



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 27, 2001

Dear Governor's Designee:

You are listed as the State official designated by your Governor^{*} to receive advance notification of transportation of certain shipments of nuclear waste and spent fuel through your State, as required by Section 301 of Public Law 96-295 and implemented by provisions in 10 CFR Parts 71 and 73 of the U.S. Nuclear Regulatory Commission's regulations. I have enclosed a copy of the applicable portions of the regulations for your information. Also enclosed is a copy of NUREG-0794 "Protection of Unclassified Safeguards Information" which is intended to assist persons who possess Safeguards Information in establishing an information protection system that satisfies the specific requirements of Section 73.21 of Part 73.

I have also enclosed a copy of the present list of Governors' designees, containing your address and telephone number. If any information on this list is inaccurate, please send your corrections to the Office of State and Tribal Programs. If we do not receive a response by June 1, 2001, we will assume the information shown on the list is correct. The list of Governors' designees is required to be published in the Federal Register on or about June 30, 2001.

During the year, please inform us of any changes which may arise in either appointment, address, or telephone number. Please note that changes in appointment should be made by the Governor of your State.

Any inquiries on this matter should be directed to Spiros Droggitis of my staff at (301) 415-2367 or by INTERNET: SCD@NRC.GOV. You may also FAX corrections to Mr. Droggitis at (301) 415-3502.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosures:
As stated

* We have added your name as a substitute in those instances where we have learned that the previous Governor's designee has left his or her position.

Governor's Designee

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STP -A-2

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF
NUCLEAR WASTE SHIPMENTS

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
ALABAMA	Col. James H. Alexander, Director Alabama Department of Public Safety P.O. Box 1511 Montgomery, AL 36102-1511 (334) 242-4394	same
ALASKA	Douglas Dasher Alaska Department of Environmental Conservation Northern Regional Office 610 University Avenue Fairbanks, AK 99709-3643 (907) 451-2172	same
ARIZONA	Aubrey V. Godwin, Director Arizona Radiation Regulatory Agency 4814 South 40th Street Phoenix, AZ 85040 (602) 255-4845, ext. 222 24 hours: (602) 223-2212	same
ARKANSAS	David D. Snellings, Jr., Director Division of Radiation Control and Emergency Management Arkansas Department of Health 4815 West Markham Street, Mail Slot #30 Little Rock, AR 72205-3867 (501) 661-2301 24 hours: (501) 661-2136	same
CALIFORNIA	Captain Jim Abrames California Highway Patrol Enforcement Services Division P.O. Box 942898 Sacramento, CA 94298-0001 (916) 445-3253 24 hours: 1-(888) 330-2015	same
COLORADO	Captain Allan M. Turner Hazardous Materials Section Colorado State Patrol 700 Kipling Street, Suite 1000 Denver, CO 80215-5865 (303) 239-4546 24 hours: (303) 239-4501	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
CONNECTICUT	Dr. Edward L. Wilds, Jr., Director Division of Radiation Department of Environmental Protection 79 Elm Street Hartford, CT 06106-5127 (860) 424-3029 24 hours: (860) 424-3333	same
DELAWARE	Brian J. Bushweller, Secretary Department of Public Safety P.O. Box 818 Dover, DE 19903 (302) 744-2680 24 hours: (pager) (302) 247-8475	same
FLORIDA	Harlan W. Keaton, Manager Bureau of Radiation Control Environmental Radiation Program Department of Health P.O. Box 680069 Orlando, FL 32868-0069 (407) 297-2095	same
GEORGIA	Al Hatcher, Director Transportation Division Public Service Commission 1007 Virginia Avenue, Suite 310 Hapeville, GA 30354 (404) 559-6600	same
HAWAII	Mr. Gary Gill Deputy Director for Environmental Health State of Hawaii Department of Health P.O. Box 3378 Honolulu, HI 96813 (808) 586-4424	same
IDAHO	Lietenant Duane Sammons Deputy Commander Commerical Vehicle Safety Idaho State Police P.O. Box 700 Meridian, ID 83680-0700 (208) 884-7220 24 hours: (208) 334-2900	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
ILLINOIS	Thomas W. Ortciger, Director Illinois Department of Nuclear Safety 1035 Outer Park Drive, 5th Floor Springfield, IL 62704 (217) 785-9868 24 Hours: (217) 785-9900	same
INDIANA	Melvin J. Carraway, Superintendent Indiana State Police Indiana Government Center North 100 North Senate Avenue Indianapolis, IN 46204 (317) 232-8248	same
IOWA	Ellen M. Gordon, Administrator Emergency Management Division Hoover State Office Building Des Moines, IA 50319-0113 (515) 281-3231	same
KANSAS	Frank H. Moussa, M.S.A. Technological Hazards Administrator Department of the Adjutant General Division of Emergency Management 2800 SW. Topeka Boulevard Topeka, KS 66611-1287 (785) 274-1409 24 hours: (785) 296-3176	same
KENTUCKY	John A. Volpe, Ph.D., Manager Radiation Health and Toxic Agents Branch Cabinet for Health Services 275 East Main Street Frankfort, KY 40621-0001 (502) 564-3700	same
LOUISIANA	Major Joseph T. Booth Louisiana State Police 7901 Independence Boulevard P.O. Box 66614 (#21) Baton Rouge, LA 70896-6614 (225) 925-6113	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
MAINE	Chief of the State Police Maine Department of Public Safety 42 State House Station Augusta, ME 04333 (207) 624-7000	same
MARYLAND	First Sgt. John M. Wilhelm Maryland State Police Communication Services Division 1201 Reisterstown Road Pikesville, MD 21208 (410) 653-4208 24 hours: (410) 653-4200	same
MASSACHUSETTS	Robert M. Hallisey, Director Radiation Control Program Massachusetts Department of Public Health 174 Portland Street, 5 th Floor Boston, MA 02114 (617) 727-6214	same
MICHIGAN	Captain John Ort, Commander Special Operations Division Michigan State Police 714 South Harrison Road East Lansing, MI 48823 (517) 336-6263 24 hours: (517) 336-6100	same
MINNESOTA	John R. Kerr, Assistant Director Administration and Preparedness Branch Department of Public Safety Division of Emergency Management 444 Cedar St., Suite 223 St. Paul, MN 55101-6223 (651) 296-0481 24 hours: (651) 649-5451	same
MISSISSIPPI	Robert R. Latham, Jr. Emergency Management Agency P.O. Box 4501 Fondren Station Jackson, MS 39296-4501 (601) 352-9100	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
MISSOURI	Jerry B. Uhlmann, Director Emergency Management Agency P.O. Box 116 Jefferson City, MO 65102 (573) 526-9101 24 hours: (573) 751-2748	same
MONTANA	Jim Greene, Administrator Disaster & Emergency Service P.O. Box 4789 Helena, MT 59604 (406) 841-3911	same
NEBRASKA	Major Bryan J. Tuma Nebraska State Patrol P.O. Box 94907 Lincoln, NE 68509-4907 (402) 479-4950 24 hours: (402) 471-4545	same
NEVADA	Stanley R. Marshall, Supervisor Radiological Health Section Health Division Department of Human Resources 1179 Fairview Drive, Suite 102 Carson City, NV 89701-5405 (775) 687-5394 x276 24 hours: (775) 688-2830	same
NEW HAMPSHIRE	Richard M. Flynn, Commissioner New Hampshire Department of Safety James H. Hayes Building 10 Hazen Drive Concord, NH 03305 (603) 271-2791 (603) 271-3636 (24 hours)	same
NEW JERSEY	Kent Tosch, Chief Bureau of Nuclear Engineering Department of Environmental Protection P.O. Box 415 Trenton, NJ 08625-0415 (609) 984-7701	same

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NEW MEXICO	Max D. Johnson, Bureau Chief Technological Hazards Bureau Department of Public Safety P.O. Box 1628 Santa Fe, NM 87504-1628 (505) 476-9620 24 hours: (505) 827-9126	same
NEW YORK	Edward F. Jacoby, Jr., Director State Emergency Management Office 1220 Washington Avenue Building 22 - Suite 101 Albany, NY 12226-2251 (518) 457-2222	same
NORTH CAROLINA	Line Sgt. Mark Dalton Hazardous Materials Coordinator North Carolina Highway Patrol Headquarters 4702 Mail Service Center Raleigh, NC 27699-4702 (919) 733-5282 After hours: (919) 733-3861	same
NORTH DAKOTA	Jeffery L. Burgess, Director Division of Environmental Engineering North Dakota Department of Health 1200 Missouri Avenue, Box 5520 Bismarck, ND 58506-5520 (701) 328-5188 After hours: (701) 328-2121	same
OHIO	Carol A. O'Claire, Supervisor Ohio Emergency Management Agency 2855 West Dublin Granville Road Columbus, OH 43235-2206 (614) 799-3915 24 hours: (614) 889-7150	same
OKLAHOMA	Bob A. Ricks, Commissioner Oklahoma Department of Public Safety P.O. Box 11415 Oklahoma City, OK 73136-0145 (405)425-2001 24 hours: (405) 425-2424	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
OREGON	David Stewart-Smith Energy Resources Division Oregon Office of Energy 625 Marion Street, NE, Suite 1 Salem, OR 97301-3742 (503) 378-6469	same
PENNSYLVANIA	John Bahnweg Director of Operations and Training Pennsylvania Emergency Management Agency P. O. Box 3321 Harrisburg, PA 17105-3321 (717) 651-2001	same
RHODE ISLAND	William A. Maloney Associate Administrator Motor Carriers Section Division of Public Utilities and Carriers 100 Orange Street Providence, RI 02903 (401) 222-3500; ext. 150	same
SOUTH CAROLINA	Henry J. Porter, Assistant Director Division of Waste Management Bureau of Land and Waste Management Department of Health & Environmental Control 2600 Bull Street Columbia, SC 29201 (803) 896-4245 Emergency: (803) 253-6488	same
SOUTH DAKOTA	John A. Berheim, Director Division of Emergency Management 500 E. Capitol Avenue Pierre, SD 57501-5070 (605) 773-3231	same
TENNESSEE	John D. White, Jr., Director Emergency Management Agency 3041 Sidco Drive Nashville, TN 37204-1504 (615) 741-0001 After hours: (Inside TN) 1-800-262-3400 (Outside TN) 1-800-258-3300	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
TEXAS	Richard A. Ratliff, Chief Bureau of Radiation Control Texas Department of Health 1100 West 49th Street Austin, TX 78756 (512) 834-6688	Col. Thomas A. Davis, Director Texas Department of Public Safety Attn: EMS Preparedness Sec. P.O. Box 4087 Austin, TX 78773-0223 (512) 424-2450 (512) 424-2277 (24 hrs)
UTAH	William J. Sinclair, Director Division of Radiation Control 168 North 1950 West P.O. Box 144850 Salt Lake City, UT 84114-4850 (801) 536-4250 After hours: (801) 536-4123	same
VERMONT	Lieutenant Col. Thomas A. Powlovich Director, Division of State Police Department of Public Safety 103 South Main Street Waterbury, VT 05671-2101 (802) 244-7345	same
VIRGINIA	L. Ralph Jones, Jr., Director Technological Hazards Division Department of Emergency Services Commonwealth of Virginia 10501 Trade Court Richmond, VA 23236 (804) 897-6500, ext. 6579	same
WASHINGTON	Lieutenant Stephen L. Kalmbach Washington State Patrol P.O. Box 42600 Olympia, WA 98504-2600 (360) 753-0565	same
WEST VIRGINIA	Colonel Gary L. Edgell Superintendent West Virginia State Police 725 Jefferson Road South Charleston, WV 25309 (304) 746-2111	same

<u>STATE</u>	<u>PART 71</u>	<u>PART 73</u>
WISCONSIN	Edward J. Gleason, Administrator Wisconsin Division of Emergency Management P.O. Box 7865 Madison, WI 53707-7865 (608) 242-3232	same
WYOMING	Captain L. S. Gerard Support Services Officer, Commercial Carrier Wyoming Highway Patrol 5300 Bishop Boulevard Cheyenne, WY 82009-3340 (307) 777-4317 24 hours: (307) 777-4317	same
DISTRICT OF COLUMBIA	Harold Monroe, Acting Program Manager Bureau of Food, Drug & Radiation Protection Department of Health 51 N Street, NE, Room 6025 Washington, DC 20002 (202) 535-2188 24 hours: (202)535-2180	same
PUERTO RICO	Hector Russe Martinez, Chairman Environmental Quality Board P.O. Box 11488 San Juan, PR 00910 (787) 767-8056 or (787) 767-8181	same
GUAM	Jesus T. Salas, Administrator Guam Environmental Protection Agency P.O. Box 22439 GMF Barrigada, Guam 96921 (671) 475-1658/9	same
VIRGIN ISLANDS	Dean C. Plaskett, Esq., Commissioner Department of Planning and Natural Resources Cyril E. King Airport Terminal Building - Second Floor St. Thomas, Virgin Islands 00802 (340) 774-3320	same
AMERICAN SAMOA	Pati Faiai Government Ecologist Environmental Protection Agency Office of the Governor Pago Pago, American Samoa 96799 (684) 633-2304	same

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COMMONWEALTH	Joaquin A. Tenorio, Ph.D.	same
OF THE	Secretary	
NORTHERN	Department of Lands and Natural Resources	
MARIANA ISLANDS	Commonwealth of Northern Mariana Islands Government Saipan, MP 96950 (670) 322-9830 or (670) 322-9834	

in accordance with standards for approved quarantine facilities and handling procedures for importation of birds as provided in Part 92 of 9 CFR.

11. In § 92.11(f)(7)(iii)(B), paragraphs (3)-(7) are added to read:

(f) * * *
(7) * * *
(iii) * * *
(B) *The Service Agrees:*

(3) To issue or validate permits on a timely basis depending upon the availability of personnel.

(4) To inform the Cooperator when a diagnosis of VVND has been made in any facility.

(5) To promptly inform the Embassy or Consulate of the foreign country to which lots of birds, refused entry into the United States due to a diagnosis of VVND, are to be shipped.

(6) To notify in writing the Cooperator of any designated employee which the Service believes should be suspended from work at the approved quarantine facility and the basis for such action. Similar notice shall be afforded to the designated employee. Subsequent to such suspension, the designated employee shall have the right to request an immediate review of such action by the Deputy Administrator, Veterinary Services, including presenting his views to the Deputy Administrator in an informal conference. If the Deputy Administrator makes a final determination that grounds existed to suspend such employee, he shall notify the Cooperator and the suspended employee of his decision and such employee shall be discharged by the Cooperator.

(7) Prior to any final determination being made by the Service concerning the discharge of any designated personnel employed by the Cooperator, the Service will inform, in writing, the Cooperator and the designated personnel of the basis for such action. If such person contests such action he or she shall be permitted to present his or her views to the Deputy Administrator, Veterinary Services, provided such request is made within 30 days of the receipt of the aforementioned written notice. If a final determination is made by the Deputy Administrator that such personnel should be discharged, he shall notify such personnel and the Cooperator of such determination.

12. In § 92.11(f)(7)(iii)(C), paragraphs (1), (2), and (3) are redesignated (3), (4), and (5) respectively, and new paragraphs (1) and (2) are added to read:

(f) * * *
(7) * * *
(iii) * * *

(C) *It is Mutually Agreed and Understood:*

(1) That a maximum capacity will be established for each approved quarantine lot.

This will be based upon the capacity of the approved quarantine facility to handle the birds. The number of birds on the permits will not exceed this capacity.

(2) If the seals referred to in paragraph (f)(7)(iii)(A)(16) of this section are broken by other than Service personnel, it will be considered a breach in security and an immediate accounting of all birds in the facility shall be made by the Service. If any birds are determined to be missing from the facility, the quarantine period will be extended for at least an additional 90-day period.

13. In § 92.11(f)(7)(iii)(C), the paragraph following the signature block is removed.

14. Section 92.11(f)(8) is removed.

15. In § 92.11(g), the introductory language up to the colon is revised to read:

(g) *Charges for services.* The charges to be borne by the operator for services provided for quarantine facilities approved in accordance with paragraph (f) of this section shall be:

(41 Stat. 270, sec. 2, 32 Stat. 782, as amended, sec. 11, 58 Stat. 734, as amended, secs. 2, 3, and 4, 76 Stat. 129, 130, and sec. 11, 76 Stat. 132 (7 U.S.C. 450b and 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f respectively))

Done at Washington, D.C., this 28th day of December 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

(FR Doc. 82-36 Filed 1-8-82; 8:46 am)

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

Advance Notification to States of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to implement a federal statute which requires the NRC to promulgate regulations providing for timely notification to the governor of any state prior to transport of certain types of nuclear waste, including spent fuel, to, through, or across the boundary of that state. This notification provides the governor advance information, not otherwise available to the governor, related to nuclear waste transportation in his state. Shipment of spent fuel is covered under a separate amendment to the Commission's regulations on the physical protection of plants and

materials since information regarding these shipments contains sensitive safeguards data which must be protected.

EFFECTIVE DATE: July 6, 1982.

FOR FURTHER INFORMATION CONTACT: John P. Roberts, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-427-4205).

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of Pub. L. 96-295 requires the Nuclear Regulatory Commission to

Promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirement shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

On December 9, 1980, the NRC published a Federal Register notice (45 FR 81058) inviting public comments on a proposed rule providing for advance notification to governors of states of the transportation of nuclear waste. The 90-day comment period expired March 9, 1981. Copies of the proposed rule with a request for comments were also sent to state governors. The final rule is essentially the same as the proposed rule except that its scope has been restricted to cover only large quantity (defined in § 71.4(f) as exceeding Type B radioactivity limits) shipments of radioactive waste and spent fuel not covered under advance notification provisions of 10 CFR Part 73.

The Rule

The Commission and the Department of Transportation (DOT) have established packaging standards for packages for various quantities of radioactive material to provide for adequate safety of the public. There are two basic categories of packages, Type A and Type B. Type A packages must be designed to withstand the rigors of normal transport but are not designed to withstand transport accidents. Therefore, the quantities and types of radioactive material which may be transported in Type A packages are limited so that, if material release occurs in an accident, no significant hazard to public health and safety would result. Type B packages, which contain larger quantities of radioactive material, are designed to withstand both the normal

conditions of transport and specified accident conditions. While limits are set for Type B quantities of radioactive materials, there are no quantity limits for radioactive material per se in Type B containers. Accordingly, quantities larger than Type B, designated large quantities, may also be transported in Type B containers. However, regulatory requirements, which set limits on such factors as weight, volume, decay heat generation, and criticality control, place practical restrictions on the contents of Type B containers.

The NRC has recently affirmed the adequacy with respect to safety of existing 10 CFR Part 71 in its Withdrawal of Advance Notice of Rulemaking, "Radioactive Material Packaging and Transportation by Air," (46 FR 21619, April 13, 1981). In reaching this conclusion, it cited NUREG-0170, the Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, which, after considering the types and quantities of materials shipped in Type A and Type B and large quantity packaging, states that the potential risk of transportation is small.

Radioactive material shipments, including spent fuel shipments, were considered in NUREG-0170 and are subject to the NRC regulations in 10 CFR Part 71 which the Commission found to be adequate with respect to transportation safety. However, the Congress in Section 301(a) of Pub. L. 96-295 has specifically required prenotification for spent fuel shipments. Thus, while Congress leaves to the Commission's judgment, on the basis of potential significant hazard to public health and safety, which types of nuclear waste may be excluded from prenotification, it has also made it clear that at least one type of material, spent fuel, is not to be excluded. Shipments of spent fuel are almost all large quantity (defined in § 71.41(f) as exceeding Type B radioactivity limits) shipments. Almost all spent fuel shipments will contain in excess of 100 grams mass of spent fuel and will be covered under the amendment to 10 CFR Part 73.

At the present time, all large quantity shipments of radioactive waste, excluding spent fuel, are of low level waste. In the future, should reprocessing of power reactor spent fuel resume, shipments of solidified high level waste would be expected to occur. Such shipments would be expected to be in large quantities, and the characteristics of such high level waste would be similar, in terms of radioactivity and heat load, to spent fuel.

After reviewing the data on radioactive waste shipments which is

currently available, the Commission has determined that its conclusion on the adequacy of existing 10 CFR Part 71 with respect to the safety of radioactive material transportation should be reaffirmed. It also has determined that, in accordance with the intent of Congress in Section 301 of Pub. L. 96-295, for shipments of radioactive waste which include large quantities of radioactive waste and spent fuel required to be shipped in Type B packaging, prenotification shall be required. Shipments of all other types of radioactive materials do not pose a potentially significant hazard to the public health safety, and such types of materials are excluded from shipment prenotification requirements.

The NRC also recognizes that, while the term "large quantity" may be eliminated as a result of proposed rulemaking to revise regulations for the transportation of radioactive material to make them compatible with those of the International Atomic Energy Agency ("Packaging of Radioactive Material for Transportation and Transportation of Radioactive Material Under Certain Conditions, Compatibility with IAEA Regulations," 44 FR 48234, at 48236, August 17, 1979), this revision will address types and quantities of radioactive materials presently covered under these regulations so that no purpose would be served at this time in attempting in this rulemaking to separately redefine the term "large quantity" for advance notification.

In accordance with the intent of Congress and consistent with the Commission's determination that shipments of radioactive waste do not pose a potentially significant hazard to the health and safety of the public, the Commission is amending its regulations in 10 CFR Part 71 to require NRC licensees to notify state governors in advance of all large quantity shipments of radioactive waste and of spent fuel not covered under the amendment to 10 CFR Part 73 (generally 100 grams mass or less) required to be shipped in Type B packaging.

Advance notification requirements for spent fuel shipments in excess of 100 grams mass are being addressed by the Commission in a separate rulemaking action in 10 CFR Part 73 for safeguards purposes. A companion notice covering this action is published elsewhere in this issue of the Federal Register. Shipments of large quantities (defined in § 71.4(f) as exceeding Type B radioactivity limits) of radioactive waste, including spent fuel not subject to 10 CFR Part 73 (approximately 100 grams mass or less) are covered in this amendment to 10 CFR Part 71.

The amendment to 10 CFR Part 71 will require licensees to supply the following information: the name, address, and telephone number of the shipper, carrier and receiver of the shipment, a description of the material to be transported, point of origin, estimated period of departure, estimated periods of arrival at state boundaries, the destination of the shipment, the estimated period of arrival, and a point of contact for current shipment information. This information would be provided by mail postmarked at least seven days or delivered by messenger at least four days in advance of the estimated period of departure, to the offices of the governors of affected states or their designees. A new information requirement contained in a recent DOT rulemaking ("Radioactive Material; Routing and Driver Training Requirements," 46 FR 5298, January 19, 1981) may lessen the impact of this amendment since shippers are on notice that they may need to develop procedures for reporting to DOT and can arrange to extend this effort to include NRC. The DOT Final Rule "Radioactive Materials; Routing and Driver Training Requirements," would require that route plans for large quantity shipments be submitted to the DOT Materials Transportation Bureau (49 CFR 173.22(c) 46 FR 5298 at 5316, January 19, 1981).

This final rule, unlike the DOT Final Rule (46 FR 5298), affects only NRC licensees, resulting, at the outset, in a situation where governors will not receive notification concerning a fraction of the total number of shipments, since some shipments of interest will be made by Agreement State licensees. This situation was anticipated, as noted in the additional views of several representatives (opposed to the requirement of section 301) appearing at page 37 of H. Rept. 96-194, Part 2 (June 29, 1979):

Further, the NRC currently licenses possession of radioactive materials in only 25 [now 24] states. Under agreements between the NRC and the remaining states, those states would also have to implement regulations under this amendment.

The Comments

NRC received 62 letters containing more than 300 comments on the proposed rule. Comments were received from these entities as follows:

	Comments
State governors or state agencies.....	21
Individuals from public sector.....	19
Nuclear industry.....	18
Federal agencies.....	3
City mayor.....	1
Total.....	62

The comments covered three general categories: (1) the scope of the rule, (2) its impacts and (3) administrative considerations.

1. *Scope of the Rule. a. Contents of packages subject to prenotification requirement.* Comments received ranged from favoring inclusion of almost all radioactive wastes for prenotification to not promulgating any amendment at all.

Initially, the NRC contemplated that all waste required to be shipped in Type B packaging should be included. Type B packaging designs are required to be accident resistant because Type B quantities of radioactive wastes are potentially a more significant hazard to the public health and safety if they are not adequately contained. However, NRC regulatory requirements for Type B packaging have been found to be adequate. As has been noted herein, the NRC has recently affirmed the adequacy with respect to safety of Type B packaging in a withdrawal of Advance Notice of Rulemaking, "Radioactive Material; Packaging and Transportation by Air" (46 FR 21619, April 13, 1981). In reaching this conclusion, it cited NUREG-0170, the Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, which, after considering the types and quantities of materials shipped in Type A and Type B and large quantity packaging states that the potential risk of transportation is small. Upon further consideration and review of the currently available data on radioactive waste shipments, the Commission has determined that shipments of radioactive waste do not pose a potentially significant hazard to the health and safety of the public. However, Congress has specifically required prenotification of shipments of spent fuel, which are almost always large quantity shipments, for prenotification. Accordingly, the Commission is amending the regulations in 10 CFR Part 71 to require NRC licensees to notify state governors or their designees in advance of all large quantity shipments of radioactive waste and of spent fuel not covered under the amendment to 10 CFR Part 73 required to be in Type B packaging. In the opinion of the Commission, this amendment is consistent with the intent of Congress which specifically included spent fuel, almost always shipped in large quantities, in the prenotification provisions of section 301(a) of Pub. L. 96-295, but also authorized the Commission to determine which types of radioactive waste may be excluded from prenotification requirements.

The NRC also believes that the varying concerns of the states can best be addressed by limiting NRC prenotification requirements to large quantity shipments of radioactive waste, including spent fuel. In its recent June 8, 1981 meeting, the State Planning Council on Radioactive Waste Management endorsed prenotification of high-level or large quantity shipments of radioactive materials, including spent fuel.

Finally, after consideration of comments, the NRC believes that inclusion of all shipments of Type B packaged waste is likely to cause an unwieldy paper management problem and reduce the utility of the notification system. For this reason the NRC determines that limiting advance notification to large quantity shipments will significantly reduce an undue administrative burden of notification on states and shippers. The number of shipments expected under this more restricted rule is a few hundred annually and will more likely be less than one percent of the 24,000 Type B shipments per year previously estimated in the proposed rule.

b. *Emergency preparedness concerns.* These issues are already being addressed outside this rulemaking action and therefore do not require further discussion at this time. As the Commission noted on April 13, 1981 in its Withdrawal of Advance Notice of Rulemaking (46 FR 21619),

In another separate action, the NRC, in cooperation with the Federal Emergency Management Agency and other federal agencies is currently developing guidance material to be used by state agencies in developing emergency response plans for transportation accidents involving radioactive material.

c. *State and local authority.* Since the advance notification rule is solely informational and does not in any way preempt existing state or local authority with respect to regulation of transportation of radioactive materials, the concerns raised on the impact of the rule on state and local authority, particularly on the issue of preemption, are not germane. With respect to concerns over the failure to include Agreement State licensees under prenotification requirements, Congress did not choose to amend the Atomic Energy Act of 1954, as amended, to subject Agreement State licensees to this requirement. However, NRC plans to work with Agreement States to make regulations equivalent to this rule a matter of compatibility.

2. *Impact.* Concern was expressed over the potential impacts that the

proposed amendment could have on the public health and on the safety of radioactive materials shipping. Such comment varied considerably because of widely differing views of commenters as to the present dangers to the public of radioactive waste shipping and whether a greater degree of regulation would enhance or diminish public safety. Concern was also expressed over potential problems for shipping accruing from the implementation of the proposed amendment. Potential problems raised included additional radiation exposure to the public, impeding efficient shipping, the financial and administrative burden of reporting on shippers, carriers, state agencies, and safeguards. In general, these comments indicated concern that the impact of the amendment was negative. However, with respect to safeguards, inclusion of all Type B shipments under proposed § 73.37(f) was also advocated. A third area of concern was that NRC regulations be coordinated with the Department of Transportation. This concern was generally directed toward the prospect of alleviating the administrative burden resulting from federal regulations on shipping.

The NRC has already addressed the issue of shipment safety in determining what types of wastes should be excluded from prenotification. In accordance with the provisions of section 301(a) of Pub. L. 96-295 only shipments of large quantities of radioactive waste, including spent fuel, required to be shipped in Type B packaging are subject to the prenotification requirement. Under existing transportation regulations, such shipments are placarded and information on them is not restricted from the public. Moreover, this regulation does not preempt existing state and local authority over transportation. The NRC has therefore concluded that requiring prenotification for large quantity shipments of spent fuel and radioactive waste will have negligible negative impacts on public health and safety and efficient shipping.

The Commission also believes that the exclusion from the prenotification requirement of all radioactive waste shipments except large quantities required to be shipped in Type B packaging, including spent fuel not covered under the amendment to 10 CFR Part 73, will significantly reduce the financial and administrative burden on states, carriers, and shippers of such notification. Based on estimates

contained in NUREG-0170, the Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, in 1985 shipments of Type B wastes are expected to number 24,000 while large quantity shipments are only expected to number, at most, a few hundred annually and more probably less than one percent of the 24,000 Type B waste shipments.

With respect to coordination with the Department of Transportation, DOT announced in the preamble to its final rule on "Radioactive Materials; Routing and Driver Training Requirements" (46 FR 5298, January 19, 1981) that,

In order to prevent a possibly severe inconsistency between NRC and DOT transportation requirements, the DOT will have to wait at least until final rules are issued for NRC licensees before undertaking a rulemaking proceeding to consider specific prenotification requirements for other types of large quantity shipments.

3. *Administrative Considerations.* A number of changes which were suggested or raised for consideration in comments may be categorized as administrative in nature. These included: inclusion of route information, use of generic reporting, creation of a federal clearing-house for notification, designation of a state agency addressee for notification receipt other than the office of the governor, restrictions on notification information to be supplied, clearer definition of carrier and licensee responsibilities, requesting state acknowledgement of notification before a shipment could enter a state, additional documentation requirements related to notification, and changes in the period required prior to shipment.

With one exception, notification to a governor's designee, which will serve to facilitate state response, these comments have not been adopted in this rule. Three of these comments, inclusion of route information, use of generic reporting, and the creation of a federal clearinghouse for reporting information were substantially resolved in the recent DOT rulemaking on "Radioactive Materials; Routing and Driver Training Requirements" (46 FR 5298, January 19, 1981), the preamble to this final DOT rule states in part,

Also a provision is added to § 173.22(c) to require shippers of a large quantity package of radioactive materials to file a copy of the route plan prepared for that shipment within 90 days following the shipment with DOT. The Department intends to consolidate the information contained in the route plans and supply it to interested parties.

This effort by DOT to obtain post-shipment information is likely to provide greater accuracy in such reporting, and

any NRC efforts would be largely duplicative.

The Commission believes that proposals on restricting information to be supplied in reporting would be confusing and burdensome. Provision for some state governors to decline to receive prenotification would also be a burden to licensees. Governors are not required to take any action on prenotifications received and are free to dispose of them since they will not contain protected information that Part 73 prenotifications will. Provision for receipt of partial information, which was also suggested, would result in increased paperwork since, for a single shipment, different amounts of information would be required for different states and militate against use of a standard reporting form. As already noted, summary information is expected to be available from DOT as a result of its highway routing rule. In addition, NRC staff plans to forward to DOT advance notifications received for DOT's data base. Another restriction suggested, requiring a state to reapply periodically for continued receipt of notification, does not comport with congressional intent in section 301 of Pub. L. 96-295.

The text of § 71.5a makes it clear that responsibility for advance notification of a shipment of nuclear waste, as defined in § 71.4(r), rests with the licensee, i.e., the shipper, not the carrier. Requiring shippers to await state acknowledgement of notifications would likely impede interstate shipping and could burden interstate commerce by effectively excluding shipments from states which did not choose to establish means of promptly acknowledging such notifications. With regard to suggestions that would require additional documentation from licensees, such as, for example, requiring licensees to document telephoned notification changes by letter, the NRC concludes that the additional burden on industry and states is not worth such effort. No change has been made in the period of time within which advance notification of a shipment must be given. A shorter period would tend to reduce the effectiveness of notification by mail and a longer period does not seem necessary. Basing the period on arrival at individual state boundaries rather than shipment departure would result in multiple and differing notifications for a single shipment which would require additional effort and possibly contribute to confusion in reporting.

Environmental Impact Statement

In accordance with 10 CFR 51.5(d)(3), an environmental impact statement,

negative declaration, or environmental impact appraisal need not be prepared in connection with this rulemaking action because the amendments are nonsubstantive and insignificant from the standpoint of environmental impact.

Paperwork Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96-511. The SF-83, "Request for Clearance," Supporting Statement, and other related documentation submitted to OMB have been placed in the NRC Public Document Room at 1717 H Street NW., Washington, DC 20555 for inspection and copying for a fee.

After careful consideration of the comments on the proposed rule, the Commission, for the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 301 of Pub. L. 96-295 (94 Stat. 789-790), and Sections 552 and 553 of Title 5 of the United States Code, has adopted the following amendments to 10 CFR Part 71 which are published as a document subject to codification.

PART 71—PACKAGING OF RADIOACTIVE MATERIAL FOR TRANSPORT AND TRANSPORTATION OF RADIOACTIVE MATERIAL UNDER CERTAIN CONDITIONS

1. In the table of contents for 10 CFR Part 71, the portion of Subpart A which precedes the center heading "Exemptions" is revised to read as follows:

Subpart A—General Provisions

- Sec.
71.1 Purpose.
71.2 Scope.
71.3 Requirement for license.
71.4 Definitions.
71.5 Transportation of licensed material.

Advance Notification to States of Transport of Nuclear Waste

- 71.5a Transport of nuclear waste—Advance notification requirement.
71.5b Advance notification of shipment of nuclear waste; Revision notice; Cancellation notice.

Exemptions

* * * * *

2. The authority for 10 CFR Part 71 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161 b, i and c, 182, 183, Pub. L. 83-703, 68 Stat. 930, 932, 933, 935, 948, 949, 950, 953, 954, as

amended (42 U.S.C. 2073, 2077, 2092, 2093, 11, 2201 (b), (i) and (o), 2232 and 2233), Secs. 201, 202, and 206, Pub. L. 93-438, 88 Stat. 1242 as amended, 1244, and 1246 (42 U.S.C. 5841, 5842 and 5846).

For the purposes of Sec. 223, Pub. L. 83-703, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 71.61-71.63 issued under Sec. 1610, 68 Stat. 950 as amended (42 U.S.C. 2201(o)), Secs. 71.4 (r) and (s), 71.5a and 71.5b also issued under Sec. 301, Pub. L. 96-295, 94 Stat. 789-790.

3. In § 71.4, new paragraphs (r) and (s) are added to read as follows:

§ 71.4 Definitions.

(r) "Nuclear waste" as used in §§ 71.5a-71.5b means:

(1) Any large quantity of source, by-product, or special nuclear material required by this part to be in Type B packaging while transported to, through, or across state boundaries to a disposal site, or to a collection point for transport to a disposal site, or

(2) Any large quantity of irradiated fuel required by this part to be in Type B packaging while transported to, through, or across state boundaries irrespective of destination if the quantity of irradiated fuel is less than that subject to advance notification requirements of 10 CFR Part 73.

(s) "State" as used in §§ 71.5a-71.5b means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

4. Immediately following § 71.5, a new centerhead and new §§ 71.5a and 71.5b are added to read as follows:

Advance Notification to States of Transport of Nuclear Waste

§ 71.5a Transport of nuclear waste—advance notification requirement.

Prior to the transport of any nuclear waste outside of the confines of the licensee's plant or other place of use or storage, or prior to the delivery of any nuclear waste to a carrier for transport, each licensee shall comply with the procedures in § 71.5b for advance notification to the governor of a state or the governor's designee for the transport of nuclear waste to, through, or across the boundary of the state.

§ 71.5b Advance notification of shipment of nuclear waste; revision notice; cancellation notice.

(a) *Where, when, and how advance notification must be sent.* The notification required by § 71.5a must be made in writing to the office of each appropriate governor or governor's designee and to the Director of the

appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of Part 73 of this chapter. A notification delivered by mail must be postmarked at least seven days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A notification delivered by messenger must reach the office of the governor or of the governor's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur. A list of the mailing addresses of the governors and governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the notification shall be retained by the licensee as a record for one year.

(b) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the nuclear waste shipment.

(2) A description of the nuclear waste contained in the shipment as required by the regulations of the U.S. Department of Transportation in 49 CFR §§ 172.202 and 172.203(d);

(3) The point of origin of the shipment, and the seven-day period during which departure of the shipment is estimated to occur;

(4) The seven-day period during which arrival of the shipment at state boundaries is estimated to occur;

(5) The destination of the shipment, and the seven-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact with a telephone number for current shipment information.

(c) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee in accordance with § 71.5b(b) will not be met, shall telephone a responsible individual in the office of the governor of the state or of the governor's designee and inform that individual of the extent of the delay relative to the schedule originally reported in writing under the provisions of § 71.5b(b). The licensee shall maintain a record of the name of the individual contacted for one year.

(d) *Cancellation notice.* (1) Each licensee who cancels a nuclear waste shipment for which advance notification has been sent as required by § 71.5a shall send a cancellation notice to the governor of each state or the governor's

designee previously notified and to the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A of Part 73 of this chapter.

(2) The notice shall state that it is a cancellation and shall identify the advance notification which is being cancelled. A copy of the notice shall be retained by the licensee as a record for one year.

Dated at Washington, D.C. this 30th day of December 1981.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-256 Filed 1-5-82; 6:45 am]

BILLING CODE 7590-01-M

10 CFR Part 73

Advance Notification to Governors Concerning Shipments of Irradiated Reactor Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to implement a federal statute which requires the NRC to promulgate regulations regarding notification to state governors of the transport of spent fuel through a state. This notification will provide the governor advance information, not otherwise available to the governor, related to spent fuel transportation in his state. Shipment of certain other forms of nuclear waste is covered under a separate amendment to the Commission's regulation 10 CFR Part 71. Separate amendments are needed because information regarding spent fuel shipments contains sensitive safeguards data which must be protected. The information pertaining to the other waste shipments is not sensitive.

EFFECTIVE DATE: July 6, 1982.

ADDRESS: The comments received may be examined at the NRC Public Document Room at 1717 H Street, NW, Washington D.C.

FOR FURTHER INFORMATION CONTACT: Tom R. Allen, Regulatory Improvements Branch, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-427-4181).

SUPPLEMENTARY INFORMATION:

Background

Section 301(a) of Pub. L. 96-295 states: "The Nuclear Regulatory Commission,

within 90 days of enactment of this Act, shall promulgate regulations providing for timely notification to the Governor of any State prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of such State. Such notification requirements shall not apply to nuclear waste in such quantities and of such types as the Commission specifically determines do not pose a potentially significant hazard to the health and safety of the public."

On December 9, 1980, the NRC published a *Federal Register* notice (45 FR 81060) inviting public comments on a proposed rule providing for advance notification to governors of states of the transportation of spent fuel. The 90-day comment period expired March 9, 1981. Copies of the proposed rule, with a request for comments, were also sent to state governors. The final rule is essentially the same as the proposed rule except that it has been modified to permit notification of a governor's designee (rather than the governor).

The Rule

The amendment to 10 CFR Part 73 will require licensees to supply the following information: the name, address, and telephone number of the shipper, carrier and receiver of the shipment, a description of the material to be transported, point of origin, estimated date and time of departure, estimated date and time of arrival at state boundaries, and a description of the shipment route to be used within the state. This information would be provided by mail, postmarked at least seven days or delivered by messenger at least four days in advance of the estimated date of departure, to the offices of the governors (or governors' designees) of affected states. Any person receiving schedule information would be required to protect it against unauthorized disclosure. The information protection measures are set forth in § 73.21 of 10 CFR Part 73 and are the subject of a separate rulemaking notice (46 FR 51718, October 22, 1981). Schedule information would be downgraded a short time after completion of the shipment, so that protection need not be continued. The state official would be renotified in the event of schedule changes in excess of six hours.

The Comments

NRC received 60 letters containing more than 300 comments on the proposed rule. Comments were received from these entities as follows:

	Comments
State governors or state agencies	24
Individuals from public sector	23
Nuclear industry	9
Federal agencies	3
City mayor	1
Total	60

Some of these comments resulted in minor changes to the rule or in changes in the way the NRC will administer the rule. These comments relate to three general groupings.

The first such group of comments resulted in modification of the rule. A number of comments requested that the regulation be modified to require advance notifications be sent to a state official designated by the governor, rather than being sent to the governor himself. The Commission has decided that notification of a governor's designee has significant information handling and information protection advantages. Accordingly, the final rule has been modified to provide for notification of a governor's designee.

One comment requested that the advance notification information include the telephone number of the shipper and receiver. This suggestion is being adopted because during times of emergencies it would allow quick access to additional technical information about a shipment at insignificant additional cost. For completeness, the rule modification has been expanded to include the telephone number of the carrier.

A final comment requested that the regulation make clear that renotification can be done routinely by telephone. Paragraph § 73.37(f)(4) in the regulation has been modified to make this point clear.

In addition to the revisions resulting from public comment revisions were also made to simplify the information protection provisions of § 73.37(f)(3) and to clarify that they apply to intrastate shipments as well as to interstate shipments.

The second such group of comments made suggestions that were adopted but did not result in modification of the rule. Rather, these suggestions will be carried out by the NRC in the administration of the rule.

One comment in this group stressed the importance of a governor's right to decline to receive notifications and suggested that the regulations make this right explicit, while opposing comments insisted that a governor should not be given the option of declining to receive the notifications. The Commission continues to believe that in view of the information protection requirements of

§ 73.21, a governor should have the option to decline to receive advance notification information relevant to spent fuel shipments. If requested by a governor, the NRC will remove that governor's name from the list of governors to be notified.

One of these comments suggested that the notification should be made to a single contact within each state, and that localities within the state that need the information would obtain it from that contact. Another suggested that the NRC should make available to licensees a list of the responsible persons in each state to be notified in the event of a change of schedule. The Commission has decided that it is consistent with the intent of Congress that notifications should be made to a single designated individual within each state who is to receive notifications and renotifications. The NRC will make available a list of these individuals.

One comment requested that the list of governors to receive advance notifications should include the executives of certain Pacific Island territories and the U.S. Secretary of Interior (for shipments that would stop over at these Pacific Island territories). This suggestion is consistent with the language of the statute, which includes territories as states. The list of governors will be so modified.

One comment requested that a standardized advance notification form be used. The NRC adopted the suggestion and will issue a suggested format as a guidance document.

The Commission also received comments which were evaluated but not adopted. Some of these were in the form of suggestions, while others provided information for consideration. Some dealt with matters beyond the scope of this regulatory action or with matters beyond the authority of the Commission. These comments are discussed below:

1. *Scope of the Rule.* Several comments made suggestions concerned with the scope of the rule. These suggestions were rejected because they would modify the scope of the rule in ways that are inconsistent with NRC understanding of law or inconsistent with the aims of this particular rulemaking.

a. *Application to other than NRC licensees or to non-radioactive materials.* One comment suggested that the rule should apply to all transporters of radioactive fuel, rather than being limited to NRC licensees. Another comment expressed concern that the rule would be unjustifiably extended to include vast numbers of shipments of nonradioactive waste. These comments

were rejected because the NRC has no authority to apply the rule to persons other than NRC licensees.

b. *Promulgation of the rule by DOT, rather than NRC.* One comment contended that the DOT, rather than the NRC, should promulgate the rule. However, since Congress specifically directed the NRC to issue the rule, DOT has not undertaken the promulgation of such a rule.

c. *Emergency response and other state actions.* Some comments requested that the NRC identify state actions needed for optimum utilization of the information and provide more information on emergency response. Apart from information protection rules, which was required by Pub. L. 96-295, the NRC does not regulate state use of advance notification information. Accordingly, it would be inappropriate to incorporate advice concerning state use of notification information in a regulation. Although emergency response by states is a timely and important subject, these issues are already being addressed outside this rulemaking action, and therefore do not require further discussion here. As the Commission noted on April 13, 1981 in its withdrawal of advance notice of rulemaking (46 FR 21619):

In another separate action, the NRC in cooperation with the Federal Emergency Management Agency and other federal agencies is currently developing guidance material to be used by state agencies in developing emergency response plans for transportation accidents involving radioactive material.

d. *State and local authority.* A group of comments pointed out differences between the proposed rule and existing state laws and asked whether the rule would preempt the existing state laws. In that regard, local regulations that call for the advance disclosure of spent fuel shipment schedule information could be affected by new NRC requirements for the protection of such schedule information. In accordance with a separate rulemaking, NRC licensees as well as any other person who has advance schedule information will be prohibited from furnishing it to any local official other than a member of a local enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies (see § 73.21(c) in 46 FR 51718, October 22, 1981). It should be noted that the protection provisions of § 73.21(c) do not apply to any of the other information provided to governors or the designees in accordance with this regulation.

Other comments requested that the rule provide for advance notification of

citizens along spent fuel shipment routes. The NRC has not adopted this suggestion because it is beyond the scope of Pub. L. 96-295, and because a local official could obtain such information from his state governor's office as appropriate.

e. *Routing.* Some comments suggested that the rule require that shipments be routed on interstate highways and that the NRC consult with state police before approving a route. The issue of whether to route shipments only on interstates is outside the scope of the advance notification rule. Routing of spent fuel shipments is covered in 10 CFR 73.37 and in DOT regulation 49 CFR 173 and 177. However, it should be noted that the NRC encourages the use of interstate highways and, routinely consults with state police before approving a route.

2. *Impacts.* Some comments contended that the rule was unsupported and would be burdensome and ineffective. Congress has decided that, rather than being burdensome and ineffective, advance notification to states is beneficial because it enables states to contribute to the security, safety, and ease of transport of shipments. Therefore, Congress directed the NRC to issue requirements for its licensees to carry out advance notification.

3. *Administrative.* Comments in this group generally requested clarification of how various details of the rule would be interpreted and administered or set forth alternatives to the measures proposed. The specific comments are discussed below.

a. *Waterborne and airborne shipments.* One comment asked how the rule will apply to waterborne and airborne shipments. Notifications for waterborne shipments would be given as for highway shipments. There are no airborne shipments of spent fuel.

b. *Shipper-carrier division of responsibility.* Some comments asked whether the shipper or the carrier is intended to be responsible for notification under various conditions. Generally two licensees, a shipper and a carrier, are involved in each spent fuel shipment. Both are responsible for physical protection, including advance notification. As a practical matter, division of responsibility for carrying out the physical protection requirements is a subject of agreement between the shipper and the carrier.

c. *Series shipments.* One comment requested clarification concerning the way in which series of shipments are related with respect to protection of schedule information. Shipments in a series are related in the sense that knowledge of the schedule details of one

shipment in the series could aid in predicting the schedule of subsequent shipments in the series. For this reason, schedule information protection is required until after the last shipment in a series is completed.

d. *Documentation to demonstrate compliance.* One comment asked what documentation a licensee must maintain to demonstrate compliance with the regulation. The Commission has decided that maintenance of a recordkeeping system by licensees is not required at this time. For its inspection the NRC will rely on a sampling process wherein NRC records concerning the details of notification will be checked against state records for the same shipment.

e. *Notification lead times.* Some comments inquired about the basis for the proposed lead times for notifications, suggested various alternative lead times, and asked whether there are circumstances under which a shipment could be made with less than four days advance notification. The notification lead times are selected to offer a reasonable compromise between the needs for (1) timely advance notification, (2) avoidance of unnecessarily long periods for protection of schedule information, and (3) avoidance of unnecessary numbers of renotifications stemming from schedule changes. NRC regulations in 10 CFR Part 73 provide for the granting of exceptions to the provisions of Part 73, including the provision for four-day notification lead time, but there must be good cause for the exception to be granted.

f. *Confirmation of receipt of notification.* One comment suggested that, prior to entering a state with a shipment, licensees obtain confirmation from the state that notification has been received. The suggestion was not adopted because it could lead to significant delays of shipments en route and thereby weaken safeguards of the shipments.

g. *Use of registered or certified mail.* One comment suggested that notifications be sent only by certified or registered mail to ensure delivery. The suggestion was not adopted because NRC analysis showed insignificant benefit.

h. *Clearinghouse for notifications.* One comment suggested that the NRC establish a Federal clearinghouse or other centralized unit to transmit notifications to states. The suggestion was not adopted because it is not necessary to the notification process, it would be costly, and it could cause notification delays.

i. *Notification through mutual agreement.* One comment suggested that notifications be carried out through mutual agreement between licensee and state, rather than having the details specified by the NRC in a regulation. The suggestion was rejected because notifications would likely be nonuniform from state to state and would be difficult for the NRC to enforce.

j. *Schedule tolerance.* Several comments suggested various alternatives to the proposed ± 6 hours tolerance be considered. The ± 6 hour tolerance was retained because it appears to be a reasonable compromise between (1) the need for carriers to be allowed to have significant flexibility in schedules for long distance shipments and (2) the need for schedule accuracy in order to assure that states have the opportunity to contribute to the security and safety of transport of shipments.

k. *Relevant state law.* Some comments contended that the NRC should have evaluated all of the relevant advance notification rules now in force in several of the states. The NRC staff reviewed a number but not all of the state advance notification laws and consulted with representatives of some states that have operational advance notification laws. Some provisions of the proposed rule were adopted from state laws.

l. *General rather than specific notifications.* Some comments suggested that states need only general information (routes, number of shipments using that route, typical quantity of material in a shipment, etc.) rather than shipment specific information. The suggestion was rejected because states will have a greater range of alternatives to contribute to the security, safety, and ease of transport of spent fuel shipments if the notifications are in advance and are shipment specific.

4. *Information protection.* Numerous comments were concerned with the information protection provisions in the proposed rule, under which shipment schedule information would be required to be protected.

Concerns surrounding the basis for protection of information, and the ways in which such information should be handled, are addressed in a separate rulemaking (see 10 CFR 73.21, 46 FR 51718, October 22, 1981).

After careful consideration of these comments, the Commission has adopted the amendment in final form.

Environmental Impact Statement

In accordance with 10 CFR 51.5(d)(3), an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared

in connection with this rulemaking action because the amendments are nonsubstantive and insignificant from the standpoint of environmental impact.

Paperwork Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96-511. The SF-83, "Request for Clearance," Supporting Statement, and other related documentation submitted to OMB have been placed in the NRC Public Document Room at 1717 H Street, NW., Washington, D.C. 20555 for inspection and copying for a fee.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 301 of Pub. L. 96-295 (94 Stat. 789-790), and sections 552 and 553 of title 5 of the United States Code, the following amendments to 10 CFR Part 73 are published as a document subject to codification.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 147, 161b, 161i, 161o, Pub. L. 85-703, 68 Stat. 930, 948-950, as amended, Pub. L. 85-507, 72 Stat. 327, Pub. L. 88-489, Stat. 602, Pub. L. 93-377, 88 Stat. 475, Pub. L. 96-295, 94 Stat. 780 (42 U.S.C. 2073, 2201, 2167); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, 1243, as amended, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841). For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, 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)(i), 73.24(b)(i), 73.26(b)(3), (h)(6), (i)(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), 73.70, 73.71 and 73.72 are issued under Sec. 161o, 68 Stat. 950, as amended, 42 U.S.C. 2201(o). Paragraph 73.37(f) also is issued under Section 301 Pub. L. 96-295, 94 Stat. 280.

2. Section 73.37 is amended by adding paragraphs (f) and (g) to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(f) Prior to the transport of spent fuel within or through a state a licensee subject to this section shall notify the governor or the governor's designee. The licensee shall comply with the following criteria in regard to a notification: (1) The notification must be in writing and sent to the office of each appropriate

governor or the governor's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or through the state. A notification delivered by messenger must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state. A list of the mailing addresses of governors and governors' designees is available upon request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR § 172.202 and § 172.203(d).

(iii) A listing of the routes to be used within the state.

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of § 73.21.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's state.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with § 73.37(f)(3), and shall inform that individual of the number of hours of

advance or delay relative to the written schedule information previously furnished.

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in § 73.21.

Dated at Washington, D.C. this 30th day of December 1981.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-216 Filed 1-5-82; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Part 298

[Reg. ER-1278; Economic Regulations Amendment No. 20 to Part 298; Docket 40133]

Classification and Exemption of Air Taxi Operators Dual Authority After Domestic Route Deregulation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB's "dual authority" rule includes exemptions that allow certificated air carriers to operate with small aircraft under the air taxi rule as if they were air taxi operators. For passenger service, the exemptions have been limited to flights outside the carrier's certificated route system. The CAB now removes that route limitation, so that all of a certificated carrier's passenger operations with small aircraft will be considered as operations under the air taxi rule. There is a special provision for service within Alaska.

DATES: Adopted: December 22, 1981. Effective: December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION:

Background

The Board's air taxi rule, 14 CFR Part 298, defines "air taxi operator" essentially as an air carrier that uses only small aircraft (up to 60 seats/18,000 pound payload capacity), does not have a certificate under section 401 of the Federal Aviation Act, and meets certain other conditions. Subpart B of Part 298 exempts air taxi operators from the section 401 certificate requirements, section 403 tariff-filing requirements,

and a variety of other provisions of the Act. The exemption is conditioned on compliance with registration, liability insurance, reporting, and other requirements.

A certificated carrier is by definition not an air taxi operator, regardless of the size of its aircraft, and so has not qualified for air taxi operators' Subpart B exemptions. In a series of orders in recent years, however, the Board granted exemptions from this definitional constraint to various carriers, enabling the carriers to hold dual authority. These orders generally enabled a dual authority carrier to conduct small-aircraft operations off its certificated route system as an air taxi operator under Part 298, while performing on-route operations with small or large aircraft under its section 401 certificate.

In a recent final rule, the Board eliminated the need for individual dual authority exemption orders by amending Part 298 to embody the dual authority scheme directly in a new Subpart I of the air taxi regulation (ER-1251; 46 FR 51371; October 20, 1981). The scheme in the rule resulted in a slight change in terminology. A dual authority carrier is no longer both a certificated carrier and an air taxi operator at the same time. Instead, it is simply a certificated carrier, and Subpart I gives it the exemptions set out in Subpart B for air taxi operators *as if it were* an air taxi operator. The dual authority carrier's exemptions are conditioned on compliance with Subparts C through H, as they are for true air taxi operators, and further conditioned on the terms of Subpart I itself. In § 298.90(a), Subpart I provides that the exemptions cover small aircraft operations outside the carrier's certificated route system and, for cargo-only service, all the carrier's small aircraft operations, regardless of whether they are on- or off-route. These operations of a dual authority carrier are considered as "operations under Part 298" or "air taxi operations" rather than as operations under its certificate, even though the carrier is not an air taxi operator.

The Proposed Rule (EDR-433)

Under section 1601(a)(1)(C) of the Federal Aviation Act, the Board will have no authority after December 31, 1981, to specify terminal or intermediate points in certificates authorizing domestic passenger air transportation. The practical effect of this change is to give most certificated carriers virtually unlimited domestic route authority. As a result, the provision in § 298.90(a) established by ER-1251 that limits the Subpart I exemption for passenger

service to operations outside a carrier's "certificated route system" will lose its meaning and some type of change in the regulatory scheme will be necessary.

The Board therefore proposed in EDR-433 (46 FR 51390; October 20, 1981) to remove the route limitation, effective December 31, 1981, so that all of a dual authority carrier's passenger operations with small aircraft would come under Part 298. Even if such a change were not compelled by the impending changes in domestic route regulation, this would be the next logical step in the Board's efforts to align regulatory requirements with the nature of a carrier's operations instead of the less significant criterion of whether the carrier holds a certificate. The proposal noted, for example, that the Board had already granted unlimited domestic fare flexibility to certificated carriers for their small aircraft operations, to provide parity with Part 298 operations (PS-82, 45 FR 24115, April 8, 1980). Similarly, the Board had recently amended the denied boarding compensation rule to exclude coverage of small aircraft entirely (ER-1237, 46 FR 42442, August 21, 1981). And the smoking rule had been amended to apply uniformly to U.S. carriers' operations of aircraft with 30 or more seats, without regard to whether a carrier holds a certificate (ER-1245, 46 FR 45934, September 16, 1981).

The main practical effect of the proposal would be to extend the tariff-filing exemption. The reason for this is that the main exemptions that part 298 provides to air taxi operators (subpart B) and dual authority certificated carriers for their covered operations (Subpart I, incorporating Subpart B) are from the section 401 certificate requirement and the section 403 tariff-filing requirement. The proposed extension of Subpart I coverage from off-route small aircraft operations to all small aircraft operations would have no substantive effect with regard to the section 401 exemption, because a section 401 exemption for operations already authorized by the carrier's section 401 certificate would merely be redundant.

Under the proposed scheme there would be no change in §§ 298.93 or 298.11(b), the provisions that directly address tariff filing. But the proposed change in § 298.90 from a route criterion to an aircraft-size criterion would change the effect of those provisions, to result in the following scheme: A certificated carrier would continue to file tariffs for all its large aircraft operations. For its small aircraft operations, tariffs would not be required except for joint fares that it had agreed

§ 71.95 Reports.

The licensee shall report to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days—

(a) Any instance in which there is significant reduction in the effectiveness of any approved Type B, or fissile, packaging during use;

(b) Details of any defects with safety significance in Type B, or fissile, packaging after first use, with the means employed to repair the defects and prevent their recurrence; or

(c) Instances in which the conditions of approval in the certificate of compliance were not observed in making a shipment.

§ 71.97 Advance notification of shipment of irradiated reactor fuel and nuclear waste.

(a) As specified in paragraphs (b), (c) and (d) of this section, each licensee shall provide advance notification to the governor of a State, or the governor's designee, of the shipment of licensed material, through, or across the boundary of the State, before the transport, or delivery to a carrier, for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage.

(b) Advance notification is required under this section for shipments of irradiated reactor fuel in quantities less than that subject to advance notification requirements of § 73.37(f) of this chapter. Advance notification is also required under this section for shipment of licensed material, other than irradiated fuel, meeting the following three conditions:

(1) The licensed material is required by this part to be in Type B packaging for transportation;

(2) The licensed material is being transported to or across a State boundary en route to a disposal facility or to a collection point for transport to a disposal facility; and

(3) The quantity of licensed material in a single package exceeds the least of the following:

(i) 3000 times the A_1 value of the radionuclides as specified in appendix A, Table A-1 for special form radioactive material;

(ii) 3000 times the A_2 value of the radionuclides as specified in appendix A, Table A-1 for normal form radioactive material; or

(iii) 1000 TBq (27,000 Ci).

(c) *Procedures for submitting advance notification.*

(1) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the Administrator of the appropriate

NRC Regional Office listed in appendix A to part 73 of this chapter.

(2) A notification delivered by mail must be postmarked at least 7 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(3) A notification delivered by messenger must reach the office of the governor or of the governor's designee at least 4 days before the beginning of the 7-day period during which departure of the shipment is estimated to occur.

(i) A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the **Federal Register** on June 30, 1995 (60 FR 34306).

(ii) The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

(iii) A list of the names and mailing addresses of the governors' designees is available on request from the Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(4) The licensee shall retain a copy of the notification as a record for 3 years.

(d) *Information to be furnished in advance notification of shipment.* Each advance notification of shipment of irradiated reactor fuel or nuclear waste must contain the following information:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the irradiated reactor fuel or nuclear waste shipment;

(2) A description of the irradiated reactor fuel or nuclear waste contained in the shipment, as specified in the regulations of DOT in 49 CFR 172.202 and 172.203(d);

(3) The point of origin of the shipment and the 7-day period during which departure of the shipment is estimated to occur;

(4) The 7-day period during which arrival of the shipment at State boundaries is estimated to occur;

(5) The destination of the shipment, and the 7-day period during which arrival of the shipment is estimated to occur; and

(6) A point of contact, with a telephone number, for current shipment information.

(e) *Revision notice.* A licensee who finds that schedule information previously furnished to a governor or governor's designee, in accordance with this section, will not be met, shall telephone a responsible individual in the office of the governor of the State or of the governor's designee and inform that individual of the extent of the delay beyond the schedule originally reported.

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The licensee shall maintain a record of the name of the individual contacted for 3 years.

(f) *Cancellation notice.*

(1) Each licensee who cancels an irradiated reactor fuel or nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each State or to the governor's designee previously notified, and to the Administrator of the appropriate NRC Regional Office listed in appendix A of part 73 of this chapter.

(2) The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for 3 years.

§ 71.99 *Violations.*

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or (3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section; or

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 71.100 *Criminal penalties.*

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 71 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 71 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are

as follows: §§ 71.0, 71.2, 71.4, 71.6, 71.7, 71.9, 71.10, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.47, 71.51, 71.52, 71.53, 71.55, 71.59, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.99, and 71.100.

Subpart H—Quality Assurance

§ 71.101 *Quality assurance requirements.*

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this subpart, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements.

(b) *Establishment of program.* Each licensee shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§ 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging. The licensee shall apply each of the applicable criteria in a graded approach, i.e., to an extent that is consistent with its importance to safety.

(c) *Approval of program.* Before the use of any package for the shipment of licensed material subject to this subpart, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied, with the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(d) *Existing package designs.* The provisions of this paragraph deal with packages that have been approved for use in accordance with this part before January 1, 1979, and which have been designed in accordance with the provisions of this part in effect at the time of application for package approval. Those packages will be accepted as having been designed in accordance with a quality assurance program that satisfies the provisions of paragraph (b) of this section.

§ 73.3 Interpretations.
 Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized as binding upon the Commission.

§ 73.4 Communications.
 Except where otherwise specified, all communications and reports concerning the regulations in this part should be addressed to the Director of Nuclear Material Safety and Safeguards or the Director of Nuclear Reactor Regulation, as appropriate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be delivered in person at the Commission's offices at 2120 L Street, NW, Washington, DC, or at 11555 Rockville Pike, Rockville, Maryland.

§ 73.5 Specific exemptions.
 The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

§ 73.6 Exemptions for certain quantities and kinds of special nuclear material.
 A licensee is exempt from the requirements of 10 CFR part 26 and §§ 73.20, 73.25, 73.26, 73.27, 73.45, 73.48, 73.70 and 73.72 with respect to the following special nuclear material:

- (a) Uranium-235 contained in uranium enriched to less than 20 percent in the U-235 isotope;
 - (b) Special nuclear material which is not readily separable from other radioactive material and which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding; and
 - (c) Special nuclear material in a quantity not exceeding 350 grams of uranium-235, uranium-233, plutonium, or a combination thereof, possessed in any analytical, research, quality control, metallurgical or electronic laboratory.
 - (d) Special nuclear material that is being transported by the United States Department of Energy transport system.
 - (e) Special nuclear material at non-power reactors.
- Licensees subject to § 73.60 are not exempted from §§ 73.70 and 73.72, and licensees subject to § 73.67(e) are not exempted from § 73.72 of this part.

§ 73.8 Information collection requirements: OMB approval.
 (a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-0002.

(b) The approved information collection requirements contained in this part appear in §§ 73.20, 73.24, 73.25, 73.28, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.67, 73.70, 73.71, 73.72, and Appendices B and C.

§ 73.20 General performance objective and requirements.

(a) In addition to any other requirements of this part, each licensee who is authorized to operate a fuel reprocessing plant pursuant to Part 50 of this chapter; possesses or uses formula quantities of strategic special nuclear material at any site or contiguous sites subject to control by the licensee; is authorized to transport or deliver to a carrier for transportation pursuant to Part 70 of this chapter formula quantities of strategic special nuclear material; takes delivery of formula quantities of strategic special nuclear material free on board (f.o.b.) the point at which it is delivered to a carrier for transportation; or imports or exports formula quantities of strategic special nuclear material, shall establish and maintain or make arrangements for a physical protection system which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security, and do not constitute an unreasonable risk to the public health and safety. The physical protection system shall be designed to protect against the design basis threats of theft or diversion of strategic special nuclear material and radiological sabotage as stated in § 73.1(a).

(b) To achieve the general performance objective of paragraph (a) of this section a licensee shall establish and maintain, or arrange for, a physical protection system that:

(1) Provides the performance capabilities described in § 73.25 for in-transit protection or in § 73.45 for fixed site protection unless otherwise authorized by the Commission;

(2) Is designed with sufficient redundancy and diversity to ensure maintenance of the capabilities described in §§ 73.25 and 73.45;

(3) Includes a safeguards contingency capability that can meet the criteria in appendix C to this part "Licensee Safeguards Contingency Plans;" and

(4) Includes a testing and maintenance program to assure control over all activities and devices affecting the effectiveness, reliability, and availability of the physical protection system, including a demonstration that any defects of such activities and devices will be promptly detected and corrected for the total period of time they are required as a part of the physical protection system.

(c) Each licensee subject to the requirements of paragraphs (a) and (b) of this section shall establish, maintain, and follow NRC-approved safeguards physical protection and safeguards contingency plans that describe how the licensee will comply with the requirements of paragraphs (a) and (b) of this section.

§ 73.21 Requirements for the protection of safeguards information.

(a) *General performance requirement.* Each licensee who (1) possesses a formula quantity of strategic special nuclear material, or (2) is authorized to operate a nuclear power reactor, or (3) transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

(b) *Information to be protected.* The specific types of information, documents, and reports that shall be protected are as follows:

(1) *Physical Protection at Fixed Sites.* Information not otherwise classified as Restricted Data or National Security Information relating to the protection of facilities that possess formula quantities of strategic special nuclear material, and power reactors. Specifically: (i) The composite physical security plan for the

nuclear facility or site.

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical protection system.

(iii) Details of alarm system layouts showing location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.

(iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.

(v) Details of the on-site and off-site communications systems that are used for security purposes.

(vi) Lock combinations and mechanical key design.

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in physical security plans, safeguards contingency plans, or plant specific safeguards analyses for production or utilization facilities.

(viii) The composite safeguards contingency plan for the facility or site.

(ix) Those portions of the facility guard qualification and training plan which disclose features of the physical security system or response procedures.

(x) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

(xi) Size, armament, and disposition of on-site reserve forces.

(xii) Size, identity, armament, and arrival times of off-site forces committed to respond to safeguards emergencies.

(xiii) Information required by the Commission pursuant to 10 CFR 73.55 (c) (8) and (9).

(2) Physical protection in transit.

Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of formula quantities of strategic special nuclear material and spent fuel. Specifically: (i) The composite transportation physical security plan.

(ii) Schedules and itineraries for specific shipments. (Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series.)

(iii) Details of vehicle immobilization features, intrusion alarm devices, and communication systems.

(iv) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(v) Details regarding limitations of radio-telephone communications.

(vi) Procedures for response to safeguards emergencies.

(3) *Inspections, audits and evaluations.* Information not otherwise classified as National Security Information or Restricted Data relating

to safeguards inspections and reports. Specifically:

(i) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Information regarding defects, weaknesses or vulnerabilities may be released after corrections have been made. Reports of investigations may be released after the investigation has been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (5 U.S.C. 552).

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information specifically defined in paragraphs (b)(1) through (b)(3) of this paragraph.

(c) *Access to Safeguards Information.*

(1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57;

(ii) A member of a duly authorized committee of the Congress;

(iii) The Governor of a State or designated representative;

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

(vi) An individual to whom disclosure is ordered pursuant to § 2.744(e) of this chapter.

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

(d) *Protection while in use or storage.*
(1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual.

(2) While unattended, Safeguards Information shall be stored in a locked security storage container. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need to

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know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

(e) Preparation and marking of documents. Each document or other matter that contains Safeguards Information as defined in paragraph (b) in this section shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information (portion marking is not required for the specific items of information set forth in paragraph § 73.21(b) other than guard qualification and training plans and correspondence to and from the NRC). Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(f) Reproduction and destruction of matter containing Safeguards Information. (1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents or other matter containing Safeguards Information may be destroyed by any method that assures complete destruction of the Safeguards Information they contain.

(g) External transmission of documents and material. (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be packaged to preclude disclosure of the presence of protected information.

(2) Safeguards Information may be transported by messenger-courier, United States first class, registered, express, or certified mail, or by any individual authorized access pursuant to § 73.21(c).

(3) Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted only by protected telecommunications circuits (including facsimile) approved by the NRC. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(h) Use of automatic data processing (ADP) systems. Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's or his contractor's facility and requires the use of an entry code for access to stored information. Other systems may be used if approved for security by the NRC.

(i) Removal from Safeguards Information category. Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section.

§ 73.24 Prohibitions.

(a) Except as specifically approved by the Nuclear Regulatory Commission, no shipment of special nuclear material shall be made in passenger aircraft in excess of (1) 20 grams or 20 curies, whichever is less, of plutonium or uranium-233, or (2) 350 grams of uranium-235 (contained in uranium enriched to 20 percent or more in the U-235 isotope).

(b) Unless otherwise approved by the Nuclear Regulatory Commission, no licensee may make shipments of special nuclear material in which individual shipments are less than a formula quantity, but the total quantity in shipments in transit at the same time could equal or exceed a formula quantity, unless either of the following conditions are met:

(1) The licensee shall confirm and log the arrival at the final destination of each individual shipment and retain the log for three years from the date of the last entry in the log. The licensee shall also schedule shipments to ensure that the total quantity for two or more shipments in transit at the same time does not equal or exceed the formula quantity, or

(2) Physical protection in accordance with the requirements of §§ 73.20, 73.25, and 73.26 is provided by the licensee for such shipments as appropriate so that the total quantity of special nuclear material in the remaining shipments not so protected, and in transit at the same time, does not equal or exceed a formula quantity.

Physical Protection of Special Nuclear Material in Transit

§ 73.25 Performance capabilities for physical protection of strategic special nuclear material in transit.

(a) To meet the general performance objective and requirements of § 73.20 an in-transit physical protection system shall include the performance capabilities described in paragraphs (b) through (d) of this section unless otherwise authorized by the Commission.

(b) Restrict access to and activity in the vicinity of transports and strategic special nuclear material. To achieve this capability the physical protection system shall:

(1) Minimize the vulnerability of the strategic special nuclear material by using the following subfunctions and procedures:

(i) Preplanning itineraries for the movement of strategic special nuclear material;

(ii) Periodically updating knowledge of route conditions for the movement of strategic special nuclear material;

(iii) Maintaining knowledge of the status and position of the strategic special nuclear material en route; and

(iv) Determining and communicating alternative itineraries en route as conditions warrant.

(2) Detect and delay any unauthorized attempt to gain access or introduce unauthorized materials by stealth or force into the vicinity of transports and strategic special nuclear material using the following subsystems and subfunctions:

(i) Controlled access areas to isolate strategic special nuclear material and transports to assure that unauthorized persons shall not have direct access to, and unauthorized materials shall not be introduced into the vicinity of, the transports and strategic special nuclear material, and

(ii) Access detection subsystems and procedures to detect, assess and communicate any unauthorized penetration (or such attempts) of a controlled access area by persons, vehicles or materials so that the response will satisfy the general performance objective and requirements of § 73.20(a).

(3) Detect attempts to gain unauthorized access or introduce unauthorized materials into the vicinity of transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and procedures to provide current authorization schedules and access criteria for persons, materials and vehicles; and

(ii) Access controls and procedures to verify the identity of persons, materials and vehicles, to assess such identity against current authorization schedules and access criteria before permitting access, and to initiate response measures to deny unauthorized entries.

(c) Prevent or delay unauthorized entry or introduction of unauthorized materials into, and unauthorized removal of, strategic special nuclear material from transports. To achieve this capability the physical protection system shall:

(1) Detect attempts to gain unauthorized entry or introduce unauthorized materials into transports by deceit using the following subsystems and subfunctions:

(i) Access authorization controls and

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location on the train that will permit observation of the shipment car while in motion.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications, which shall be available on the train.

(e) *Shipments by sea.* In addition to the provisions of paragraph (b), the physical protection system for any portion of a spent fuel shipment that is by sea shall provide that:

(1) A shipment vessel, while docked at a U.S. port within a heavily populated area, is protected by:

(i) Two armed escorts stationed on board the shipment vessel, or stationed on the dock at a location that will permit observation of the shipment vessel; or

(ii) A member of a local law enforcement agency, equipped with normal LLEA radio communications, who is stationed on board the shipment vessel, or on the dock at a location that will permit observation of the shipment vessel.

(2) A shipment vessel, while within U.S. territorial waters, or while docked at a U.S. port not within a heavily populated area, is accompanied by an escort, who may be an officer of the shipment vessel's crew, who will assure that the shipment is unloaded only as authorized by the licensee.

(3) Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications.

(f) Prior to the transport of spent fuel within or through a state a licensee subject to this section shall notify the governor or the governor's designee. The licensee shall comply with the following criteria in regard to a notification:

(1) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee. A notification delivered by mail must be postmarked at least 7 days before transport of a shipment within or through the state. A notification delivered by messenger must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state. A list of the mailing addresses of governors and governors' designees is available upon request from the Director, Office of Public Affairs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) The notification must include the following information:

(i) The name, address, and telephone number of the shipper, carrier and receiver.

(ii) A description of the shipment as specified by the Department of Transportation in 49 CFR § 172.202 and § 172.203(d).

(iii) A listing of the routes to be used within the state.

(iv) A statement that the information described below in § 73.37(f)(3) is required by NRC regulations to be protected in accordance with the requirements of § 73.21.

(3) The licensee shall provide the following information on a separate enclosure to the written notification:

(i) The estimated date and time of departure from the point of origin of the shipment.

(ii) The estimated date and time of entry into the governor's state.

(iii) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until at least 10 days after the shipment has entered or originated within the state.

(iv) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected in accordance with the provisions of § 73.21 until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state.

(4) A licensee shall notify by telephone or other means a responsible individual in the office of the governor or in the office of the governor's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished in accordance with § 73.37(f)(3), and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(g) State officials, state employees, and other individuals, whether or not licensees of the Commission, who receive schedule information of the kind specified in § 73.37(f)(3) shall protect that information against unauthorized disclosure as specified in § 73.21.

NUREG-0794

Protection of Unclassified Safeguards Information

Criteria and Guidance

**U.S. Nuclear Regulatory
Commission**

Office of Nuclear Material Safety and Safeguards

D. J. Kasun



Available from

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Division of Technical Information and Document Control
U.S. Nuclear Regulatory Commission
Washington, DC 20555

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Protection of Unclassified Safeguards Information

Criteria and Guidance

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Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555**



ABSTRACT

This document was prepared to assist licensees and other persons who possess Safeguards Information in establishing an information protection system that satisfies the requirements of 10 CFR 73.21.

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1.0 Introduction

The guidance and criteria contained in this document pertains to the protection of Safeguards Information as defined in 10 CFR Part 73. It is intended to assist licensees and other persons who possess Safeguards Information in establishing an information protection system that satisfies the specific requirements of §73.21 of Part 73. Protection measures and procedures other than as set forth in this document may be used to satisfy the regulatory requirements if a comparable level of protection is achieved. There are no reporting, record keeping, or security plan development provisions associated with this rule.

2.0 Scope of the Rule

2.1 Facilities and Material Type Covered

Safeguards Information is limited to information regarding the physical protection of :

- Operating power reactors,
- Spent fuel shipments, and
- Activities involving formula quantities of strategic special nuclear material (for information not otherwise classified as National Security Information or Restricted Data under 10 CFR Part 95)

In regard to facilities that possess formula quantities, the rule applies to both fresh and irradiated material or combinations thereof and includes HEU fuel fabricators, non-power reactors, away-from-reactor spent fuel storage, and laboratories.

Information concerning the physical protection of special nuclear material of moderate and low strategic significance is not covered by the rule.

2.2 Types of Information Included

Safeguards Information is information that discloses equipment, procedures, communications, or response plans used by a licensee to protect certain special nuclear material or facilities. It includes:

- The overall physical security and safeguards contingency plan
- Drawings, sketches and diagrams that show locations of site safeguards features
- Details of the intrusion alarm system
- Guard orders and procedures

- Details of on-site and off-site response forces
- Drawings that explicitly identify certain areas or equipment at power reactors as being vital for purposes of physical protection.
- Portions of guard training and qualification plans that disclose specific safeguards features or response procedures
- Correspondence, inspection reports and audits that contain any of the above or that disclose weaknesses in the protection system.

Matter other than documents and drawings that contain Safeguards Information, such as alarm system computer programs, data processing storage disks, micro-films or photographs, should be afforded the same level of protection. (All items described in 10 CFR 2.4(q) should be protected.)

Certain types of information, even though possibly regarded as Safeguards Information, do not fall within the scope of the rule. Most notably are generic studies, reports or analyses conducted by or on behalf of the NRC, licensees, or applicants which concern the safeguarding of nuclear materials or facilities. Additional types not included in the rule are:

- Documents, drawings, or reports submitted by applicants or licensees, or produced by the staff, in response to the environmental and safety requirements contained in Parts 50, 51, 70, and 71.
- Routes and quantities for spent fuel shipments.
- Information concerning licensee control and accounting procedures or inventory differences for special nuclear material, or source material and byproduct material.
- Any information already in the public domain including commercial safeguards equipment specifications, catalogues and equipment buying data.
- Portions of guard qualification and training plans that do not disclose facility safeguards features or response procedures.

Normally the composite (i.e. sum of all parts) physical security and safeguards contingency plans would be considered single entities for protection purposes. However, licensees and applicants may find it more appropriate to segregate general or non-sensitive information into unprotected appendices or attachments. Also, guard orders and standard operating procedures may

be segregated into protected and unprotected portions. (Note that the rule requires guard qualification and training plans to be segregated)

In regard to engineering or construction drawings, all the revisions that substantially represent the final design features of the physical protection system would be considered to contain Safeguards Information. Initial requests for bids or proposals and original design sketches, for example would probably not qualify as Safeguards Information. Specific items of design that should be protected include:

- Location and types of alarm devices
- Alarm system schematic and wiring diagrams (but not wiring lists)
- Defensive positions and guard posts
- Alarm system emergency power location and capability
- Response and patrol routes
- Details of alarm station and guard post bullet resistant construction features
- Location of alarm stations (when it does not conflict with other submittal requirements)
- Vehicle alarm and immobilization features

In addition to physical protection measures, the rule requires protection of documents or drawings that identify certain safety related equipment as being vital for the purpose of physical security. Normal engineering or construction drawings that show the locations of safety-related equipment are not Safeguards Information. In order to be Safeguards Information, the drawing must explicitly state that the equipment or area is vital from the standpoint of physical protection. (Unless a drawing is specifically made, overlaid, or annotated for purpose of the physical protection of the facility, it cannot be considered Safeguards Information.)

Arrangements made with State or local police forces for response to safeguards emergencies are Safeguards Information. Specific information to be protected include:

- Size and armament of initial responding force
- Response times
- Primary and alternate routes
- Identity (e.g., does the response force come from a road unit or Hq building)

- Specific response plans upon arrival
- Availability of reserve forces

General information concerning State or local police forces, such as total complement, shift size etc., that is already in the public domain is not Safeguards Information and not subject to the rule requirements.

Arrangements made with telephone companies regarding dedicated, fail-safe, leased land lines used for security purposes should be protected to the extent possible. (A licensee would only be responsible for the control of the documentation in his possession.)

2.3 Persons Subject to the Rule

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires Safeguards Information is subject to the requirements (and sanctions) of the rule. Firms and their employees that supply services or equipment to power reactors would fall under the rule if they possess facility Safeguards Information. While a licensee would not be directly responsible for the protection of Safeguards Information in the hands of others, a licensee should as a matter of prudence inform contractors and suppliers of the existence of the regulatory requirements and the need for proper protection. (See more under Conditions for Access)

State or local police units who have access to Safeguards Information also are subject to the rule. However, these organizations are deemed in the rule to have adequate information protection systems. The conditions for transfer of information to a third party, ie, need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again it would be prudent for licensees who have arrangements with local police to advise of the existence of the rule.

3.0 Conditions for Access

There are no personnel security clearances or specific determinations of trustworthiness needed for access to Safeguards Information. The conditions for access are set forth below.

3.1 Need-to-Know

Need-to-know is defined in §73.2 of Part 73 as a determination that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. A licensee or his contractor, or any other person having possession of Safeguards Information has significant discretionary authority under the rule in making these determinations. The recipient should be made aware that the information is sensitive and subject to NRC regulations.

3.2 Occupational Groups

In lieu of a personnel clearance program the rule limits dissemination of Safeguards Information to members of certain occupation groups. These include:

- (i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government.
- (ii) A member of a duly authorized committee of the Congress.
- (iii) The Governor of a State or his designated representative.
- (iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC,
- (v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies, or
- (vi) A person to whom disclosure is ordered pursuant to Section 2.744 of Part 2 of this Chapter.

In a generic sense, these individuals are considered to be trustworthy by virtue of their employment status. Nevertheless, some discretion should be exercised in granting access to these individuals if there is any indication that the recipient would be unwilling or unable to provide proper protection for the Safeguards Information. (Employees of an organization affiliated with the licensee's company, e.g., a parent company, may be considered as employees of the licensee for access purposes.)

4.0 Physical Protection

4.1 Storage

Section 73.21 (d) requires that Safeguards Information be stored in a locked security storage container when unattended. Inside a protected or controlled access area Safeguards Information may be stored in a steel filing cabinet or map cabinet equipped with a locking bar and GSA approved combination padlock. A controlled access area, which is defined in §73.2 (2), should provide both isolation and access control. The boundaries of the area should be of substantial construction to deter entry or exit through other than the established access control points. Access should be positively controlled by personal recognition, use of keys or card keys, or other comparable means. In many cases corporation headquarters or other office buildings will qualify as controlled access areas provided they are attended around the clock or locked at night.

*See GSA Supply Catalog - Industrial Products Group 53

Safeguards Information located in an uncontrolled area is required to be stored in a GSA approved security container (class 6 or equivalent).^{*} Such a condition might occur at a construction site or at an equipment manufacturing plant.

Other repositories, such as document vaults, or vault-type-rooms, which in the judgement of the NRC provide comparable protection may be used. For additional information and/or a determination of acceptability contact:

U.S. Nuclear Regulatory Commission
Division of Security
Washington, D.C. 20555
Telephone - 301-427-4415

4.2 Control While in Use

Section 73.21 (d) requires that Safeguards Information be under the control of an authorized individual while it is in use in order to limit access to persons who have a need to know. This requirement is satisfied if the matter is attended by an authorized individual even though the information is in fact not constantly being used. Safeguards Information, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in security storage containers. Similarly, guards or transport escorts may carry orders and response plans on a routine basis.

Under certain conditions the general control exercised over protected or controlled access areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

- The above mentioned alarm stations, guard posts and guard ready rooms
- An engineering or drafting area if visitors are escorted
- Certain nuclear power plant vital areas such as the control room or security office
- Plant maintenance areas if access is restricted
- Administrative offices such as central records or purchasing if visitors are escorted.

4.3 Transportation of Documents and Other Matter

Documents containing Safeguards Information when transmitted outside an authorized place of use or storage should be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper should contain the name and address

^{*}See Federal Supply Schedule 71 Part 3 Section E

of the intended recipient, and be marked both sides, top and bottom with the words SAFEGUARDS INFORMATION. The outer envelope or wrapper should contain the intended recipient's name and address with no indication that the document inside contains Safeguards Information.

Safeguards Information may be transported by messenger-courier, US first class, registered, express, or certified mail, or by any individual authorized access pursuant to §73.21(c). Individuals transporting Safeguards Information should retain the documents in their personal possession at all times. Such documents should not be left in private homes, hotel rooms, hotel safes, automobiles or in the custody of other person.

4.4 Telecommunications and ADP

Safeguards Information may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a safeguards event (or an event that has potential safeguards significance).

Included would be:

- Safeguards events required to be reported by §73.71.
- Schedule changes, delays or equipment breakdowns associated with the transport of spent fuel or Category I strategic special nuclear material.
- Failure or loss of safety related equipment identified in the physical security plan as being vital.

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmissions between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility safeguards features or response procedures. Similarly, call-ins during transport should not disclose the point of transmission or schedule information. (Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that either the discussion is general in nature or the identification of specific safeguards measures is effectively disguised.)

Individuals should use care when discussing Safeguards Information at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts or minutes of meetings or hearings that contain Safeguards Information should be marked and protected in accordance with this section.

Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's facility and requires the use of an access code, or has been approved for security by the NRC, Division of Security. An ADP system is defined here as a data processing system having the capability of long term storage of Safeguards

Information. Word processors such as typewriters and VYDEC are not subject to the requirements as long as they do not transmit information off-site. The basic objective of these restrictions is to prevent access and retrieval of stored Safeguards Information by unauthorized individuals, particularly from remote terminals.

4.5 Marking of Documents

Each document that contains Safeguards Information should have on the face of the document (i) the name, title, and organization of the individual authorized to make a Safeguards Information determination, and who has determined that the document contains Safeguards Information, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains Safeguards Information, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each page shall be marked in a conspicuous fashion at the top and bottom with letters denoting SAFEGUARDS INFORMATION.

If the document contains any form of Restricted Data or National Security Information, it should also be marked in accordance with the provisions of 10 CFR Part 95.

Transmittal letters or memoranda which do not in themselves contain Safeguards Information should be marked to indicate that attachments or enclosures contain Safeguards Information.

In addition to the information required on the face of the document, each item of correspondence that contains Safeguards Information and each guard qualification and training plan, should by marking or other means clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain Safeguards Information and which do not. (Portion marking is not required for physical security and safeguards contingency plans.)

All documents or other matter in use or storage should be marked by the effective date of the rule. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the rule. Such documents need not be marked unless they are removed from security storage containers. The same exception would also apply to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this section.

Documents should only be removed from the Safeguards Information category by, or with the permission of, the individual (or office) who made the original determination. The document should indicate the name and organization of the individual removing the document from the Safeguards Information category and the date of the removal. Other persons who have the document in their possession should be notified of the removal.

4.6 Destruction

Documents containing Safeguards Information may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed for the purpose of this rule.

5.0 Proprietary Information

Information regarding the physical protection of nuclear materials and facilities or information concerning material control and accounting for special nuclear material, other than as contained in §73.21(b) or classified pursuant to Part 95, is not subject to NRC information protection requirements. However, such information has been generically deemed by the NRC to be confidential commercial or financial information and withholdable from public disclosure under exemption Four of the Freedom of Information Act. Documents or correspondence submitted to the NRC that contain such information should be marked to show that they contain 10 CFR 2.790(d)(1) type information.

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