vague. They asserted that it was redundant with current regulations; would lead to unfair and impractical enforcement; be impossible to implement; inhibit the ability of facility management to perform their safety functions; promote lying among the facility staff; require formal training and recordkeeping; and indicates a distrust of licensees.

**NRC Response.** NRC does not agree with the comments, but to ensure that the intent of the rule is clear and focused, adds the following clarification to the rule. The intent of this rule is to prevent site and contractor personnel from widespread dissemination or broadcasting the presence of an NRC inspector. Broadcasting, as used here, is defined as unsolicited one-way communications. Implementing or enforcing this rule should be no more difficult than implementing or enforcing any rule that involves personnel performance.

Adopting this rule does not indicate a predisposition on the part of the NRC that licensees are not acting properly. It is human nature for an individual to be more conscious of his or her performance when the individual realizes he or she is being observed. The NRC inspection program evaluates licensee performance on the basis of a sampling of its activities. It is critical that the sampling portion of the licensee's activities that are relied upon for this evaluation be representative of its overall activities. Therefore, the rule is more prophylactic than proscriptive, although it does carry enforcement sanctions should it be violated. Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement of an intentional action for a significant response by an employee to an innocent inquiry that he/she just saw an NRC inspector that within the proscriptive perimeter of the rule. An honest response would not be required to lie, in response to a question, about the presence of an NRC inspector. Based on this discussion, formalized training will not be necessary, and NRC Form 3 need not be modified to reflect this requirement.

The NRC does not agree that this rule will prevent management from

performing its safety functions. It be noted the rule does not affect software security systems which monitor the presence of persons in certain areas. Such systems should provide the licensee with needed information on space occupancy in the case of an emergency or evacuation. Those licensees who have these systems in place, or will put them in place, the rule does not affect such systems. If a licensee were, however, to design or modify these systems in order to alert the purpose of monitoring the NRC inspector's movements in order to alert other plant personnel of the inspector's whereabouts, those actions would violate the rule.

In sum, the licensee is prohibited from taking affirmative action which would compromise the NRC inspector's mission of gaining unfettered access to the plant and its various areas of interest to the inspector.

**Comment.** Some commenters expressed a concern that the rule could raise Constitutional questions under the First and Fourth Amendments.

**NRC Response.** As discussed above, the purpose of the rule is to enhance the credibility of the inspection process. Inspections are specifically authorized under section 1610 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(o). The regulation is narrowly drawn to achieve a legitimate governmental interest (effective NRC inspections) without infringing on an individual's right to express ideas and opinions on any subject. Thus, the regulation does not impermissibly intrude upon freedom of speech protected by the First Amendment to the Constitution.

The regulation does not raise any significant Fourth Amendment considerations. The Atomic Energy Act creates a pervasive regulatory scheme that puts licensees on clear notice that they will be subject to inspection, and on granting of a license is conditioned on consent to reasonable inspections. Thus, NRC inspections of licensees' premises, activities and records do not require a warrant under the Fourth Amendment. United States vs. Radiation Technology, Inc., 519 F. Supp. 1266, 1288-91 (D.N.J., 1981); Union Electric Co. (Callaway Plant, Units 1 & 2), ALAB-527, 9 NRC 126, 139-41 (1979). The new regulation is a reasonable exercise of the Commission's inspection authority. Inspectors will continue to identify themselves and comply with other reasonable access control measures and, as always, inspections will be conducted for purposes authorized

personnel. There is a need for this change because of the possible altering of attention and performance levels of a licensee and/or its contractors when the licensee is aware of NRC surveillance. Past occurrences where site and/or contractor personnel have been notified of NRC's presence on site have heightened concern in this area.

**EFFECTIVE DATE:** October 25, 1988.

**FOR FURTHER INFORMATION CONTACT:** George Barber, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-1234.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

By clarifying the meaning and intent of 10 CFR 50.70(b)(3), this final rule should ensure that NRC inspectors will be granted immediate and unannounced access to licensee facilities so as to provide the inspector with unfettered access equivalent to that provided a regular plant employee following proper identification and compliance with applicable access control procedures. This rule provides that no access control measures or other means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of an NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector. There have been instances in the past at several facilities that compromised the ability of properly badged NRC inspectors to inspect and access, on an unannounced basis, activities related to the license or construction permit when licensee employees or contractor employees informed others at the facility of the presence of the NRC inspectors. This change to 10 CFR 50.70 is to clarify that NRC inspectors, badged at the facility, have immediate, unescorted access to ongoing activities as these activities are being performed without advanced notification of the inspection. This is especially important during non-normal business hours when operating personnel might assume NRC inspectors would not be on site.

**II. Summary of Comments**

On March 18, 1988, the Commission published in the Federal Register (53 FR 8924) a notice of proposed rulemaking on "Licensee Announcement of Inspectors." The Commission invited the public to comment on the proposed rule and received six letters of comment by April 18, 1988 (the specified closing date for public comments). After April 18, 1988, 26 additional letters of comments

were received. All 32 letters of comments were considered in NRC's review of this final rule. The comments are discussed below.

**Comment.** A majority of the commenters believed the rule was unnecessary and characterized it as being too broad and vague. They asserted that it was redundant with current regulations; would lead to unfair and impractical enforcement; be impossible to implement; inhibit inspector assistance by plant personnel; limit the ability of facility management to perform their safety functions; promote lying among the facility staff; require formal training and recordkeeping; and indicates a distrust of licensees.

**NRC Response.** NRC does not agree with the comments, but to ensure that the intent of the rule is clear and focused, adds the following clarification of the rule. The intent of this rule is to prevent site and contractor personnel from widespread dissemination or broadcasting the presence of an NRC inspector. Broadcasting, as used here, is defined as unsolicited one-way communications. Implementing or enforcing this rule should be no more difficult than implementing or enforcing any rule that involves personnel performance.

Adopting this rule does not indicate a predisposition on the part of the NRC that licensees are not acting properly. It is human nature for an individual to be more conscious of his or her performance when the individual realizes he or she is being observed. The NRC inspection program evaluates licensee performance on the basis of a sampling of its activities. It is critical that the sampling portion of the licensee's activities that are relied upon for this evaluation be representative of its overall activities. Therefore, the rule is more prophylactic than proscriptive, although it does carry enforcement sanctions should it be violated. Recognizing the possibility of inadvertent communication of an inspector's presence, the NRC expects to reserve enforcement action for significant intentional violations of the rule. An honest response by an employee to an innocent inquiry that he/she just saw an NRC inspector is not within the proscriptive perimeter of the rule. Therefore, an employee would not be required to lie, in response to a question, about the presence of an NRC inspector. Based on this discussion, formalized training will not be necessary, and NRC Form 3 need not be modified to reflect this requirement.

The NRC does not agree that this rule will prevent management from

performing its safety functions. It should be noted the rule does not affect software security systems which monitor the presence of persons in certain areas. Such systems should provide the licensee with needed information on space occupancy in the case of an emergency or evacuation. For those licensees who have these systems in place, or will put them in place, the rule does not affect such systems. If a licensee were, however, to design or modify these systems (or use them) for the purpose of monitoring the NRC inspector's movements in order to alert other plant personnel of the inspector's whereabouts, those actions would violate the rule.

In sum, the licensee is prohibited from taking affirmative action which would compromise the NRC inspector's mission of gaining unfettered access to the plant and its various areas of interest to the inspector.

**Comment.** Some commenters expressed a concern that the rule could raise Constitutional questions under the First and Fourth Amendments.

**NRC Response.** As discussed above, the purpose of the rule is to enhance the credibility of the inspection process. Inspections are specifically authorized under section 1610 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(o). The regulation is narrowly drawn to achieve a legitimate governmental interest (effective NRC inspections) without infringing on an individual's right to express ideas and opinions on any subject. Thus, the regulation does not impermissively intrude upon freedom of speech protected by the First Amendment to the Constitution.

The regulation does not raise any significant Fourth Amendment considerations. The Atomic Energy Act creates a pervasive regulatory scheme that puts licensees on clear notice that they will be subject to inspection, and the granting of a license is conditioned on consent to reasonable inspections. Thus, NRC inspections of licensees' premises, activities and records do not require a warrant under the Fourth Amendment. *United States Nuclear Regulatory Commission vs. Radiation Technology, Inc.*, 519 F. Supp. 1266, 1268-91 (D.N.J. 1981); *Union Electric Co. (Callaway Plant, Units 1 & 2)*, ALAB-527, 9 NRC 126, 139-41 (1979). The new regulation is a reasonable exercise of the Commission's inspection authority. Inspectors will continue to identify themselves and comply with other reasonable access control measures and, as always, inspections will be conducted for purposes authorized



under the Atomic Energy Act and the Energy Reorganization Act. The regulation does not run afoul of the Fourth Amendment to the Constitution.

**Comment.** A number of commenters suggested that the rule be implemented only by written request of the NRC inspector.

**NRC Response.** NRC rejects the suggestion. With this suggested modification, the rule would only apply to those individuals who had been given notice of the NRC inspector's presence on site. If implemented, this suggestion would defeat the intent of the rule.

#### Environmental Impact Categorical Exclusion

The NRC has determined that this 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 this final rule.

#### Paperwork Reduction Act Statement

The final 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 3150-0011.

#### Regulatory Analysis

This final rule will have no significant impact on state and local governments and geographical regions. It may have a significant 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 will make 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 final rule.

#### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule applies only to licensees authorized to construct or operate nuclear power reactors, who are not small business entities within the meaning of the act or implementing regulations. Therefore, a regulatory

flexibility analysis has not been prepared.

#### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does apply to this final rule. The backfit analysis for announcement of inspectors rule in accordance with each of the factors specified in 10 CFR 50.109(a)(4)(ii)(c) is as follows:

(1) This rule provides that no means may be employed by the licensee or its contractors to intentionally give notice to other persons of the arrival and presence of a NRC inspector at a facility, unless the licensee is specifically requested to do so by the NRC inspector.

(2) The licensee will have to communicate the requirements of this rule to its personnel and to contractor personnel working at its site.

(3) The purpose of this rule is to enhance the credibility of the inspection process. By requiring that the presence of NRC inspectors (either resident or off site) is not announced, the NRC, public and licensees will have more confidence that the activities inspectors are witnessing are representative of licensee performance. Ensuring that NRC inspectors are witnessing representative licensee performance could substantially increase the likelihood that NRC inspectors will discover unsafe or potentially unsafe practices, bring about corrective actions and thereby lower the risk of accidents occurring which could lead to the accidental off-site release of radioactive material.

It is not possible, without before and after data, to quantitatively evaluate the benefits of implementing this rule. Still, a recent significant enforcement action concerning licensee employee's inattention to duty demonstrates the premise advanced in the above paragraph. In this enforcement action, over 30 licensee personnel, both management and staff were cited for inattention to duty. The primary concern was sleeping on watch. It is not difficult to envision accidents that could occur because of this type of licensee performance.

Coupling inattention to duty with equipment failure adds a new dimension to the risk of accidents occurring which could lead to the off-site release of radioactive material. In the enforcement action mentioned above, had the licensee announced the presence of the NRC inspector, the inattention to duty would have gone unnoticed. It should be noted that the licensee facility where this incident occurred did, on one past occasion, announce the presence of NRC inspectors.

(4) Not appropriate. There is no radiological exposure of facility employees resulting from the rule's implementation.

(5) Very minor costs are associated with the rule's implementation. There are no training requirements or record keeping requirements associated with this rule. The only cost to the licensee would be communicating this rule to its employees and contractors.

(6) Not appropriate. There is no potential safety impact of changes in plant or operational complexity associated with this rule.

(7) Not appropriate. There is no resource burden on the NRC from the implementation of this rule.

(8) Not appropriate. There is no potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit.

(9) The proposed backfit is final.

#### Conclusion

Based on the above analysis, the Commission concludes that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from this backfit and that the direct and indirect costs of implementation for facilities are justified in view of this increased protection.

#### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

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 to adopt the following amendment to 10 CFR Part 50.

#### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 171, 182, 183, 186, 189, 66 Stat. 936, 937, 938, 946, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2262), sec. 201, as amended, 202, 206, 68 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5641, 5642, 5646).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 62 Stat. 2651 (42 U.S.C. 5651). Section 50.10 also issued under sec. 101, 186, 66 Stat. 936, 955, as amended (42 U.S.C. 2131).

2235) sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332) Section 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 66 Stat. 955 (42 U.S.C. 2235) Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 66 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239) Section 50.78 also issued under sec. 122, 66 Stat. 939 (42 U.S.C. 2152) Sections 50.80-50.81 also issued under sec. 184, 66 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 66 Stat. 939, as amended (42 U.S.C. 2138) Appendix F also issued under sec. 187, 66 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 66 Stat. 958, as amended (42 U.S.C. 2273): §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161(b), 66 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161(i), 66 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.56(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161(o), 66 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.70, paragraph (b)(4) is added to read as follows:

**§ 50.70 Inspections.**

(b) \* \* \*

(4) The licensee or construction permit holder (nuclear power reactor only) shall ensure that the arrival and presence of an NRC inspector, who has been properly authorized facility access as described in paragraph (b)(3) of this section, is not announced or otherwise communicated by its employees or contractors to other persons at the facility unless specifically requested by the NRC inspector.

Dated at Rockville, MD, this 13th day of October, 1988.

For the Nuclear Regulatory Commission,  
Victor Stello, Jr.,

*Executive Director for Operations*

(FR Doc. 88-24609 Filed 10-24-88; 8:45 am)

BILLING CODE 7590-01-M

**NATIONAL CREDIT UNION  
ADMINISTRATION**

**12 CFR Part 704**

**Corporate Credit Unions**

**AGENCY:** National Credit Union  
Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Regulatory Review program of NCUA, Part 704 (Corporate Credit Union) has been reviewed. The minor amendments to the section are primarily clarification language in three areas: (1) 704.2

includes a definition of "average daily assets" in the regulation, (2) 704.3 clarifies which items may be excluded from assets before the reserve transfer is computed, and (3) 704.5 specifies that the annual CPA audit be an opinion audit.

**EFFECTIVE DATE:** October 25, 1988.

**ADDRESS:** National Credit Union  
Administration, 1776 G Street NW.,  
Washington, DC 20450.

**FOR FURTHER INFORMATION CONTACT:**  
D. Michael Riley, Director, Office of  
Examination and Insurance, or Linda  
Groth, Corporate Credit Union  
Specialist at the above address or  
telephone: (202) 357-1065.

**SUPPLEMENTARY INFORMATION:**

**Background**

Part 704 of NCUA Rules and Regulations, Corporate Credit Unions, has been revised as a part of the Agency's continuing program of review of regulations and as a result of provisions in the Garn-St Germain Act which amended section 120(a) of the Federal Credit Union Act to permit the NCUA Board to differentiate the functions of corporate central Federal credit unions from natural person credit unions through the issuance of rules or orders of the Board. Part 704 was promulgated in 1977 to define a corporate credit union (herein referred to as a corporate) and to establish a reserve account for corporate credit unions. The regulation was revised in 1979 and again in 1984 to provide additional requirements pertaining to operations of corporate credit unions.

**Public Comment**

The NCUA Board issued a proposed rule on May 20, 1988 (see 53 FR 20122, (June 2, 1988)). The Board received 15 comments in response to the proposal to amend Part 704. Of the 15 comments, 7 were from Federally chartered corporates, 4 from state-chartered Federally insured corporates, 1 from a state-chartered non-insured corporate, 1 from a state credit union supervisor, 1 from a natural person Federal credit union and 1 from a trade association. A discussion of the comments received on the proposed amendments follows:

**A. Proposal to Amend § 704.2 To Include a Definition of "Average Daily Assets" in the Regulation**

Six of the commenters addressed the first proposal. Those who commented favored the change. The Board is adding paragraph (d) to § 704.2 to include the definition of average daily assets for reserve computation purposes in the regulation itself. Corporate credit unions

may elect either of two methods of calculating average daily assets. This is not a new requirement. The definition was formerly included only in the preamble to the regulation.

**B. Proposal To Amend § 704.3 To Clarify Items That May Be Excluded from the Assets Prior to the Reserve Transfer Computation**

This section concerns establishment and maintenance of a corporate reserve against loan and certain investment losses. A total of 14 comments were received addressing this proposal. Eleven commenters concurred with the change in § 704.3 which clarifies the items that may be excluded from the assets prior to the reserve transfer computation.

Two commenters believe the exclusion of reverse repurchase transactions only through US Central Credit Union is too narrowly defined. One commenter stated that they are "extremely concerned as to the preferential status which this exemption grants to transactions through US Central Credit Union." Both agreed that reverse repurchase transactions through US Central should be excluded but that the regulation should be expanded to exclude other matched arbitrage transactions that inflate the balance sheet. One corporate urged NCUA to amend the regulations to exempt from the definition of assets, those assets involved in matched repurchase transactions with members of the corporate when the corporate executes the reverse repurchase transaction directly in the marketplace. This corporate also urged NCUA to reduce the corporate reserve burden by permitting a reduction in average daily assets as defined in the regulation by the amount of corporate-owned government securities involved in reverse repurchase transactions. The other corporate expressed the opinion that all matched reverse repurchase agreements with broker dealers "which have a primary dealer status with the Federal Reserve Board and are in compliance with the Federal Reserve's Capital Adequacy Guidelines for U.S. Government Security Dealers" be excluded from average daily assets when computing reserve requirements.

Reverse repurchase transactions on behalf of the members of a corporate using the US Central corporate network program have been given a previous exemption because the corporates act primarily in an administrative capacity to forward securities to US Central Credit Union; the principal risks and primary benefits are shared by US