

PDR

INITIATE RULEMAKING

MAR 04 1991

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MEMORANDUM FOR: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

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

SUBJECT: REQUEST TO INITIATE RULEMAKING

This memorandum is to request initiation of 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." The purpose of the proposed rule is to ensure that the presence of NRC 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 sites are limited to fuel cycle facilities using or possessing formula quantities of strategic special nuclear material. Similar requirements for power reactor licensees were published in October 1988. To assist you in this endeavor, enclosed are: 1) a 7-Point Request for Rulemaking (Enclosure 1), 2) a complete draft rulemaking package (Enclosure 2), and 3) background material (Enclosure 3). We recommend that this rulemaking be submitted to Regions I and II for review and comment via a memorandum such as Enclosure 4. NMSS contact is Priscilla A. Dwyer, x20478. Given the completeness of the enclosures, we would hope that this request can be satisfied in an expedited manner. Thank you for your assistance.

Original signed by G. A. Aronoff

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

- Enclosures:
1. 7-Point Request for Rulemaking
 2. Draft Rulemaking Package
 3. Background Material
 4. Memo to Regions

DISTRIBUTION:

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* See previous concurrence

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ENCLOSURE 1

REQUEST FOR RULEMAKING - LICENSEES ANNOUNCEMENTS OF INSPECTIONS AT
FUEL CYCLE FACILITIES USING OR POSSESSING
FORMULA QUANTITIES OF STRATEGIC SPECIAL NUCLEAR
MATERIAL

1. The Nuclear Regulatory Commission (NRC) amended its regulations in 10 CFR Part 50 (53 FR 42939) to ensure that the presence of NRC inspectors at power reactor sites is not announced or otherwise communicated to licensees and contractor personnel without the expressed request to do so by the inspector. No similar provision currently exists within NRC regulations for inspections at fuel cycle facilities using or possessing a formula quantity of strategic special nuclear material. This request would initiate rulemaking to amend §§73.46 and 74.81 to include such a provision for inspections at such fuel cycle facilities.
2. This issue needs to be addressed in a timely manner to increase the effectiveness of unannounced inspections at affected facilities. Without benefit of this proposed requirement, the utility of an unannounced inspection is lessened.
3. There is no alternative to rulemaking which will provide the regulatory authority to compel affected licensees not to announce the presence of an NRC inspector on-site. The issuance of orders in place of a rulemaking would not be appropriate or efficient.
4. The issue will be addressed through rulemaking by amending §§73.46 and 74.81 to explicitly require that the presence of NRC inspectors at affected facility sites not be announced or otherwise communicated to licensees and contractor personnel without the expressed request to do so by the inspector.

5. This rulemaking will make unannounced inspections more effective and enable an inspector to get a more accurate view of normal facility operations, both of which will be of benefit to the public. The rule is expected to have no impact on industry or the NRC with respect to costs or resources.
6. (Timetable - to be provided by RES)
7. This rulemaking is a medium to high priority.

ENCLOSURE 2

DRAFT

FEB 28 1991

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

SUBJECT: LICENSEE ANNOUNCEMENTS OF INSPECTIONS AT CERTAIN FUEL CYCLE
FACILITIES

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) 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 an 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 impose requirements on 10 CFR Part 50 licensees.

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.

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FEB 28 1991

Coordination:

The Office of Nuclear Material Safety and Safeguards concurs in these amendments which have also been reviewed in the Office of the General Counsel. There are no legal objections.

Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

Attachments:

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