

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AI31

[NRC-2008-XXXX]

CRIMINAL PENALTIES; UNAUTHORIZED INTRODUCTION OF WEAPONS

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to authorize the imposition of Federal criminal penalties on those who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. This action is necessary to implement section 229, "Trespass on Commission Installations," of the Atomic Energy Act of 1954, as amended.

DATE: Submit comments on the proposed rule by **[insert the date 45 days after publication in the Federal Register]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RIN3150-AI31 in the subject line of your comments. Comments on this rulemaking submitted in writing or in electronic form will be made available to the public in their entirety on the federal government's rulemaking web site, <http://www.regulations.gov>. Personal

information, such as name, address, telephone, e-mail address, etc., will not be removed from your submission.

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

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

Comments can also be submitted via the federal eRulemaking portal <http://www.regulations.gov>.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays. (Telephone 301-415-1101)

Publicly available documents related to this rulemaking, including all public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. For more information, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.

Documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-415-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jody C. Martin, Attorney, Office of the General Counsel, telephone 301-415-1569, e-mail: jody.martin@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Proposed Rule
- III. Plain Language
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I. Background

Section 654 of the Energy Policy Act of 2005, “Unauthorized Introduction of Dangerous Weapons,” amended section 229 of the Atomic Energy Act to authorize the NRC to issue regulations that make it a Federal crime to bring, without authorization, weapons or explosives into facilities designated by the Commission. This proposed rule would implement that legislative provision.

In 1956, Congress added section 229 to the Atomic Energy Act. That section made it a crime to bring weapons or explosives, without authorization, into facilities owned by the Atomic Energy Commission. With the enactment of the Energy Reorganization Act in 1974, this provision covered facilities now owned or occupied by the Department of Energy as well as the buildings occupied by the NRC. Section 229 did not extend to facilities regulated by the NRC. Over the years, there were incidents where individuals were successful in bringing weapons into NRC-regulated facilities without authorization. Fortunately, the individuals were not terrorists or others with malevolent intent and no damage was done. In

such circumstances, the Commission had the ability to take action against its licensee for violation of security requirements, but could not refer the matter to the Department of Justice for criminal prosecution of the individual; any criminal sanctions had to be sought by the State under State law. Beginning in the late 1980s, the Commission submitted legislative proposals to Congress requesting that Congress enact legislation that would make it a Federal crime to bring weapons or explosives, without authorization, into NRC-designated facilities.

Congress enacted the requested legislation in section 654 of the Energy Policy Act of 2005, amending section 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2278a.) (the Atomic Energy Act). This section authorizes the Commission to

issue regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to person or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.

Section 229 also requires that “every such regulation of the Commission shall be posted conspicuously at the location involved.”

II. Discussion

The NRC is proposing to amend 10 CFR 73.81, “Criminal Penalties” and 10 CFR 73.70, “Records” to implement section 654 of the Energy Policy Act of 2005. Under the proposed regulations, the unauthorized willful introduction of any dangerous weapon, explosive or any other dangerous instrument or material likely to produce substantial injury or damage to persons or property upon the facilities or installations subject to sections 236a.(1) or (4) of the Atomic Energy Act would be subject to the criminal penalties set forth in section 229 of the Atomic Energy Act. The Commission here is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives when nuclear material is present.

By listing these facilities in section 236 of the Atomic Energy Act, Congress has recognized the potential danger that could result from sabotage to them; consequently, the NRC believes it prudent to also make the unauthorized introduction of weapons or explosives into or upon these facilities a Federal crime. The covered facilities include: (1) production and utilization facilities; and, (2) uranium enrichment, uranium conversion and fuel fabrication facilities. The proposed rule also covers some of the facilities listed in section 236a.(2). Specifically, this proposed rule would apply to high-level waste storage and disposal facilities and independent spent fuel storage installations. The remaining waste facilities and installations listed in section 236a.(2) that are subject to agreement state jurisdiction may be covered in a future rulemaking. For other classes of licensees, the unauthorized introduction of weapons or explosives would continue to be governed, absent other Federal legislation, by State law.

Whoever willfully introduces, without authorization, weapons or explosives into or upon any installation or facility listed in § 73.81(c)(1) that is enclosed by a fence, wall, floor, roof, or other barrier would be guilty of a misdemeanor, and upon conviction, could be punished by a fine not to exceed \$5,000, or imprisonment for not more than one year, or both, as set forth in section 229c. of the Atomic Energy Act. Whoever willfully introduces, without authorization, weapons or explosives into or upon any other installation or facility listed in § 73.81(c)(1) would be, upon conviction, punishable by a fine of not more than \$1,000, as set forth in section 229b. of the Atomic Energy Act. This proposed rule does not interfere with state prosecution of these crimes under state law, but it does allow the Federal Bureau of Investigation to investigate and the Department of Justice to prosecute in addition to, or instead of, the State government.

At this time, the NRC does not propose including the following facilities or materials even though they are listed in section 236 of the Atomic Energy Act:

- Subsection a.(3) covering any nuclear fuel for a utilization facility licensed under this Act, or any spent fuel from such a facility. Section 229 of the Atomic Energy Act specifically applies to “facilities and installations,” while this subsection applies to “nuclear fuel” and “spent nuclear fuel.” Fuel is neither a facility nor installation; therefore, section 229, by its terms, is not applicable to this subsection.
- Subsection a.(5) covering any “production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facility” during construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during operation of the facility. In this proposed rule, the Commission is primarily concerned with dangers posed by the unauthorized introduction of weapons or explosives into facilities when nuclear material is present. Therefore, the proposed § 73.81(c) would apply only to those facilities designated in § 73.81(c)(1) upon the receipt of nuclear material. However, if an unauthorized introduction of a weapon or explosive results in sabotage covered by section 236 before the receipt of nuclear material, this would already constitute a Federal crime.
- Subsection a.(6) covering any “primary or backup facility from which a radiological emergency preparedness alert or warning system is activated.” These facilities do not contain nuclear material or contain the controls needed to operate a facility.
- Subsection a.(7) pertaining to other materials or property that the Commission designates by order or regulation. The Commission proposes excluding this section because the rulemaking implementing this subsection of section 236 has not commenced. The Commission may revisit this decision after the rulemaking implementing the Energy Policy Act of 2005 revisions to section 236 is complete.

This proposed regulation would not impose any burden on States. The only burden the proposed regulation would impose on licensees is the statutorily-mandated requirement that signs containing the quoted text in proposed § 73.70(i) be posted conspicuously at each of the listed facilities. The NRC proposes that these signs be posted at all points of entry to the protected area, or if the facility or installation does not have a protected area, at the personnel and vehicle entrances to each building that contains nuclear material. The signs may include other prohibitions already posted at the point of entry. The signs mark the area past which the unauthorized introduction of weapons or explosives would constitute a federal crime. In other words, the introduction of weapons or explosives, without authorization, into or upon the protected area or if no protected area into or upon a building containing nuclear material would be a federal crime. For purposes of this proposed section, “without authorization” means not authorized as part of one’s official duties to carry weapons or explosives. Under this proposed definition, the introduction of weapons by security guards, peace officers or military personnel into the protected area or a building where the sign is posted as part of their official duties would be “authorized” and these individuals would not be subject to criminal sanctions.

The NRC recognizes that by placing the signs at the entrance to the protected area or if no protected area at the entrance to buildings containing nuclear material means that it would not be a federal crime (under this proposed regulation) to merely stand beyond the area where the sign is posted with an unauthorized weapon or explosive. However, if anyone attacks the protected area or building where the sign is posted, he or she would be in violation of this proposed regulation because the firing of a bullet, explosive or other projectile into or upon the protected area or building where the sign is posted would constitute an unauthorized introduction of a dangerous instrument.

The signs should be easily readable day and night by both pedestrian and vehicular traffic. The NRC proposes a 90-day implementation period for this requirement to allow

licensees enough time to acquire the appropriate signs. The NRC welcomes any comments on the sufficiency of this implementation period, on the feasibility of adding this notice at each entrance to the protected area or if no protected area at every entrance to buildings containing nuclear material, and on whether there is a more effective place to post the signs.

This proposed rule should not require any changes to licensee security procedures. Under § 73.71(b)(1) and paragraph I(d) of appendix G to Part 73, licensees are required to report within one hour, followed by a written report within 60 days, “the actual or attempted introduction of contraband into a protected area, material access area, vital area, or transport.” For purposes of this proposed rule, the unauthorized introduction of dangerous weapons, explosives or other dangerous instruments would be “contraband.”

III. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is proposing criminal penalties for the unauthorized introduction of weapons or explosives into or upon certain facilities and installations subject to the regulatory authority of the NRC. This action

does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

The Need for the Proposed Action:

This proposed action is needed to implement section 229 of the Atomic Energy Act. In section 654 of the Energy Policy Act of 2005, Congress amended section 229 of the Atomic Energy Act, authorizing the NRC to issue regulations making it a federal crime to, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. Section 229 was also amended to require that each such regulation be posted conspicuously at the location involved.

Environmental Impacts of the Proposed Action:

The NRC has completed its evaluation of the proposed rule and concludes that it will not cause any significant environmental impact. The only action required by the proposed rule is the requirement in § 73.70(i) that licensees place a notice at each entrance to the protected area or if the facility or installation does not have a protected area at each entrance to a building that contains nuclear material. Licensees already post notices at the entrances to facilities, and this proposed rule allows licensees to combine the notice required in § 73.70(i) with these other notices. Therefore, the NRC has concluded that there will be little to no environmental impact of creating and posting an additional notice.

Accordingly, the NRC concludes that there will be no significant environmental impacts associated with this proposed action.

Alternatives to the Proposed Action:

As an alternative to the proposed action, the staff considered not promulgating this rule (the “no-action” alternative). This would result in leaving unfulfilled the Congressional authorization the NRC had sought. Moreover, because implementation of the proposed rule would not result in environmental impacts, the no-action alternative would not reduce the environmental impacts.

Accordingly, the Commission determined in this environmental assessment that there will be no significant offsite impact to the public from this action. However, the Commission is soliciting public comments on any aspect of the environmental assessment. These comments may be submitted to the NRC as indicated under the **ADDRESSES** heading.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The posting requirements contained in this proposed rule are not included in the definition of information collection because the public disclosure information was originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

VII. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. Congress authorized the NRC to implement by regulation section 654 of the Energy Policy Act of 2005, which establishes as a Federal crime the unauthorized introduction of weapons or explosives into NRC-designated facilities. The Atomic Energy Act requires that signs be conspicuously posted warning facility entrants of the criminal prohibition. The only costs associated with implementing the proposed rule are the costs to procure, post and maintain these signs. The Commission has considered the economic implications of this proposed rule, and has determined that there are limited costs associated with implementation.

VIII. 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 promulgated, would not have a significant economic impact upon a substantial number of small entities.

IX. Backfit Analysis

The NRC has determined that a backfit rule, 10 CFR 50.109, 70.76, 72.62, 76.76, does not apply to this proposed rule and that a backfit analysis is not required. The backfit analysis is not required because the only actions required by the proposed rule would be the procuring and posting of signs. The posting of such signs is required by section 229a.(2) of the AEA and does not involve the exercise of agency discretion and, in any event, does not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Agreement State Compatibility

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the Federal Register on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category “NRC.” Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws but does not confer regulatory authority on the State.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, 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, 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, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

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. In §73.70, the section heading is revised and paragraph (i) is added to read as follows:
§ 73.70 Records and notices.

* * * * *

(i) Licensees or certificate holders operating facilities subject to the requirements of § 73.81(c) shall conspicuously post notices at every vehicle and pedestrian entrance to the protected area, or, if a facility or installation does not have a protected area at the personnel and vehicle entrances to each building containing nuclear material. Such notices must state: “The willful unauthorized introduction of any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon these premises is a Federal crime. (42 U.S.C. 2278a.)” Every such notice must be easily readable day and night by both pedestrian and vehicular traffic entering the facility or installation. These notices may be combined with other notices.

3. In §73.81, paragraph (c) is added to read as follows:
§ 73.81 Criminal penalties.

* * * * *

(c) (1) Any individual who, without authorization, willfully carries, transports, or otherwise introduces or causes to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property into or upon any of the following facilities or installations licensed or certified by the NRC shall be subject to the criminal penalties set forth in section 229 of the Act:

- (i) Production or utilization facilities;
- (ii) High-level waste storage or disposal facilities and independent spent fuel storage installations; or
- (iii) Uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities.

(2) Licensees or certificate holders operating facilities subject to the requirements of paragraph (c)(1) of this section must follow the posting requirements in § 73.70(i).

(3) As used in this section:

- (i) “Without authorization” means not authorized as part of one’s official duties to carry weapons or explosives;
- (ii) “Introduce” means to transport or discharge a weapon, explosive or other dangerous instrument past the notice posted pursuant to § 73.70(i).

(4) For all facilities or installations described in paragraph (c)(1) of this section that do not possess nuclear material as of the effective date of this rule, this provision shall take effect upon receipt of nuclear material at the applicable facility or installation.

Dated at Rockville, Maryland, this ___ day of ___, 2008.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.