



PR 60, 63, 73 and 74  
(73FR72521)

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08-075-DL (L)

April 8, 2008

Secretary, U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemakings and Adjudications Staff

**Subject:** *RIN 3150-A106 - Nye County, Nevada Comments on Part III, Nuclear Regulatory Commission, 10 CFR Parts 60, 63, 73, and 74, Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Proposed Rule - Federal Register Volume 72, No. 244, Thursday December 20, 2007, pages 72522 - 72562*

DOCKETED  
USNRC

April 15, 2008 (9:45am)

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ADJUDICATIONS STAFF

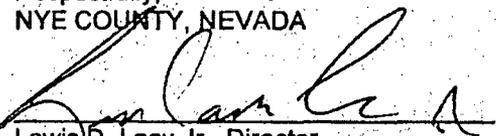
Dear Secretary:

The Nye County, Nevada, Nuclear Waste Repository Project Office appreciates the opportunity to comment on the subject proposed rule. In general, we believe the proposed rule is well written and appropriate to ensure the security and safety of Nye County residents near Yucca Mountain.

Our enclosed comments reflect suggestions to improve the proposed regulation that will ensure that the Department of Energy makes a good faith effort to work cooperatively with Nye County emergency response and law enforcement officials in their implementation of emergency response, safeguards, and security activities.

If you have any questions, please contact me at (775) 727-7727 ext. 22, e-mail [llacy@nyecounty.net](mailto:llacy@nyecounty.net), or fax (775) 727-7919.

Respectfully,  
NYE COUNTY, NEVADA

  
Lewis D. Lacy Jr., Director  
Nuclear Waste Repository Project Office

DL/zc

Enclosure: As stated

cc: Nye County Board of Commissioners  
Ron Williams, County Manager  
Bob Gamble  
Mai Murphy  
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Cash Jaszczak

Template = SECY-067

SECY-02

**Nye County, Nevada Comments on Part III, Nuclear Regulatory Commission, 10 CFR Parts 60, 63, 73, and 74, Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Proposed Rule – Federal Register Volume 72, No. 244, Thursday December 20, 2007, pages 72522 -- 72562**

The Nye County, Nevada, Nuclear Waste Repository Project Office (NWRPO) commends the Nuclear Regulatory Commission (NRC) for taking action to ensure the security of the Yucca Mountain Repository and certainty that nuclear materials at the repository are appropriately accounted for at all times. It is of utmost importance that the citizens of Nye County are safe and secure during repository operations and that the Nye County environment in the vicinity of Yucca Mountain is adequately protected. We understand the prudence of increasing the rigor of security and material control requirements after the events of September 11, 2001. We also believe it prudent to implement this increased rigor consistently at the Geologic Repository Operations Area (GROA) and at nuclear power plants across the country and encourage NRC to put the power plant and GROA requirements into effect simultaneously such that they will be totally consistent.

The NWRPO offers the following specific comments on the proposed GROA regulations.

**1. Section I, Background, page 72523, middle column, subparagraph (5)** states that certain licensees are required to, “enhance coordination with local law enforcement agency (LLEA) and military authorities.”

**Comment:** Nye County believes that offsite emergency response agencies may participate in joint response activities in the event of a radiological or other emergency. Prior active planning and coordination of intelligence gathering and training for local (offsite) emergency response agencies must be included in planning and training for such an event. Offsite agencies will be affected by security requirements. Therefore, it is recommended that the wording be changed to, “enhance coordination and planning with local law enforcement agencies (LLEA) and emergency response agencies, and military authorities.”

**2. Section I, page 72523, right column,** states, “Specifically, the security requirements for power reactors are being used as the starting point for the security requirements for this proposed rule.”

The discussion of changes to 73.71a, page 72531, states, “A new section is being proposed because significant changes to this section have been proposed in the power reactor security rule . . .”

**Comment:** NRC should ensure that security regulations for both power plants and the GROA are consistent – not that they just have a consistent starting point. The only way to ensure consistency is to put the revised regulations for power plants and the GROA into effect simultaneously.

**3. Section II, subsection B, page 72524, states, "Only the DOE, as the potential operator of any repository, would be impacted by this proposed rule."**

**Comment:** Since planning and coordination with LLEAs, emergency response agencies, and military authorities are required, more than just the DOE will be affected. The statement should be changed to, "Only the DOE, as the potential operator of any repository, local emergency response and law enforcement agencies, and military authorities would be impacted by this proposed rule."

**4. Section II, Discussion, Subsection D, page 72524 states that the Security and MC&A plans would be required to be submitted to NRC 180 days after the Commission grants the construction authorization for the GROA. A description of the plans is required to be included in DOE's license application.**

Discussion of changes to 10 CFR 73.53, Paragraph (b)(1), page 72529; proposed Section 60.24, page 7534; and proposed Section 73.53(b), page 72535 state that DOE is required to submit a Physical Security Plan, Training and Qualification Plan, and Safeguards Contingency Plan that describe how physical security requirements are met 180 days after GROA construction authorization.

Proposed Section 73.53, page 72535 states, "The security plans must be submitted no later than 180 days after the NRC issues a construction authorization for the GROA."

Proposed Section 74.71(c), page 72561 states the MC&A Plan is required to be submitted no later than 180 days after construction authorization.

**Comment:** NRC has appropriately recognized that there is no need for detailed plans to be developed many years before the repository could ever receive high level radioactive waste (HLW), begin repository operations, and have operations management and staff on board. This recognition should apply to all plans that are not required to be implemented until repository operations or shortly before operations. However, it would be more appropriate to specify the submittal schedule as a period before operation of the repository. For example, the requirement could be to submit the plans at least two years before NRC grants a license to receive and possess HLW. This would facilitate NRC staff review regardless of DOE's presumed construction schedule as well as the statement made in the Federal Register notice that, "... there may be some aspects that would be better integrated during construction." Stating the requirement in this manner would also squarely place the operations schedule burden on DOE if it does not submit the plans in a timely manner.

**5. Section II, Discussion, Subsection H, page 72525 states that DOE must closely coordinate with originators the special nuclear material (SNM) content and packaging including reactor fuel burnup calculations, unique serial numbers, and tamper-safing of canisters. It goes on to say that power reactor utilities would be expected to complete and file the DOE/NRC Form 741 for transferring the SNM to the GROA using their respective NRC Reporting Identification Symbol. Subsection I on the same page goes on**

to state, "At this point, no routine onsite measurements are foreseen as necessary to further validate/accept SNM content values assigned to receipts by the originators."

**Comment:** While this section addresses only MC&A requirements, NRC should recognize that the same information provides the necessary input to radiation safety and nuclear criticality calculations. It should be recognized that the same data that was adequate to ensure safety at the NRC regulated power plants is adequate to ensure safety at the GROA.

**6. Section II, Discussion, Subsection V, page 72527,** states, "Construction may be considered substantially complete if the construction of surface and interconnecting structures, systems, and components and any underground storage space required for initial operation are substantially complete." It goes on to say, "The NRC's security requirements are flexible enough to allow the DOE to establish a protected area that could separate remaining construction activities from operations involving HLW and other radioactive material." And further it says, "The protected area and security plans would be expanded to include new facilities or areas before radioactive material could be received in that new facility or area."

**Comment:** The citations above recognize how phased development of the repository is allowed by NRC's regulations. Although the discussion applies to security matters, it is equally applicable to other aspects of repository operations including radiation protection and nuclear safety.

**7. Section II, Subsection X, pages 72527 and 72528** discuss whether or not the security and MC&A-plans will cover the repository after closure. It is stated that there is no such requirement, "However, the DOE plans for continued oversight of the Yucca Mountain site after permanent closure." Also, Section III, under the 73.53 paragraph (b)(2) discussion on page 72529, middle column notes that DOE would be exempted from security requirements after the permanent closure of a GROA [should probably be permanent closure of a repository].

**Comment:** What DOE plans to do more than 100 years from now is irrelevant. NRC regulations at 10 CFR 63.51 have several requirements regarding the postclosure repository activities and programs. For example, 63.51(a)(iii) requires DOE's application for a license amendment for permanent closure to include "A program for continued oversight, to prevent any activity at the site that poses an unreasonable risk of breaching the geologic repository's engineered barriers; or increasing the exposure of individual members of the public to radiation beyond allowable limits." The GROA security and MC&A regulations should recognize this NRC requirement that is part of the basis required for NRC to allow closure of the repository and terminate the repository license.

**8. Section II, Subsection Y, page 72528,** refers to notification of the NRC Operations Center as soon as possible after they notify Local Law Enforcement Agencies, and goes on to note time frames under which various notifications must be made.

**Comment:** This should include local emergency response agencies in the event of the theft or release of radioactive material. This can be accomplished by changing paragraph 1, line 2 to read, "The Commission would expect the DOE to notify the NRC Operations Center as soon as possible after they notify local law enforcement agencies (and emergency response agencies, as necessary), but within 15 minutes.

**9. Section III, Discussion of Proposed Amendments by Section, page 72528** states in several instances the timing requirements for submittal and implementation of the security and MC&A plans. It specifically states in several places, "The security and MC&A plans would not be implemented until SNM is received at the GROA." Proposed section 74.71 on page 72561 makes the same statement.

**Comment:** NWRPO has already addressed the timing of submittal of the plans to NRC in a previous comment that applies to this section, as well. The requirement for implementation of the plans should be some period of time before NRC authorizes receipt of SNM at the GROA. The implementation timing should be sufficient to allow NRC inspection of plan implementation before a license to receive and possess HLW is granted. At the time of receipt is too late.

**10. Section III, page 726529**, middle column discusses the requirements in proposed 73.53 including the requirement for DOE to "establish and maintain a written performance evaluation program, an access authorization program, an insider mitigation program, and a corrective action program."

**Comment:** As stated in an earlier comment, the timing of the submittal and implementation of all plans and programs should be based on the timing of the need for such plans and programs. Requiring submittal of detailed plans before the requisite skills exist in the operating staff would not be in the best interests of safety, security, MC&A, or other program elements.

**11. Section III, page 726529**, right column, mentions a performance based requirement in proposed 73.51, "for determining the use and placement of physical barriers for the protection of personnel, equipment, and systems, the failure of which could directly or indirectly endanger public health and safety."

**Comment:** For GROA design considerations that are part of the security plan, the timing of 180 days after construction authorization might not be soon enough. NRC should consider requiring security elements embodied in the GROA design to be submitted prior to construction authorization such that the design features could be reviewed before a decision is made to authorization construction. Otherwise such design reviews could result in increased costs and/or extended construction schedules.

**12. Section III, page 72530, left column**, states "The DOE would be required to establish and maintain the minimum number of properly trained and equipped personnel required to intercept, challenge, delay and/or neutralize any security related events."

Page 72531, middle column goes on to say, "operations and safety plans, would establish the requirements that govern the development of the safeguards contingency plan for a GROA." It also says, "drills and exercises must be performed properly to assure they do not negatively impact personnel or facility safety."

Proposed Section 73.53, page 72541, middle column, item (iii)(1), states, "DOE shall establish and maintain continuous communication capability with onsite and offsite resources to ensure effective command and control during both normal and emergency situations."

**Comment:** The regulations should recognize that some of the requirements could be met by DOE through the use of agreements with local law enforcement and public safety agencies. In addition, there should be requirements that DOE make a good faith effort to coordinate its security activities, including drills and exercises, with local law enforcement agencies.

**13. Section XII, Regulatory Flexibility Certification, page 72533** states "The proposed rule affects only the licensing of one entity, the DOE, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC."

Proposed Section 73.53, page 72541, middle column, item (iii)(1), states, "DOE shall establish and maintain continuous communication capability with onsite and offsite resources to ensure effective command and control during both normal and emergency situations."

Proposed Appendix C to Part 73, page 72558, left column, states that DOE shall, "Reconfirm on an annual basis, liaison with local, State, and Federal law enforcement agencies, established in accordance with Section 73.53 (m)(8), to include communication protocols, command and control structure, marshaling locations, estimated response times, and anticipated response capabilities and specialized equipment."

**Comment:** This regulation would likely also affect Nye County, Nevada, a county with limited resources to serve its citizens, including all who live in the vicinity of the GROA. Since DOE should, at a minimum, coordinate its security activities with local law enforcement, strain on already overtaxed county resources could be increased. The NRC security regulations should make it clear that DOE should make a good faith effort to work with county agencies. Nye County would expect the cost to the county of such coordination to be borne by the applicant/licensee.

**14. Proposed Section 73.53, page 72535** discusses "controlled area boundary" in several instances.

**Comment:** The precise definition of the "controlled area" should be included in the regulation. The only definition of "controlled area" in 10 CFR 63 is in Subpart L defining the location of the reasonably maximally exposed individual. Section 63.121

discusses additional controls of land for both permanent closure and through permanent closure at subsections (b) and (c). 10 CFR 73 defines "controlled access area" but not "controlled area." 10 CFR Part 20 discusses restricted areas and 10 CFR 63.111 states that the GROA must meet the requirements of Part 20. A precise definition or use of a term not defined otherwise elsewhere in regulation would avoid confusion.

**15. Proposed Section 73.53, page 72538, right column, item (5)(iv) states, "Vehicles transporting hazardous materials inside the protected area must be escorted by an armed member of the security organization."**

**Comment:** Hazardous materials should be specifically defined. It's not clear whether the meaning is environmentally hazardous per EPA regulations or otherwise hazardous. Without a clear definition, all motorized vehicles and possibly the cleaning staff pushing a mop bucket might require armed escorts. If what is meant is the list of items on page 72539, right column, item (j)(i), it should be stated explicitly each time or defined globally.

**16. Proposed Section 73.53, page 72544, right column, states search requirements for individuals and containers exiting material access control areas.**

**Comment:** If the emplacement or the staging pad areas of the repository are considered material control access areas, NRC should consider relaxing the search requirements for exiting such areas. It would be impossible to carry SNM from such areas without heavy handling equipment and a coordinated effort by operations staff.

## Secy

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**From:** Zoie Choate [zchoate@co.nye.nv.us]  
**Sent:** Thursday, April 10, 2008 8:07 PM  
**To:** Rulemaking Comments; Secy  
**Cc:** Commissioner Gary Hollis; Chairperson Joni Eastley; Commissioner Borasky; Commissioner Liakopoulos; Commissioner Midge Carver; Ron Williams (Ron Williams); Bob Gamble (Bob Gamble); 'MalMurphy'; 'Jeff VanNiel'; 'Cash Jaszczak'; Darrell Lacy (Darrell Lacy)  
**Subject:** RIN 3150-AI06 [FR Doc: E8-03597];[Page 10187-10188]; Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Comment Period Extension  
**Attachments:** Cover Letter GROA Comments .pdf; RIN 3150-AI06 GROA Comments .PDF

Good Afternoon:

Please find the attached cover letter and the Nye County, Nevada comments on Part III, Nuclear Regulatory Commission, 10 CFR Parts 60, 63, 73, and 74, Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Proposed Rule - Federal Register Volume 72, No. 244, Thursday, December 20, 2007, pages 72522 - 72562.

I look forward to your email confirmation of this submittal.

Respectfully,

Zoie Choate

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Subject: RIN 3150-AI06 [FR Doc: E8-03597];[Page 10187-10188]; Geologic Repository  
Operations Area Security and Material Control and Accounting Requirements; Comment Period  
Extension

Date: Thu, 10 Apr 2008 17:06:31 -0700

Message-ID: <007e01c89b67\$eb21d960\$c1658c20\$@nye.nv.us>

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