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PROPOSED RULE **PR 73**  
(63FR49505)

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 73

RIN: 3150-AG00

PHYSICAL PROTECTION FOR SPENT NUCLEAR FUEL AND  
HIGH-LEVEL RADIOACTIVE WASTE: TECHNICAL AMENDMENT

OFFICE  
OF  
ADJUDICATION

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations concerning physical protection of spent nuclear fuel and high-level radioactive waste stored at independent spent fuel storage installations, monitored-retrievable storage installations, and geologic repository operations areas. This action is necessary to correct the inappropriate inclusion of surveillance/assessment and illumination systems within the requirement for tamper indication and line supervision.

DATES: Comments on the proposed rule must be received on or before *October 16, 1998* (~~insert 30 days~~  
~~after publication in the Federal Register~~).

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission,  
Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Maryland, between 7:30 am and 4:15 pm on  
Federal workdays.

Copies of any comments received may be examined at the NRC Public Document  
Room, 2120 L Street NW (Lower Level), Washington, D.C.

You may also provide comments via the NRC's interactive rulemaking website through  
the NRC home page (<http://www.nrc.gov>). From the home page, select "Rulemaking" from the  
tool bar. The interactive rulemaking website can then be accessed by selecting "New  
Rulemaking Website." The site provides the ability to upload comments as files (any format), if  
your web browser supports that function. For information about the interactive rulemaking  
website, contact Ms. Carol Gallagher, (301) 415-5905, e-mail [cag@nrc.gov](mailto:cag@nrc.gov).

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FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8110, e-mail pad@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

For additional information see the Direct Final Rule published in the Rules and Regulations section of this Federal Register.

Because NRC considers this action noncontroversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on November 12, 1998. However, if the NRC receives significant adverse comment on the direct final rule by (insert 30 days after publication in the Federal Register), then the NRC will publish a notice that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revision in a subsequent final rule. The NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

#### Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

#### Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

## Public Protection Notification

If an information collection ~~does~~ not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## Regulatory Analysis

A regulatory analysis has not been prepared for this proposed rule because this rule is considered corrective in nature and a minor, nonsubstantive amendment; it has no adverse economic impact on NRC licensees or the public.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1989, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant impact upon a substantial number of small entities. The regulation would affect entities licensed to operate independent spent fuel storage installations, monitored-retrievable storage installations, and geologic repository operations areas. These entities do not fall within the definition of small entities.

## Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

## List of Subjects

### 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.



For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 73.

## PART 73--PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.51(d)(11) is revised to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

\* \* \* \* \*


(d) \* \* \* \*

(11) All detection systems and supporting subsystems must be tamper indicating with line supervision. These systems, as well as surveillance/assessment and illumination systems, must be maintained in operable condition. Timely compensatory measures must be taken after discovery of inoperability, to assure that the effectiveness of the of the security system is not reduced.

\* \* \* \* \*

Dated at Rockville, Maryland, this 26<sup>th</sup> day of August, 1998.

For the Nuclear Regulatory Commission.



L. Joseph Callan,

Executive Director for Operations.