

# Proposed Rules

Federal Register

Vol. 60, No. 90

Wednesday, May 10, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

RIN 3150-AF36

#### Changes to Nuclear Power Plant Security Requirements Associated with Containment Access Control

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing amending its regulations to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action would relieve nuclear power plant licensees of the requirement to separately control access to reactor containments during periods of high traffic, such as refueling and major maintenance outages. Deletion of this requirement would decrease the regulatory burden for the licensees without degradation of physical security. This action follows reconsideration by the NRC of nuclear power plant physical security requirements to identify those that are marginal to safety, redundant, or out-of-date.

**DATES:** Submit comments by June 9, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Hand deliver comments to 11545 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic

Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be

accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax ((301) 415-2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated above.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6261, e-mail sdf@nrc.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1991, the Commission staff re-examined the NRC's nuclear power plant security requirements contained in 10 CFR part 73, "Physical Protection of Plants and Materials," associated with an internal threat. Requirements were identified that were redundant, out-of-date, or marginal-to-safety (SECY-92-272). Following public meetings held to discuss these requirements, the NRC staff recommended changes to § 73.55 (SECY-93-326). One of the recommended changes was the deletion of § 73.55(d)(8), which contains a requirement for separate access control to reactor containments, which is unneeded, and a requirement for locks and alarms, which is contained

elsewhere in part 73. If this paragraph were removed it would provide burden relief to the licensees without compromising the physical protection of the health and safety of the public against radiological sabotage. The NRC is proposing this rulemaking in response to the above recommendation. The other recommendations will be addressed in other NRC actions.

### Discussion

Paragraph (d)(8) in § 73.55 requires physical protection for access into reactor containment. The paragraph contains two requirements, one is a requirement for locks and alarms. The second requires control, by a guard or watchman, of access of personnel and material into containment during periods of high traffic such as refueling and major maintenance outages.

When paragraph (d)(8) was promulgated there were no specific access authorization regulations, thus no additional protection for reactor containment against the insider threat. Subsequent rulemakings have been promulgated directed at protecting against the insider threat, namely § 73.56, "Personnel access authorization requirements for nuclear power plants," and § 73.57, "Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees." Reactor containment or adjacent areas that provide access to containment are already vital areas. Thus, access of personnel into containment during periods of high traffic, such as refueling and major maintenance outages, is already controlled. In addition having security personnel control access of materials into containment during periods of high traffic provides no substantial benefit since material access into the protected area is already controlled and the containment is located within the protected area. Moreover, even certain "authorized" materials could be misused once in containment. The requirement that access be controlled by a guard or watchman provides little security since the purpose is to control access, which has already been provided, and not prevent a forced entry. After reactor containment is secured following periods of heavy traffic, existing NRC requirements for walkdown inspections and security searches apply and assure the security of the containment. Hence, the requirement that access into the reactor containment itself be separately controlled provides little or no additional security.

In addition, because a reactor containment is a vital area, it is subject to the vital area requirements for locks and alarms contained in other sections of § 73.55, as well as all other policies and procedures related to vital areas and equipment. Thus, the requirement for locks and alarms in paragraph (d)(8) is redundant.

For these reasons, the NRC believes that deletion of § 73.55(d)(8) would relieve licensees of an unnecessary burden, without degradation of physical security. Moreover, since security personnel would no longer be required to be assigned to a radiation control area, there would be a decrease in occupational exposure. It should be noted that this change would apply only to access from vital areas into reactor containment (which continues to remain a vital area) and does not relieve the licensee of requirements to provide radiological controls or of other requirements for personnel accountability.

### Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 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 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

### Regulatory Analysis

Elimination of § 73.55(d)(8) would relieve licensees of the requirement to station security personnel at entrances to containment during periods of high traffic. The potential savings to the licensees from the elimination of this requirement are substantial. Assuming, on the average, 2 security personnel are needed to control access to containment during the time the reactor is open, and assuming that the containment is open 50 days per major outage, with two major outages every 3 years, and a wage of approximately \$30 per hour (loaded) for security personnel, the total savings per reactor per year would be:

$$2 \text{ guards/reactor} \times 50 \text{ days/outage} \times 2/3 \text{ outages/year} \times \$30/\text{hr-guard} \times 24 \text{ hrs/day} = \$48,000/\text{year-reactor}.$$

With 110 operating nuclear power reactors, the total savings for the

industry are potentially \$5,280,000/year. Moreover, deletion of paragraph (d)(8) would result in a decrease in occupational exposure because security personnel would no longer be required to be within the radiation controlled area directly adjacent to containment.

Based on the above discussion, the NRC concludes that eliminating § 73.55(d)(8) would provide relief to the licensees, and lower occupational exposure, without compromising physical protection of the public health and safety against radiological sabotage at licensed nuclear power reactors.

### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR part 121.

### Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because this amendment would not impose new requirements on existing 10 CFR part 50 licensees. It is voluntary and should the licensee decide to implement this amendment, it is a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

### List of Subjects in 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. 552 and 553, the NRC is proposing to adopt the following amendments 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 (42 U.S.C. 5841, 5844).

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

#### § 73.55 [Amended]

2. In § 73.55, paragraph (d)(8) is removed and paragraph (d)(9) is redesignated as (d)(8).

Dated at Rockville, Maryland, this 2nd day of May, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 95-11482 Filed 5-9-95; 8:45 am]

BILLING CODE 7590-01-P

## FEDERAL TRADE COMMISSION

### 16 CFR Part 444

#### Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Credit Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Termination of review.

**SUMMARY:** In accordance with the Regulatory Flexibility Act (5 U.S.C. 601) ("the RFA") and a published plan for Periodic Review of Commission Rules (46 FR 35118 (July 7, 1981)), the Federal Trade Commission solicited comments and data on whether the Trade Regulation Rule Concerning Credit Practices (16 CFR part 444) (the "Rule") has had a significant impact on a substantial number of small entities, and if it has, whether the Rule should be amended to minimize any significant impact on small entities (59 FR 18009 (April 15, 1994)). The Commission also requested comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. The notice required comments to be submitted to the Commission no later than June 14, 1994. Based on the comments received, which are summarized in this notice, the Commission finds that there is an insufficient basis to conclude that the Rule has had a significant economic impact upon a substantial number of number entities of otherwise merits revision. The Commission is therefore terminating this review.

**DATES:** This action is effective as of May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Wilmore, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Room S4429, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580. Tel: (202) 326-3224.

**SUPPLEMENTARY INFORMATION:** The RFA requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact on a substantial number of small entities. For the purpose of the RFA review, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR part 121 and revised by the Small Business Administration (49 FR 5024-5048 (Feb. 9, 1984)). In addition, the Commission has determined, as a part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35118 (July 7, 1981)).

#### I. Background and Summary

The Commission promulgated the Rule on March 1, 1984, (49 FR 7740), and it became effective on March 1, 1985. The Rule applies to lenders and retail installment sellers (creditors) and prohibits them from directly or indirectly taking or receiving from a consumer an obligation that includes certain contract provisions determined to be unfair, failing to provide a notice to potential cosigners, or using an unfair method of calculating late fees.

In promulgating the Rule, the Commission found that: (1) consumers suffers substantial economic and non-economic injury from creditors' use of the remedies that the Rule restricts; (2) consumers themselves cannot reasonably avoid these remedies or avoid the harsh consequences of the remedies by avoiding default; and (3) the overall costs to consumers are greater than the countervailing benefits that the use of these remedies provide to consumers or creditors.<sup>1</sup>

The notice that initiated this review requested comments on whether any

part of the Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the operation of the Rule.

In addition, the Commission requested comments on a number of other issues relating to the operation of the Rule.

#### II. Public Comments

In response to the **Federal Register** notice, the Commission received a total of seven comments, four from creditor trade associations<sup>2</sup> and three from legal organizations representing consumers.<sup>3</sup> The commenters' responses to the questions posed in the notice are summarized and analyzed below. Unless otherwise noted, the Commission is not aware of other information bearing on the issues discussed.

##### 1. Continuing Need for the Rule

Two commenters directly addressed the question of the continuing need for the Rule. The UAW-GM and NCLC stated that consumers continue to need the protection of the Rule. According to Williams & Eoannou, consumers have benefited from the Rule because it "eliminated the use of a limited number of onerous and overreaching boilerplate contract provisions \* \* \* the limited utility of which in collecting debts was more than offset by their brutally invasive and disruptive impact on consumers and their families." No commenter discussed any costs imposed on consumers by the Rule.

##### 2. Proposed Changes to the Rule to Benefit Consumers

All of the commenters made some recommendation regarding changes to the Rule. Except as noted, the commenters who proposed changes to benefit consumers did not discuss the cost to creditors of those changes.

<sup>2</sup> Comments were received from the Credit Union National Association ("CUNA"), which represents 5,000 state and 7,000 federal credit unions in the United States; the CUNA Mutual Insurance Group ("CMIG"), which provides form contracts and compliance support, as well as insurance coverage, to CUNA members; the Illinois Credit Union System, which represents 645 state and federal credit unions in Illinois; and the Missouri Bankers Association, a trade association representing 500 commercial banks in Missouri.

<sup>3</sup> Comments were received from the National Consumer Law Center, Inc. ("NCLC"); the UAW-GM Legal Service Plan ("UAW-GM"), which provides legal services to auto workers and retirees; and the law firm of Williams & Eoannou, which represents consumer debtors in bankruptcy proceedings and in cases involving possible violations of federal and state credit laws.

<sup>1</sup> See Credit Practices Rule: Statement of Basis and Purpose and Regulatory Analysis (SBP), 49 FR 7740, 7743-7745 (1984).