

# Proposed Rules

Federal Register

Vol. 60, No. 157

Tuesday, August 15, 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 Parts 60, 72, 73, and 75

RIN: 3150-AF32

### Safeguards for Spent Nuclear Fuel or High-Level Radioactive Waste

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to clarify safeguards requirements for spent nuclear fuel or high-level radioactive waste stored at independent spent fuel storage installations, power reactors that have permanently ceased reactor operations, monitored retrievable storage installations, and geologic repository operations areas. This rule would allow general licensees the option of implementing the proposed safeguards requirements for spent nuclear fuel stored in approved casks at operating power reactor sites. This action is necessary to reduce the regulatory uncertainty regarding the safeguards requirements for the storage of spent nuclear fuel and high-level radioactive waste without reducing the level of protection for public health and safety.

**DATES:** Comment period expires November 13, 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 submitted to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Attn: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm 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. Background documents on the rulemaking are also available for downloading and viewing on the bulletin board.

The NRC rulemaking subsystem on FEDWORLD can be accessed directly by dialing the toll free number: 1-800-303-9672. 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." For further information about options available for NRC at FEDWORLD consult the "Help-Information Center" from the "NRC Main Menu." Users will find the "FEDWORLD Online User's Guides" particularly helpful. Many NRC subsystems and databases also have a "Help-Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD also can be accessed by a direct dial phone number for the main FEDWORLD BBS: 703-321-3339. If you access NRC this way, then 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, then you will have full access to all NRC systems, but you will not have access to the main FEDWORLD system. For more information on NRC bulletin boards contact Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

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 rulemaking as indicated above under the **ADDRESSES** heading.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Telford (301) 415-6229 or e-mail JLT@nrc.gov, or Dr. Sandra D. Frattali

(301) 415-6261 or e-mail SDF@nrc.gov, Office of Nuclear Regulatory Research, or Ms. Priscilla A. Dwyer (301) 415-8110 or e-mail PAD@nrc.gov, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

### SUPPLEMENTARY INFORMATION:

#### Background

The Commission's regulations addressing the storage of spent nuclear fuel and high-level radioactive waste (HLW), 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste," refer the applicant or licensee to "\* \* \* applicable requirements of part 73 \* \* \*" for requirements for physical protection. However, part 73 does not identify any safeguards requirements that are specific to the storage of spent nuclear fuel or HLW. In practice, the NRC has imposed specific safeguards requirements on affected facilities through license conditions using selected portions of 10 CFR 73.50 and 73.55 and interim licensing criteria as guidance.

The Commission's regulations for disposal of spent nuclear fuel or HLW by DOE at a geologic repository operations area (GROA) take a different approach. Instead of specifying applicable requirements to protect the common defense and security, they call for DOE to certify that it will provide "\* \* \* such safeguards as it requires at comparable surface facilities \* \* \*" of DOE. They also require DOE to describe a physical security plan for protection against radiological sabotage, but the contents of that plan are not specified.

The only physical protection requirements in NRC regulations that are specific to the storage of spent nuclear fuel are those that apply to spent nuclear fuel stored in certified casks under a general license at operating nuclear power reactors. These requirements are found in § 72.212(b)(5).

The Commission is proposing regulations to codify existing practice for the safeguarding of stored spent nuclear fuel or HLW. The proposed amendments would provide a set of physical protection and material control and accounting requirements directed at the storage of spent nuclear fuel or HLW, whether at an independent spent

fuel storage installation (ISFSI), a monitored retrievable storage installation (MRS), a power reactor that has permanently ceased reactor operations, or a geological repository. In addition, these proposed amendments are consistent with safeguards requirements for spent nuclear fuel storage under a general license at operating power reactors. Because the proposed amendments codify the existing regulatory practice there would not be any additional burden placed upon current licensees.

These amendments would make minor changes to existing regulatory language to clarify the meaning of the requirements. These amendments would also make the requirements of 10 CFR part 75 (pertaining to international safeguards) applicable to the GROA. This change is needed because the Terms of Reference, dated August 1, 1994, for the Subgroup on IAEA Safeguards in the U.S., part of the Subcommittee on International Safeguards and Monitoring of the IAEA Steering Committee, states that NRC shall be the U.S. agency responsible for maintaining necessary regulations for implementing the US-IAEA Safeguards Agreement at NRC licensed or certified facilities, including the promulgation of regulations, incorporation of appropriate amendments in NRC licenses, and the issuance of such orders as may be necessary to assure compliance. These Terms of Reference regarding the agreement between the U.S. and the IAEA are available for inspection in the NRC's public document room.

These proposed amendments do not require specific protection against the malevolent use of a vehicle. As stated in the final rule "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants" (59 FR 38889, August 1, 1994), the NRC staff, with contractor assistance, is studying this issue and attempting to quantify the consequences of a vehicle bomb detonated in the vicinity of an ISFSI. The results of this study will assist the staff in making a determination as to whether vehicle bomb protection is needed for ISFSIs. Also, if any significant safety issues are identified in this study, those issues would be resolved by an appropriate regulatory action, which could include rulemaking. In the interim, the staff believes that the inherent nature of the spent nuclear fuel or HLW, along with the degree of protection provided by the approved storage means, provides adequate protection against the malevolent use of a vehicle.

### Regulatory Approach

The proposed requirements would amend 10 CFR parts 60, 72, 73, and 75. For part 60, the Commission is proposing that the regulatory approach for safeguarding a GROA be the same as that which applies to spent nuclear fuel storage facilities licensed under part 72. The basic reason for this proposal is that the GROA operations, at least insofar as they are expected to be conducted in surface facilities, appear to present the same kinds of potential risks that are characteristic of the storage of spent nuclear fuel. And the safeguards that would thus be required are deemed to be sufficient as well to protect against acts affecting the underground facility that might be inimical to the common defense and security. This regulatory approach is predicated on maintaining the physical integrity of the spent nuclear fuel rods. If their physical integrity is not maintained, additional license conditions might be found to be necessary and would then be incorporated in the license.

The current proposal represents a departure from the Commission's prior position, as explained in the statement of considerations accompanying its promulgation of 10 CFR part 60 (46 FR 13971, 13975, February 25, 1981). The prior view was that "DOE, as a Federal agency operating under the Atomic Energy Act, has its own obligation to promote the common defense and security. Indeed, DOE is responsible under the Atomic Energy Act for protection of materials and facilities far more sensitive from a safeguards standpoint than nuclear waste materials in a geologic repository. Therefore, the rule provides that a DOE certification that its repository operations area safeguards are equal to those at comparable DOE surface facilities shall constitute a rebuttable presumption on the question of inimicality to the common defense and security."

Implementation of the current rule has proved to be difficult for two reasons. The first has been the identification of DOE surface facilities that are "comparable," so that the protective measures are neither too burdensome nor too lax. The second reason concerns the indefiniteness of the "rebuttable presumption" language. Neither DOE nor the NRC staff nor any other potential party can be certain about the level of detail that might be necessary to support the certification or to rebut the presumption of noninimicality. It appears likely to the Commission that the specification of reasonable safeguards requirements, as it is here proposing, will enable DOE to

discharge its common defense and security obligations more efficiently than would be the case under the existing language. And there would be the added benefit of ensuring that similar operations (i.e., at a GROA as well as at spent nuclear fuel storage facilities) are addressed in a consistent manner. Moreover, by defining the requirements more clearly in advance of the submission of a license application, opportunities for timely public review and comment may be enhanced.

The proposed amendments would replace existing § 60.21(b)(3) with a requirement for DOE to submit a detailed plan to provide physical protection for the storage of HLW at a GROA in accordance with a new § 73.51. Also, the proposed amendment would replace existing § 60.21(b)(4) with a requirement for DOE to comply with a new § 60.78, which requires DOE to provide a description of a program to meet the requirements of existing §§ 72.72, 72.74, 72.76, and 72.78. The rationale for these changes is, as discussed above, to ensure that the safeguards for similar facilities are addressed in a consistent manner. In addition, because these specific requirements are being provided, the general requirement for DOE to provide "\* \* \* such safeguards as it requires at comparable surface facilities \* \* \*" would also be removed from §§ 60.31, 60.41, and 72.24(o), because it would not be needed. Also, all of the requirements of § 73.51 would be applicable to surface operations including the entry points to the underground facility, and the earth cover together with the remoteness of the facility would provide additional protection of the public against a significant offsite release from the underground facility. Therefore, only the more general performance objectives set out in paragraph 73.51(b) would be applicable to the underground facility. Surveillance and detection measures would be required for surface operations and access would be controlled at entry points to the underground facility; within the underground facility itself, however, no further measures would need to be implemented for purposes of this regulation.

An additional revision to Part 60 relates to the nuclear material control and accounting program that is referred to in § 60.21(c)(10). To the extent that this program relates to safeguards issues, it is more properly addressed as "general information" under § 60.21(b) rather than as part of the Safety Analysis Report under § 60.21(c). The proposed rule will accomplish this. However, existing § 60.21(c)(10) has a broader

purpose that does implicate safety issues. There is a need for DOE to describe the materials inventory and recordkeeping program that is designed to assure protection of public health and safety during operations of the GROA and after permanent closure. Such information is important, for example, for purposes of performance confirmation, potential retrieval, and archival documentation. Section 60.21(c) would accordingly be revised to reflect this focus.

The proposed amendment to § 72.180 would provide requirements for the storage of spent nuclear fuel or HLW under a specific license by referring applicants to the same new section, § 73.51. The proposed amendment to § 72.212 would allow the licensee or applicant the option of either using § 73.51 for the storage of spent nuclear fuel under a general license or continuing to use § 73.55 with the additional conditions and exceptions provided in § 72.212(b)(5).

In licensing the storage of spent nuclear fuel or HLW at an ISFSI or a power reactor that has permanently ceased reactor operations, the NRC staff has had to sort through the many safeguards requirements of Part 73 to choose appropriate safeguards requirements, and impose those requirements through license conditions. As a result of this experience, however, a set of principles has evolved that reflects both the nature of potential threats and the hazardous radioactive characteristics of the materials. Accordingly, the proposed amendments in § 73.51 would codify safeguards requirements currently imposed on spent nuclear fuel storage licensees and would provide a consistent set of requirements for future licensing. Specifically, this new section would have the objective of ensuring that the following basic physical protection performance capabilities are met:

- (1) Spent nuclear fuel or HLW is stored only within a protected area;
- (2) Only authorized individuals are granted access to the protected area;
- (3) Unauthorized penetrations of or activities within the protected area are detected and assessed;
- (4) Communication with a designated response force, whenever necessary, is conducted in a timely fashion; and
- (5) The physical security organization is managed properly.

These amendments would not apply to spent nuclear fuel storage pools at operating nuclear power plants. In addition, because these proposed safeguards requirements would codify the existing regulatory practice, there

would not be any additional burden placed on current licensees. Further, the industry would benefit from a reduction of current regulatory uncertainties. The public would benefit from a greater level of assurance that appropriate safeguards requirements are being imposed on spent nuclear fuel and HLW storage licensees through public review and comment on the proposed rule. The DOE would benefit from the proposed amendments by having a clear statement of the safeguards measures the Commission plans to require at the GROA. Also, NRC would benefit as a result of a more efficient licensing process.

In addition, the current reporting requirements in § 73.71 would be amended to specifically include facilities that are subject to this rulemaking. However, because the amended reporting requirements are equivalent to current practice, no additional burden will be placed on current licensees as a result of these amended reporting requirements.

#### Specific Considerations

Comments with supporting rationale are particularly requested on the following questions:

1. Would the proposed amendments impose any significant additional costs for safeguards of currently stored spent nuclear fuel beyond what is now incurred for that purpose?
2. Is there reason to expect the costs to future licensees to differ substantially from those of current licensees?
3. Are the cost estimates in Table III of the Draft Regulatory Analysis representative of current industry experience? Are there significant costs that have not been included in the table?
4. Are the costs justified by the benefits that would be afforded by the proposed amendments? Are there alternatives that would afford essentially the same benefits, but be more cost effective?
5. Are the proposed amendments in 10 CFR 73.51 appropriate for an MRS or geologic repository operated by the U.S. Department of Energy?

#### Criminal Penalties

The Commission notes that these proposed amendments are issued under Sections 161b and i of the Atomic Energy Act of 1954, as amended. Therefore, violation of these regulations may subject a person to criminal sanctions under Section 223 of the Atomic Energy Act.

#### Environmental Impact: Categorical Exclusion

The Commission has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(3)(i) and (iii). 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 that is 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 numbers 3150-0002, -0127, and -0132.

Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; and to the Desk Officer, Office of Information and Regulatory Affairs, (3150-0132), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

#### Regulatory Analysis

The Commission has prepared a draft regulatory analysis for this proposed rule. The draft analysis examines the benefits and impacts of the alternatives considered by the Commission. The draft regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Dr. Sandra D. Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The draft regulatory analysis also is available for viewing and downloading from the NRC's rulemaking bulletin board as discussed above under ADDRESSES.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect operators of ISFSIs, power reactors that have permanently ceased operation, and DOE as the operator of the MRS and GROA. The affected licensees do not fall within the scope of the definition of "small entities" set forth in Section 601(3) of

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 in 10 CFR 50.109 does not apply to this proposed rule because these proposed amendments do not impose new requirements on existing 10 CFR Part 50 licensees. Also, the backfitting requirements in 10 CFR 72.62 do not apply because these proposed amendments neither impose new requirements nor modify procedures or organizations of currently licensed ISFSIs. Therefore, a backfit analysis was not prepared for this proposed rule.

**List of Subjects**

*10 CFR Part 60*

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 72*

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

*10 CFR Part 73*

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

*10 CFR Part 75*

Criminal penalties, Intergovernmental relations, 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 Commission is proposing to adopt the following amendments to 10 CFR Parts 60, 72, 73, and 75.

**PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES**

1. The authority citation for part 60 continues to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071,

2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97-425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141) and Pub. L. 102-486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

2. In § 60.21, paragraphs (b)(3), (b)(4), and (c)(10) are revised to read as follows:

**§ 60.21 Content of application.**

\* \* \* \* \*

(b) \* \* \*

(3) A detailed plan to provide physical protection of high-level radioactive waste in accordance with § 73.51 of this chapter. This plan must include the design for physical protection, the licensee's safeguards contingency plan, and security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

(4) A description of the program to meet the requirements of § 60.78.

\* \* \* \* \*

(c) \* \* \*

(10) A description of the program to be used to maintain the records described in §§ 60.71 and 60.72.

\* \* \* \* \*

3. In § 60.31, paragraph (b) is revised to read as follows:

**§ 60.31 Construction authorization.**

\* \* \* \* \*

(b) *Common defense and security.*

That there is reasonable assurance that the activities proposed in the application will not be inimical to the common defense and security.

\* \* \* \* \*

4. In § 60.41, paragraph (c) is revised to read as follows:

**§ 60.41 Standards for issuance of a license.**

\* \* \* \* \*

(c) The issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public.

\* \* \* \* \*

5. A new § 60.78 is added to read as follows:

**§ 60.78 Material control and accounting records and reports.**

DOE shall implement a program of material control and accounting (and accidental criticality reporting) that is the same as that specified in §§ 72.72, 72.74, 72.76, 72.78 of this chapter.

**PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE**

6. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

7. In § 72.24, paragraph (o) is revised to read as follows:

**§ 72.24 Contents of application: Technical information.**

\* \* \* \* \*

(o) A description of the detailed security measures for physical protection, including design features and the plans required by Subpart H. For an application from DOE for an ISFSI or MRS, DOE will provide a description of the physical security plan for protection against radiological sabotage as required by subpart H of this part.

\* \* \* \* \*

8. Section 72.180 is revised to read as follows:

**§ 72.180 Physical security plan.**

The licensee shall establish, maintain, and follow a detailed plan for physical protection as described in § 73.51 of this chapter. The licensee shall retain a copy of the current plan as a record until the Commission terminates the license for which the procedures were developed and, if any portion of the plan is superseded, retain the superseded

material for 3 years after each change or until termination of the license. This plan must describe how the applicant will meet the requirements of § 73.51 of this chapter and provide physical protection during on-site transportation to and from the proposed ISFSI or MRS including the design for physical protection, the licensee's safeguards contingency plan, and the security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements.

9. In § 72.212, paragraph (b)(1)(iv) is added and (b)(5) is revised to read as follows:

**§ 72.212 Conditions of general license issued under § 72.210.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iv) Notify the NRC as to whether they will implement § 73.51 or of this chapter their approved physical security plan pursuant to § 73.55 of this chapter. If a licensee implements § 73.51 of this chapter, its approved physical security plan must be modified to clearly indicate that § 73.51 of this chapter will be followed for safeguarding spent nuclear fuel. For those persons who have not begun use of the general license, this notice must be included in the 90-day letter required by paragraph (b)(1)(i) of this section. For those persons who have begun use of the general license, this notice must be provided no later than 30 days after implementation of § 73.51 of this chapter to the appropriate Nuclear Regulatory Commission regional office listed in Appendix D to part 20 of this chapter.

\* \* \* \* \*

(5) Protect the spent nuclear fuel against the design basis threat of radiological sabotage in accordance with either § 73.51 of this chapter or the same provisions and requirements as are set forth in the licensee's physical security plan pursuant to § 73.55 of this chapter with the following additional conditions and exceptions.

\* \* \* \* \*

**PART 73— PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

10. 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).

11. In § 73.1, paragraph (b)(6) is revised to read as follows:

**§ 73.1 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

(6) This part prescribes requirements for the physical protection of spent nuclear fuel or high-level radioactive waste stored in either an independent spent fuel storage installation (ISFSI) or a monitored retrievable storage installation (MRS) licensed under part 72 of this chapter, or stored at the geologic repository operations area licensed under part 60 of this chapter.

\* \* \* \* \*

12. The introductory text of § 73.50 is revised to read as follows:

**§ 73.50 Requirements for physical protection of licensed activities.**

Each licensee who is not subject to § 73.51, but who possesses, uses, or stores formula quantities of strategic 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 other than at a nuclear reactor facility licensed pursuant to Part 50 of this chapter shall comply with the following:

\* \* \* \* \*

13. A new § 73.51 is added to read as follows:

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

(a) *Applicability.* Notwithstanding the provisions of §§ 73.20, 73.50, or 73.67, the physical protection requirements of this section apply to each licensee who stores:

(1) Spent nuclear fuel or high-level radioactive waste (HLW) under a specific license issued pursuant to Part 72 of this chapter:

- (i) At an independent spent fuel storage installation (ISFSI);
- (ii) At a monitored retrievable storage (MRS) installation; or
- (iii) At a nuclear power reactor that has permanently ceased reactor operations licensed pursuant to Part 50 of this chapter;

(2) Spent nuclear fuel or HLW at a geologic repository operations area (GROA) licensed pursuant to Part 60 of this chapter; or

(3) Spent nuclear fuel under a general license issued pursuant to Part 72 of this chapter and has exercised the option provided by § 72.212(b)(5) of this chapter to use the provisions of § 73.51 for the physical protection of spent nuclear fuel.

(b) *General performance objectives.*

(1) Each licensee subject to this section shall establish and maintain a physical protection system with the objective of providing high assurance that activities involving special nuclear material do not constitute an unreasonable risk to the public health and safety.

(2) To meet the general objective of paragraph (b)(1) of this section, each licensee subject to this section shall meet the following performance capabilities:

- (i) Store spent nuclear fuel or HLW only within a protected area;
- (ii) Grant access to the protected area only to individuals who are authorized to enter the protected area;
- (iii) Detect and assess unauthorized penetration of or activities within the protected area;
- (iv) Provide timely communication to a designated response force whenever the response force is called upon to act; and
- (v) Manage the physical security organization in a manner that maintains its effectiveness.

(3) The physical protection system must be designed to protect against radiological sabotage.

(c) *Plan retention.* Each licensee subject to this section shall retain a copy of the effective physical protection plan as a record for 3 years or until termination of the license for which the procedures were developed. Copies of superseded material must be retained for 3 years after each change or until termination of the license.

(d) *Physical protection systems, subsystems, components, and procedures.* To meet the performance capabilities of paragraph (b)(2) of this section, a physical protection system must include, but is not necessarily limited to, the measures specified in paragraphs (d)(1) through (d)(14) of this section. The Commission may require alternate or additional measures necessary to meet the performance objectives of paragraph (b)(1) of this section. The Commission may also authorize other necessary protection measures.

(1) Spent nuclear fuel or HLW must be stored only within a protected area so that access to this material requires passage through or penetration of two physical barriers, one barrier at the perimeter of the protected area and one

barrier offering substantial penetration resistance. The physical barrier at the perimeter of the protected area must be as defined in § 73.2. Isolation zones, typically 20 feet wide each, on both sides of this barrier must be provided to facilitate assessment. The barrier offering substantial resistance to penetration may be provided by an approved storage cask or building walls such as those of a reactor or fuel storage building. Other suitable measures to provide the barrier may be acceptable, if approved by the NRC on a case by case basis.

(2) A means of illumination must be provided sufficient to permit assessment of unauthorized penetration of or activities within the protected area and associated isolation zones.

(3) The perimeter of the protected area must be subject to continual surveillance and be protected by an intrusion detection system with provisions for redundant monitoring of the system. The detection and surveillance systems must be monitored in a continuously staffed alarm station, not necessarily located within the protected area, and in one redundant location.

(4) The protected area must be monitored by random patrols of a frequency not less than once every 8 hours.

(5) A security organization, with written procedures, must be established. The security organization must include a minimum of two watchmen per shift to provide for monitoring of detection and surveillance systems and for communications with a designated response force or local law enforcement agencies (LLEA) in the event of detection of unauthorized penetration or activities. Members of the security organization shall be trained, equipped, and qualified in accordance with the applicable provisions of appendix B to this part.

(6) Documented liaison with a designated response force or LLEA must be established to permit response to unauthorized penetration or activities.

(7) Screening must be conducted before granting an individual unescorted access to the protected area to obtain information on which to base a decision to permit such access. Screening should typically include a criminal history check, a previous employment check, and two personal reference checks.

(8) A controlled personnel identification and lock system must be established and maintained to limit access to the protected area to individuals authorized unescorted

access or escorted individuals who have been approved for such access.

(9) All escorted individuals to the protected area must be under the constant escort of an individual who has been authorized unescorted access to the protected area.

(10) Redundant communications capability must be provided between the security organization and designated response force or LLEA.

(11) All individuals, vehicles, and hand-carried packages entering the protected area must be checked for proper authorization and searched for explosives before entry.

(12) Written response procedures must be established and maintained for addressing unauthorized penetration of or activities within the protected area including Category 5, Procedures, of appendix C to part 73. The licensee shall retain a copy of the response procedures as a record for 3 years or until termination of the license for which the procedures were developed. Copies of superseded material must be retained for 3 years after each change or until termination of the license.

(13) All detection and surveillance systems and supporting subsystems must be tamper-indicating with line supervision and be maintained in operable condition. Compensatory measures must be taken during periods of inoperability.

(14) The security program must be reviewed once every 24 months by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The security program review must include an evaluation of the effectiveness of the physical security system and a verification of the liaison established with the designated response force or LLEA.

(15) The following documentation must be retained as a record for 3 years after the record is made or until termination of the license. Duplicate records to those required under § 73.71 need not be retained under the requirements of this section:

- (i) A log of individuals granted access to the protected area;
- (ii) Screening records of individuals granted unescorted access to the protected area;
- (iii) A log of routine patrols;
- (iv) A record of each alarm received identifying the type of alarm, location, date and time when received, and disposition of the alarm; and
- (v) The security program review reports.

(e) *Exception.* The physical protection system for the underground facility of a

geologic repository operations area must meet the performance capabilities of paragraph (b) of this section, but need not include the specific measures set out in paragraph (d) of this section provided that access is controlled at the underground facility entry points.

14. In § 73.71, paragraphs (b)(1) and (c)(1) are revised to read as follows:

**§ 73.71 Reporting of safeguards events.**

\* \* \* \* \*

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or 73.67 shall notify the NRC Operations Center within 1 hour of discovery of the safeguards events described in paragraph I(a)(1) of appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or each licensee possessing strategic special nuclear material (SSNM) and subject to § 73.67(d) shall notify the NRC Operations Center within 1 hour after the discovery of the safeguards events described in paragraphs I(a)(2), (a)(3), (b), and (c) of appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, or 73.60 shall notify the NRC Operations Center within 1 hour after discovery of the safeguards events described in paragraph I(d) of appendix G to this part.

\* \* \* \* \*

(c)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.51, 73.55, 73.60, or each licensee possessing SSNM and subject to the provisions of § 73.67(d) shall maintain a current log and record the safeguards events described in paragraphs II (a) and (b) of appendix G to this part within 24 hours of discovery by a licensee employee or member of the licensee's contract security organization. The licensee shall retain the log of events recorded under this section as a record for 3 years after the last entry is made in each log or until termination of the license.

\* \* \* \* \*

**PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT**

15. The authority citation for part 75 continues to read as follows:

**Authority:** Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

16. In § 75.4, paragraph (k)(5) is revised to read as follows:

**§ 75.4 Definitions.**

\* \* \* \* \*

(k) \* \* \*

(5) Any location where the possession of more than one effective kilogram of nuclear material is licensed pursuant to parts 40, 60, or 70 of this chapter, or pursuant to an Agreement State license.

\* \* \* \* \*

Dated at Rockville, Maryland, this 8th day of August, 1995.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Acting Secretary of the Commission.*

[FR Doc. 95-20035 Filed 8-14-95; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018-AD42

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1995–1997 Subsistence Taking of Fish and Wildlife Regulations**

**AGENCY:** Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the customary and traditional use determinations and establish regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1996–1997 regulatory year. This rule making is necessary because Subpart D regulations require annual public review, and the customary and traditional use determinations are being opened to the same annual regulatory revision process. When final, this rule making will replace hunting and trapping regulations in “Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1995–1997 Subsistence Taking of Fish and Wildlife Regulations,” which expire on June 30, 1996.

**DATES:** Written public comments and proposals to change this proposed rule must be received no later than October 27, 1995. Federal Subsistence Regional Advisory Councils (Regional Councils)

will hold public meetings on this proposed rule making from September 11–October 18, 1995, at various locations in Alaska. Notice of specific dates and meeting locations will be published in local and statewide newspapers prior to the meetings. Written proposals to change Subpart D regulations will be compiled and distributed for additional public review during early November 1995. A second 30-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the second public comment period. Comments on proposals to change Subpart D regulations may be presented to the Regional Councils at their meetings. The Federal Subsistence Board (Board) will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during April 1995.

**ADDRESSES:** Comments and proposals should be sent to Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Richard S. Pospahala, Office of Subsistence Management; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907) 586-7921.

#### **SUPPLEMENTARY INFORMATION:**

#### **Proposed Changes From 1995–1996 Seasons and Bag Limit Regulations**

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Consequently, this proposed rule reflects regulation changes for the 1995–1996 regulatory year that are approved by the Board. The Board has also decided that customary and traditional use determinations will also be subject to the annual review process. Regulations contained in this proposed rule will take effect on July 1, 1996, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1995–1996 Subpart D final rule served as the foundation for the 1996–1997 Subpart D proposed rule. Only minor administrative changes to the 1995–1996 final rule have been made to correct Federal subsistence

management program regulations for the 1995–1996 regulatory year.

#### **Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in