Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

Presidential Documents

Title 3—

The President

Proclamation 5905 of November 7, 1988

National Craniofacial Awareness Week, 1988

By the President of the United States of America

A Proclamation

Craniofacial conditions of some kind affect approximately 465,000 people in the United States each year. Hereditary and congenital conditions such as Down Syndrome and cleft lip and palate are the leading reasons for facial disfigurement. Hundreds of thousands of others suffer facial disfigurement from cancer. Advanced medical technology can save people who might otherwise die from accidents or burns, but their faces remain affected. People with craniofacial conditions often experience emotional isolation and rejection and live in seclusion from society.

Now, various foundations and institutions are addressing their needs. They have begun to fund programs for research and education regarding craniofacial conditions, to initiate the funding of surgical and nonsurgical treatment for people from our country and around the world, and to seek people who can be helped.

Mutual support organizations now forming are dedicated to helping the facially disfigured, their families, and the professionals who care for them. Through newsletters and computer linkages, people throughout our Nation offer shared experiences and resources for recovery. These praiseworthy mutual support groups encourage people to esteem the person behind every face.

Because of the difficulties of looking "different," it is important that the public understand the exceptional challenges confronting people with craniofacial conditions. Personal and community outreach efforts to befriend and assist these people deserve our cooperation, participation, and recognition.

The Congress, by House Joint Resolution 573, has designated the week of November 13 through November 19, 1988, as "National Craniofacial Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 13 through November 19, 1988, as National Craniofacial Awareness Week. I call upon the people of the United States and concerned organizations to observe that week with appropriate programs, ceremonies, and activities that foster awareness about craniofacial conditions and the continuing efforts to lessen the suffering of people afflicted.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 88-26215
Filed 11-8-88; 3:06 pm]
Billing code 3195-01-M

Federal Register
Vol. 53, No. 217
Wednesday, November 9, 1988

Presidential Documents

Title 3—

The President

Proclamation 5893 of November 7, 1988

National Craniofacial Awareness Week, 1988

By the President of the United States of America

A Proclamation

Craniofacial conditions of some kind affect approximately 600,000 people in the United States each year. Hereditary and congenital conditions such as Down Syndrome and cleft lip and palate are the leading reasons for facial disfigurement. Hundreds of thousands of others suffer facial disfigurement from cancer. Advanced medical technology can save people who might otherwise die from accidents or burns, but their faces remain affected. People with craniofacial conditions often experience continued isolation and rejection and live in seclusion from society.

Now, various foundations and institutions are addressing their needs. They have begun to fund programs for research and education regarding craniofacial conditions, to initiate the funding of surgical and nonsurgical treatment for people from our country and around the world, and to seek people who can be helped.

Mutual support organizations now forming are dedicated to helping the facially disfigured, their families, and the professionals who care for them. Through newsletters and computer-linkages, people throughout our Nation offer shared experiences and resources for recovery. Shared professionally mutual support groups encourage people to regard the person behind every face.

Because of the difficulties of looking "different," it is important that the public understand the exceptional challenges confronting people with craniofacial conditions. Personal and community outreach efforts to befriend and assist these people deserve our cooperation, participation, and recognition.

The Congress, by House Joint Resolution 575, has designated the week of November 13 through November 19, 1988, as "National Craniofacial Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 13 through November 19, 1988, as National Craniofacial Awareness Week. I call upon the people of the United States and concerned organizations to observe that week with appropriate programs, ceremonies, and activities that foster awareness about craniofacial conditions and the continuing efforts to lessen the suffering of people afflicted.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. [illegible]
Filed [illegible]
Billing code [illegible]

Presidential Documents

Executive Order 12655 of November 7, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees Represented by the Transportation Communications Union-Carmen Division

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act (45 U.S.C. Section 159a).

Section 9A(e) of the Act provides that the President upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
November 7, 1988.

[FR Doc. 88-26216
Filed 11-8-88; 3:07 pm]
Billing code 3195-01-M

Editorial note: For a White House announcement on the establishment of the emergency board, dated Nov. 7, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 45).

Rules and Regulations

Federal Register
Vol. 53, No. 218
Thursday, November 10, 1988

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 70, and 73

Safeguards Requirements for Fuel Facilities Possessing Formula Quantities of Strategic Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its physical protection and security personnel performance regulations and its design basis threat for fuel facilities possessing formula quantities of strategic special nuclear material (SSNM) to require protection equivalent to that in place at comparable Department of Energy (DOE) fuel facilities. These changes have been prompted by a recent study that compared NRC's security requirements for SSNM with DOE's recently upgraded security system. The changes are also supported by findings from reviews of safeguards event reports, Regulatory Effectiveness Reviews, and inspection reports. The amendments provide greater assurance that physical protection measures at these fuel facilities can protect against theft.

EFFECTIVE DATE: December 12, 1988.

FOR FURTHER INFORMATION CONTACT:
Dr. Sandra Frattali, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773; or Kristina Z. Jamgochian, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0360.

SUPPLEMENTARY INFORMATION:

Background

In 1974, a national goal was established that nuclear weapons-usable material, whether in the licensed or license-exempt sector, should receive fully adequate and essentially comparable levels of protection. The objective of providing comparable protection for SSNM has been reiterated in a number of subsequent communications by the National Security Council, Energy Research and Development Administration (now DOE), Department of Defense, and NRC. In consonance with this objective, reviews have been conducted periodically by joint NRC/DOE review teams. The findings from the most recent review (1986) indicated that DOE has placed increased emphasis on guard weaponry, training, and tactical response exercises and has upgraded some physical security measures. To maintain comparability with DOE as well as to respond to recent NRC security reviews, the NRC is amending its physical protection regulations for licensed fuel facilities possessing formula quantities of SSNM. These facilities are: General Atomics, La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock and Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Montville, Connecticut. Although the Fort St. Vrain reactor (Colorado) uses high enriched uranium fuel, it is not subject to these upgrades because of the extensive processing required to yield weapons usable material and because of the weight of the fuel elements and their low concentration of uranium. Pursuant to 10 CFR 73.5, the Commission will initiate an exemption from the new requirements for Fort St. Vrain. These amendments will provide greater assurance that security systems and security force capabilities at these facilities are comparable to those used by DOE. A remaining comparability issue relates to the use of deadly force by licensee guards. This issue is being addressed separately and is not covered by these amendments.

On December 31, 1987, the NRC published in the **Federal Register** (52 FR 49418) a proposed rule for upgrading safeguards requirements for licensed fuel facilities possessing formula quantities of SSNM. The upgrades called for: (1) Security system performance evaluation through tactical response exercises, (2) night firing qualification for guards using all assigned weapons, (3) search of 100 percent of entering personnel and packages (for explosives, firearms, and incendiary devices), (4) posting of armed guards at MAA control points, (5) providing two separate physical personnel barriers around the protected area, and (6) revision of the design basis threat at these fuel facilities to include land vehicle use by adversaries attempting to commit theft and require the implementation of countermeasures to prevent forcible vehicle entry into the protected area. The comment period ended on March 30, 1988.

Summary of Public Comment

Letters of comment were received from six respondents: four from fuel facility licensees, one from DOE, and one from a manufacturer of fences who submitted specifications on a type of security fence but did not comment on the rule itself. Copies of comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Lower Level, Washington, DC.

A summary of the public comments and their resolution follows. The comments are organized in the following categories:

1. Performance Evaluation Through Tactical Response Exercises and Tactical Response Teams (TRT);
2. Guard Force Weaponry;
3. Personnel, Package, and Material Entrance Search;
4. Protected Area Physical Barriers.

1. Performance Evaluation Through Tactical Response Exercises and Tactical Response Teams

Under the proposed rule, affected licensees would conduct tactical response exercises for each guard force shift on a quarterly basis. The exercises would demonstrate the guard force state of readiness and test the effectiveness of delay mechanisms, alarm and communication systems, response times, deployment of response forces, firing skills (simulated), and tactical maneuvers. The results would be used to determine whether additional training or security system improvements are needed. The exercises are not intended to be viewed in terms of "pass" or "fail."

The quarterly exercises could be of short duration, would have at least one exercise per guard shift, and would cumulatively represent the various lighting conditions during a 24-hour day. Each year, at least two of the quarterly exercises for each shift would include force-on-force scenarios. Also proposed was an additional, more extensive annual exercise to be observed by NRC representatives that would include force-on-force scenarios.

One letter of comment stated that quarterly exercises are more frequent than necessary and requested a reduction in the number of exercises to one per shift every four months. Another respondent requested that ther NRC observe one of the quarterly force-on-force exercises rather than have the licensee conduct a special annual exercise. A third respondent requested clarification of the number of exercises and how much prior notice the NRC needed before the NRC-observed annual exercise.

The NRC staff accepts that a routine of 13 exercises per year, seven of which are force-on-force (based on a three-shift operation, one exercise per shift per quarter, plus one annual exercise) can, over time, become less effective due to their frequent repetition and reduced learning curve. Therefore, this final rule is being modified to require a licensee, during the first year of rule implementation, to conduct a total of 12 exercises (one exercise per quarter per shift), half of which are to be force-on-force. The NRC will observe one of the quarterly force-on-force exercises and will not require an additional annual exercise. This reduces the number of exercises during the first year of compliance to 12 for a three-shift operation. During the second year and each year thereafter, licensees will be required to conduct nine exercises per year (one exercise per shift every four months), one-third of which will be force-on-force, with the NRC observing one of the force-on-force exercises. The NRC is to be notified 60 days prior to an NRC-observed, force-on-force exercise so that possible scheduling conflicts can be resolved.

This final rule requires licensees to establish a designated TRT and replaces the current general requirement for an armed response force. Creation of TRT's is expected to provide more highly motivated, professional, and effective organizations to respond to and prevent forceful attempts to remove SSNM from licensee sites. This rule also requires that TRT members have individually assigned, upgraded weaponry and an item of uniform distinctive and different from that of the guard force (e.g., cap, armband, etc.).

One licensee objected to the NRC replacing the term "armed response personnel" with "Tactical Response Team". This licensee believed that it should not be restricted in selection of a title, since the title/designation of its response force is changed periodically for security purposes. The NRC does not object to a licensee using different code names or changing code names for its TRT. When amending the security plan, however, a licensee shall use the term "Tactical Response Team".

This licensee also objected to the proposed requirement that TRT members have a distinctive item of uniform. It was the licensee's experience that fostering a spirit of elitism among a small group of individuals within the security force often only serves to create a schism and affects morale unfavorably. The NRC accepts that the establishment of the TRT could have unfavorable effects on the morale of some personnel as foreseen by the licensee. However, these negative factors, if indeed they develop, are far less important than the need for a highly effective response capability. Moreover, an elite group within the guard force need not be viewed negatively by the remaining guard force if presented properly. All members of a security force could be eligible to qualify as TRT members (as opposed to being singled out by the licensee). Ideally, if all members of the security force qualify as TRT members, they can be rotated through the schedule on an equal basis, thereby alleviating the concern of creating a separate elitist group and making shift scheduling easier.

The licensee was also concerned that a distinctive item of uniform could single out TRT members to an adversary. The NRC accepts this as a valid concern. However, the distinctive item could be small, such as a pin or badge, and not noticeable at a distance.

Under the proposed amendment, TRT members and guards who are eligible to be TRT members would have to successfully complete training in response tactics. The training would be in addition to the individual training currently required in Appendix B to Part 73. No specific criteria or standards for the training in response tactics were provided with the proposed rule. A licensee respondent suggested that the NRC should establish minimum standards but that the standards or criteria should be adaptable to site-specific situations.

The NRC agrees with this suggestion. A Tactical Training Manual has been developed for licensee use. The material can be adapted and used under a variety of conditions and circumstances. The manual provides viable approaches for licensees to use in structuring site-specific tactical response training programs.

2. Guard Force Weaponry

Under the proposed rule, all TRT members would be armed with 9mm semiautomatic pistols. Many major city law enforcement agencies, SWAT teams, and the U.S. military are shifting from revolvers to semiautomatic pistols in order to take advantage of sustained fire capability. These police upgrades respond to increased encounters with adversaries using more sophisticated weapons. After conducting a literature review and discussing with various agencies their rationale for converting from revolvers to semiautomatic pistols, the NRC included in the proposed amendments a requirement for TRT members only (not other security force personnel) to be armed with 9mm semiautomatic pistols.

The Commission explicitly solicited public comment on the requirement for equipping TRT members with semiautomatic pistols and on whether the final choice of weapons should be left to the licensee. Only one response (from a licensee) was received. It stated that the choice of weapon and caliber of weapon should be left to the individual licensee. This licensee believes that the NRC if justifying the requirement for a 9mm semiautomatic pistol on the faulty conclusions (1) that greater firepower (increased availability of rounds) equates with an enhanced ability to hit the target, and (2) that the 9mm's larger magazine (up to 15 rounds) and more rapid action allows for faster discharge of rounds and increased hit probability. The licensee also stated that certain types of revolvers could be equally justified and that after an in-depth evaluation of weapons and ammunition currently available, each licensee could best determine which meet the requirements of the site.

The NRC's rationale for the requirement is based on the advantages of the weapon. The 9mm has less recoil than revolvers currently used, making it easier to control, and thereby allowing increased accuracy. In light of the growing worldwide trend among the criminal element toward the adoption of sophisticated automatic and semiautomatic weaponry, the 9mm provides added firepower considered necessary while maintaining the necessary high degree of reliability and accuracy. Additionally, the semiautomatic pistol is easier to load in the dark, in the cold, or when one is under stress. In the event adversaries armed with semiautomatic weapons attack a facility where TRT members are equipped with standard six-round revolvers, the TRT responders would need to reload ammunition long before the opponents would. During reloading, TRT responders could be exposed to deadly fire without defense. The ability to sustain fire is of major importance. This final rule requires that all TRT members be equipped with 9mm semiautomatic pistols, with qualification and annual requalification in both day and night firing courses. The choice of model and manufacturer is left to the licensee.

The proposed rule required each TRT member be armed with a shoulder fired weapon, and at least one TRT member carry a .30 caliber or 7.62mm rifle. The requirement for a heavier rifle would provide additional effectiveness against the use of land vehicles, which is now included in the design basis threat.

Letters of comment on this issue were received from two licensees. One licensee did not agree with the large caliber weapon requirement and recommended that this option be left up to the licensee. The licensee asserted that a rifle of .30 caliber or 7.62mm will not immediately stop a vehicle and if that was NRC's intent, then nothing less than a .50 caliber heavy machine gun would be needed. A second licensee requested an exemption from this requirement due to the configuration and limited size of its facility. This licensee was concerned about various problems due to the proximity of high population areas and public reaction and, therefore, believed it unnecessary and dangerous to arm TRT members with large caliber rifles.

The requirement that one TRT member carry a rifle of at least .30 caliber or 7.62mm is retained in the final rulemaking. The Commission believes that additional capability should be available to defend against adversaries in a vehicle attempting to penetrate a protected area boundary. The intent of this requirement is not to stop the vehicle immediately, but to disable adversaries inside the vehicle. Any site-specific considerations that licensees may have once this final rulemaking is effective should be dealt with on an individual basis through appropriate procedures.

Under the proposed rule, TRT members on duty would be required to carry their individually assigned shotgun or semiautomatic rifle, with one member carrying the .30 caliber or 7.62mm weapon. Two licensee respondents believed that the weapons need not be carried but should be readily available i.e., kept a strategic locations throughout the facility. Both respondents noted that there were times when carrying shoulder fired weapons was not practical and were concerned about the safety hazard involved should the weapon have to be laid down (i.e., lunch, restrooms). Additional concerns were that the weapons may be functionally abused during the TRT members normal activities of climbing ladders and maneuvering through close areas, or contaminated should the weapon have to be laid down while performing searches in material access areas.

The requirement for TRT members to carry their assigned shoulder fired weapons while on duty is included in this final rule. The requirement "to carry" is not to be interpreted to mean "hand carry" but to be on the person as in a shoulder sling. The normal duties of a TRT member should permit immediate response and, therefore, should not include routine searches at material access areas. Likewise, while on lunch break, the TRT member should be relieved by another TRT-qualified security officer in order to avoid the need to lay the weapon down. The main rationale for TRT members to carry their assigned weapons is to permit immediate response. In the event of an adversary attack the timely delay caused by retrieving weapons from strategically located repositories could have an adverse impact on the successful containment of the adversaries.

3. Personnel, Package, and Material Entrance Search

Under the proposed amendments, search for explosives, firearms, and incendiary devices would be required of 100 percent of entering personnel and packages except for Federal, State, and local law enforcement personnel on official duty. Also, under the proposed amendments, present exemptions would continue for those delivery and inspection activities specifically designated by the licensee and approved by the Commission to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

One licensee respondent recommended that "Q" cleared armed security officers should be included in the exemption based on the fact that it could see no benefit in performing a prohibited article search on a security officer overtly carrying a weapon. In response, it is pointed out that of concern to the NRC is the issue of an insider attempting to introduce not only firearms, but also explosives and incendiary devices inside a protected area. Under this criterion, although a security officer displays an authorized handgun, searching the officer for explosives, incendiary devices, and unauthorized weapons is still necessary before the officer enters a protected area. Accordingly, the proposed search requirement is retained unchanged in the final rule.

4. Protected Area Physical Barriers

Under the proposed rule, the perimeter of the protected area of a fuel facility possessing formula quantities of SSNM would be required to have a double physical personnel barrier. The two barriers would be constructed and installed primarily to ensure the ability to assess an attempted penetration of the protected area perimeter at the time of the occurrence and secondarily to delay attempts of unauthorized exit from the protected area. The present intrusion detection systems required by NRC would be located between these two barriers.

In the sole letter of comment regarding the proposed requirement, DOE recommended that the proposed changes be deferred until a performance analysis of the existing security system has been completed and the need for change has been determined. In its detailed comments, DOE stated that two perimeter fences are not a DOE requirement and that double fences, where they have been installed, are installed on the basis of the overall performance of all security systems at these sites. DOE pointed out that only very limited adversary delay time is provided by a perimeter fence, and the potential of a second perimeter barrier is realized only if designed to enhance assessment. Relative to the intrusion detection system, DOE proposed revising the requirment to call for optimum use of the present systems and leaving the systems in their current locations until an evaluation of the usefulness of these present systems through a performance exercise is made.

The NRC recognizes that DOE has not established a generic requirement for two perimeter fences. However, all DOE facilities reviewed by the NRC/DOE Comparability Review Group do have double perimeter barriers. The NRC believes that the performance standards achieved at these DOE facilities, which are met in part by double fences, should be provided at comparable NRC-licensed facilities.

In guidance to affected licensees NRC makes clear that the intrusion detection system and the inner barrier are to be positioned and constructed to assure adequate delay after an intruder triggers an alarm. The delay must be sufficient to permit a defender to determine positively whether the triggering was due to an intruder. The interrelationship of the perimeter intrusion detection system and the double barriers is so close that it is essential to treat improvements to them simultaneously. Therefore, it is necessary for the overall performance of the protection system that the double barrier system and intrusion detection system locations (and possible reinstallation) be designed in concert. For these reasons, the barrier requirement is retained in the final rule.

Other Changes: Weapons Qualification

These amendments require night firing qualification and annual requalification by the security force and TRT members with all weapons assigned to them. This revises the current requirement for night familiarization firing only. Specified courses (included in Appendix H) for qualification and annual requalification with revolvers, shotguns, and rifles are added as requirements in this final rulemaking. Licensees may develop and sumibt for NRC approval a qualification course for day firing for 9mm semiautomatic pistols which TRT members must now carry. Additionally, licensees may also substitute shoulder firing for hip firing for the day shotgun qualification course contained in Appendix B to Part 73 and reflect this change in their amended security plan. Licensees are required to retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification. Microfilm documents are acceptable.

Implementation

Currently, under conditions of license, licensees carry out certain of the measures called for in the amendments, namely: (1) Search of 100 percent of personnel and packages admitted to the protected area, (2) posting of armed guards at MAA control points, and (3) night firing qualification for guards using all assigned weapons. Under the new amendments, each licensee will modify its physical security plan to show how all of the new requirements would be carried out and will submit the plan to the NRC for approval within 180 days after the effective date of these amendments. The license conditions listed earlier will be withdrawn at the time that the corresponding commitments in the approved plan become effective. The licensee will carry out the various additional new commitments not already implemented by license conditions in the approved plan commencing at various dates, ranging from 30 to 365 days after NRC approval of the plan.

Finding of No Significant Environmental Impact

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. These amendments affect neither the safety of operation nor the routine of, or exposure to, radioactivity from fuel facilities possessing formula quantities of SSNM. Their only intent is to provide greater protection against the revised design basis threat and thus reduce the risks of theft of SSNM from these facilities. Of the six measures proposed, three have no identifiable environmental impact; namely, initiation of security system performance evaluations through tactical team exercises, night firing qualification of guards using all assigned weapons, and posting of armed guards at MAA control points. The 100 percent search of entering personnel and packages would require installation of additional walk-through detection equipment which likely would require construction activities to expand or modify the existing building in which this equipment is located. The requirement regarding protected area personnel barriers would necessitate construction, on the licensee's property, of a second barrier. Finally, the installation of structures to prevent forcible vehicle entry would likely require the deployment of vehicle barriers which would be installed on the licensee's property at or near the protected area boundary at points accessible to vehicles. These construction activities at four current licensee sites and at any sites of future fuel facility licensees who require possession of formula quantities of SSNM are considered to have a minor impact on the environment and support a finding that the final rule involves no significant environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555. Single copies of the environmental assessment and finding of no significant impact are available from Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150-0002.

Public reporting burden for this collection of information is estimated to average 2.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to The Records and Reports Management Branch, Mail Stop P-530, Division of Information Support Services, IRM, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555. Single copies of the analysis may be obtained from Dr. Sandra D. Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3773.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The rule affects four licensees who operate fuel facilities possessing formula quantities of SSNM under 10 CFR Parts 70 and 73. They are GA Technologies Inc., La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock & Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Uncasville, Connecticut. The companies that own these plants are dominant in their service areas and do not fall within the scope of the definition of small entities set forth in section 605(b) of the Regulatory Flexibility Act of 1980 or within the definition of Small Business size standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, a backfit analysis is not required since these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Hazardous materials-transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, 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 Recorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 70, and 73.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Appendix C—[Amended]

2. In Appendix C of Part 2, footnote 10 to Supplement III is revised to read "[10] See 10 CFR 73.2 for the definition of 'formula quantity.' "

3. In Appendix C of Part 2, footnote 11 to Supplement III is revised to read "[11] See 10 CFR Part 73.2 for the definition of 'special nuclear material of moderate strategic significance.' "

4. In Appendix C of Part 2, footnote 12 to Supplement III is revised to read "[12] See 10 CFR Part 73.2 for the definition of 'special nuclear material of low strategic significance.' "

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 70.22 [Amended]

6. In § 70.22 paragraph (k) is amended by revising "as defined under § 73.2 (x) and (y) of this chapter" to read "as defined under § 73.2 of this chapter."

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

7. The authority citation for CFR Part 73 is revised 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) is 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), and 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 73.20(c)(1), 73.24(b)(1), 73.26 (b)(3), (h)(6), and (k)(4), 73.27 (a) and (b), 73.37(f), 73.40 (b) and (d), 73.46 (g)(6) and (h)(2), 73.50 (g)(2), (3)(iii)(B), and (h), 73.55 (h)(2) and (4)(iii)(B), 73.57, 73.70, 73.71, and 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

8. In § 73.1, paragraph (a)(2)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

(a) * * *

(2) Theft or diversion of formula quantities of strategic special nuclear material.

(i) A determined, violent, external assault, attack by stealth, or deceptive actions by a small group with the following attributes, assistance, and equipment:

(A) Well-trained (including military training and skills) and dedicated individuals;

(B) Inside assistance that may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both;

(C) Suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long-range accuracy;

(D) Hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safe-guards system;

(E) Land vehicles used for transporting personnel and their hand-carried equipment; and

(F) the ability to operate as two or more teams.

* * * * *

9. In § 73.2, remove all alphabetical designators and place all definitions in alphabetical sequence; paragraph (1) of the definition of "Special nuclear material of low strategic significance" is amended by removing "§ 73.2(x)(1)" and inserting "paragraph (1) of the definition of strategic nuclear material of moderate strategic significance set out in this section;" insert new definition, "Tactical Response Team," in proper alphabetical sequence; and revise the definition for "Physical Barrier" to read as follows:

§ 73.2 Definitions.

* * * * *

"Physical Barrier" means: (1) Fences constructed of No. 11 American wire gauge, or heavier wire fabric, topped by three strands or more of barbed wire or similar material on brackets angled inward or outward between 30° and 45° from the vertical, with an overall height of not less than 8 feet, including the barbed topping; (2) building walls, ceilings and floors constructed of stone, brick, cinder block, concrete steel or comparable materials (openings in which are secured by grates, doors, or covers of construction and fastening of sufficient strength such that the integrity of the wall is not lessened by any opening), or walls of similar construction, not part of a building, provided with a barbed topping described in paragraph (1) of this definition of a height of not less than 8 feet; or

* * * * *

"Tactical Response Team" means the primary response force for each shift which can be identified by a distinctive item of uniform, armed with specified weapons, and whose other duties permit immediate response.

* * * * *

10. In § 73.46, paragraphs (b)(3)(i), (b)(4), (b)(6), (c)(1), (d)(4)–(6), (d)(9), and (h)(3) are revised and paragraphs (b)(7)–(9) and (i) are added to read as follows:

§ 73.46 Fixed site physical protection systems, subsystems, components, and procedures.

* * * * *

(b) *Security organization.* * * *

(3) * * *

(i) Written security procedures which document the structure of the security organization and which detail the duties of the Tactical Response Team, guards, watchmen, and other individuals responsible for security. The licensee shall retain a copy of the current procedures as a record until the Commission terminates the license for which these procedures were developed and, if any portion of these procedures is superseded, retain the superseded material for three years after each change; and

(4) The licensee may not permit an individual to act as a guard, watchman, Tactical Response Team member, or other member of the security organization unless the individual has been trained, equipped, and qualified to perform each assigned security duty in accordance with Appendix B of this part, "General Criteria for Security Personnel," In addition, guards and Tactical Response Team members shall be trained, equipped, and qualified in accordance with paragraphs (b)(6) and (b)(7) of this section. Upon the request of an authorized representative of the Commission, the licensee shall demonstrate the ability of the physical security personnel, whether licensee or contractor employees, to carry out their assigned duties and responsibilities. Each guard, watchman, Tactical Response Team member, or other member of the security organization, whether a licensee or contractor employee, shall requalify in accordance with Appendix B of this part, and , for guards and Tactical Response Team members, in accordance with paragraph (b)(7) of this section, at least every 12 months. The licensee shall document the results of the qualification and requalification. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

* * * * *

(6) Each guard shall be armed with a handgun, as described in Appendix B of this part. Each Tactical Response Team member shall be armed with a 9mm semiautomatic pistol. All but one member of the Tactical Response Team shall be armed additionally with either a shotgun or semiautomatic rifle, as described in Appendix B of this part. The remaining member of the Tactical Response Team shall carry, as an individually assigned weapon, a rifle of no less caliber than .30 inches or 7.62mm.

(7) In addition to the qualification criteria of Appendix B of this part, guards and Tactical Response Team members shall qualify and requalify annually for night firing with assigned weapons in accordance with Appendix H of this part. The licensee or the licensee's agent shall document the results of weapons qualification and requalification for night firing. The licensee shall retain the documentation of each qualification and requalification as a record for three years after each qualification and requalification.

(8) In addition to the training requirements contained in Appendix B of this part, Tactical Response Team members shall successfully complete training in response tactics. The licensee shall document the completion of training. The licensee shall retain the documentation of training as a record for three years after training is completed.

(9) The licensee shall conduct Tactical Response Team and guard exercises to demonstrate the overall security system effectiveness and the ability of the security force to perform response and contingency plan responsibilities and to demonstrate individual skills in assigned team duties. During the first 12-month period following the date specified in paragraph (i)(2)(ii) of this section, an exercise must be carried out at least every three months for each shift, half of which are to be force-on-force. Subsequently, during each 12-month period commencing on the anniversary of the date specified in paragraph (i)(2)(ii) of this section, an exercise must be carried out at least every four months for each shift, one third of which are to be force-on-force. The licensee shall use these exercises to demonstrate its capability to respond to attempts to steal strategic special nuclear material. During each of the 12-month periods, the NRC shall observe one of the force-on-force exercises which demonstrates overall security system performance. The licensee shall notify the NRC of the scheduled exercise 60 days prior to that exercise. The licensee shall document the results of all exercises. The licensee shall retain the documentation of each exercise as a record for three years after each exercise is completed.

(c) *Physical barrier subsystems.* (1) vital equipment must be located only within a vital area, and strategic special nuclear material must be stored or processed only in a material access area. Both vital areas and material access areas must be located within a protected area so that access to vital equipment and to strategic special nuclear material requires passage through at least three physical barriers. The perimeter of the protected area must be provided with two separated physical barriers with an intrusion detection system placed between the two. The inner barrier must be positioned and constructed to enhance assessment of penetration attempts and to delay attempts at unauthorized exit from the protected area. The perimeter of the protected area must also incorporate features and structures that prevent forcible vehicle entry. More than one vital area or material access area may be located within a single protected area.

* * * * *

(d) *Access control subsystems and procedures.*

* * * * *

(4)(i) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals for firearms, explosives, and incendiary devices must be made and authorization must be checked at these points except for Federal, State, and local law enforcement personnel on official duty and United States Department of Energy couriers engaged in the transport of special nuclear material. The search function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of detection equipment capable of detecting both firearms and explosives. The individual responsible for the last access control function (controlling admission to the protected area) shall be isolated within a structure with bullet resisting walls, doors, ceiling, floor, and windows.

(ii) When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into a protected area, the licensee shall conduct a physical pat-down search of that individual. Whenever firearms or explosives detection equipment at a portal is out of service or not operating satisfactorily, the licensee shall conduct a physical pat-down search of all persons who would otherwise have been subject to search using the equipment.

(5) At the point of personnel and vehicle access into a protected area, all hand-carried packages except those carried by individuals exempted from personal search under the provisions of paragraph (d)(4)(i) of this part must be searched for firearms, explosives, and incendiary devices.

(6) All packages and material for delivery into a protected area must be checked for proper identification and authorization and searched for firearms, explosives, and incendiary devices prior to admittance into the protected area, except those Commission-approved delivery and inspection activities specifically designated by the licensee to be carried out within material access, vital, or protected areas for reasons of safety, security, or operational necessity.

* * * * *

(9) The licensee shall control all points of personnel and vehicle access to material access areas, vital areas, and controlled access areas. At least two armed guards trained in accordance with the provisions contained in paragraph (b)(7) of this section and Appendix B of this part shall be posted at each material access area control point whenever in use. Identification and authorization of personnel and vehicles must be verified at the material access area control point. Prior to entry into a material access area, packages must be searched for firearms, explosives, and incendiary devices. All vehicles, materials and packages, including trash, wastes, tools, and equipment exiting from a material access area must be searched for concealed strategic special nuclear material by a team of at least two individuals who are not authorized access to that material access area. Each individual exiting a material access area shall undergo at least two separate searches for concealed strategic special nuclear material. For individuals exiting an area that contains only alloyed or encapsulated strategic special nuclear material, the second search may be conducted in a random manner.

* * * * *

(h) *Contingency and response plans and procedures.*

* * * * *

(3) A Tactical Response Team consisting of a minimum of five (5) members must be available at the facility to fulfill assessment and response requirements. In addition, a force of guards or armed response personnel also must be available to provide assistance as necessary. The size and availability of the additional force must be determined on the basis of site-specific considerations that could affect the ability of the total onsite response force to engage and impede the adversary force until offsite assistance arrives. The rationale for the total number and availabiliy of onsite armed response personnel must be included in the physical protection plans submitted to the Commission for approval.

* * * * *

(i) *Implementation schedule for revisions to physical protection plans.* (1) By June 12, 1989, each licensee shall submit a revised fixed site physical protection plan to the Commission for approval. The revised plan must describe how the licensee will comply with the requirements of paragraphs (b)(3)(i), (b)(4), (b)(6), (b)(7), (b)(8), (b)((9), (c)(1), (d)(4), (d)(5), (d)(6), (d)(9), and (h)(3) of this section. Revised plans must be mailed to the Director, Division of Safeguards and Transportation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Each licensee shall carry out the new commitments in the revised plan in accordance with the following schedule:

(i) Commencing 30 days after Commission approval of the revised plan for commitments related to paragraphs (b)(3)(i), (d)(4), (d)(5), (d)(6) and (d)(9) of this section.

(ii) Commencing 60 days after Commission approval of the revised plan for commitments related to paragraphs (b)(4), (b)(6), (b)(7), (b)(8), (b)(9) and (h)(3) of this section.

(iii) Commencing 365 days after Commission approval of the revised plan for commitments related to paragraph (c)(1) of this section.

Appendix H—[Amended]

11. A new Appendix H is added to read as follows:

APPENDIX H—MINIMUM QUALIFICATION CRITERIA FOR NIGHT FIRING

Weapon	Stage	Distance	No. Rounds	Timing	Position	Target	Scoring	Lighting
Handgun:								
Revolver	1	7 yds	12	35 sec	Standing—No artificial support.	B-27	Minimum qualifying=70%.	For all courses: 0.2 footcandles at center mass of target area.
	2	15 yds	12	45 sec	do			
Semi-automatic	1	7 yds	2 + clip	30 sec	do		do	
	2	15 yds	2 + clip	40 sec	do			
Shotgun	1	25 yds	2 Rifled slugs	30 sec (Load 2 slugs—chamber empty—Time starts—Commence firing.)	Standing—strong shoulder.	B-27	Rifled-Slug: Hits=strike area on target (10, 9, 7).	
	1	15 yds	5 Double 00 buckshot.	10 sec. (Load 5rds Buckshot—chamber empty—Time starts—Commence firing.)	do	B-27	Double 00 Buckshot: Hits in black=2 pts (5rds x 9 pellets/rd x 2 pts=90 Mimimum qualifying=70%.	
Rifle	1	25 yds	1—5rd mag	45 sec	Standing—Barricade	B-27		
	2	25 yds	1—5rd mag	45 sec	Standing			
	3	25 yds	1—5rd mag	45 sec	Kneeling		Mimimum qualifying=70%.	
	4	25 yds	1—5rd mag	45 sec	Prone			

Note.—All firing is to be done only at night. Use of night simulation equipment during daylight is not allowable. Use of site specific devices (i.e., laser, etc.) should be included in the licensee amended security plan for NRC approval.

Dated at Rockville, MD, this 4th day of November 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88–26059 Filed 11–9–88; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 88–1182]

Accounting Policy Relating to Acquisition, Development and Construction Loans

Date: November 2, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Statement of Policy; withdrawal.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is removing its statement of accounting policy relating to acquisition, development and construction ("ADC") arrangements, and consequently terminates the proposed rule issued March 4, 1987. Board Res. No. 87–240, 52 FR 7887 (March 13, 1987). All institutions, the accounts of which are insured by the FSLIC ("insured institutions") or affiliates thereof, should follow generally accepted accounting principles ("GAAP") in classifying and accounting for ADC arrangements in reports or financial statements filed with the Board or the FSLIC. GAAP on ADC arrangements is currently set forth in the "Notice to Practitioners" issued by the American Institute of Certified Public Accountants ("AICPA") and published in the February 10, 1986 issue of the CPA Letter. By this amendment, the Board is reducing the number of documents which insured institutions must consult in determining how to account for transactions. At the same time, the Board continues its longstanding policy that insured institutions should apply the guidance of the accounting profession in determining whether a transaction characterized as an ADC loan is in fact a loan or whether, in substance, it is a real estate investment or a joint venture.

EFFECTIVE DATE: November 10, 1988.

FOR FURTHER INFORMATION CONTACT: Carol H. Larson, Professional Accounting Fellow, (202) 331–4577, Ben F. Dixon, Policy Analyst, (202) 331–4599, Office of Regulatory Activities, 801 17th Street NW., Washington, DC 20006, or Deborah Dakin, Regulatory Counsel, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In the early 1980's, insured institutions began entering into an increasing number of acquisition, development and construction arrangements. These ADC arrangements may be structured as loans, but the insured institution has virtually the same risks and potential rewards as those of an owner or joint venturer. Because this type of arrangement had not been common previously, clearly-defined accounting literature providing authoritative accounting guidance did not exist. As a result, accounting for ADC arrangements varied widely in practice. This was of particular concern to not only the accounting profession but also the Board, because ADC arrangements were more common among thrift institutions than among commercial banks.

In response, the AICPA's Accounting Standards Executive Committee ("AcSEC"), in November 1983, and the Savings and Loan Committee, in November 1984, issued two notices to practitioners addressing ADC arrangements. Professional Notes, *Guidance on Accounting for Real Estate Acquisition, Development or Construction Loans: Enhancing the Accounting Manual*, Journal of Accountancy, November 1983, at 51; *Notice to Practitioners on ADC Loans*, CPA Letter, November 26, 1984, at 3. In 1985, the Board adopted these notices to practitioners as its accounting policy in this area "to put into regulatory format the accounting guidance that had been developed by the accounting profession and to state that there was *no substantive difference* between the Board's regulatory treatment and GAAP [generally accepted accounting principles]." Board Res. No. 85–291, 50 FR 18233, 18235 (April 30, 1985) (emphasis in original). The Board's statement of policy, codified at 12 CFR 571.17, incorporated both notices, neither of which separately addressed all aspects of ADC arrangements. The Board's regulations continued to provide that except where the Board's regulations specifically required different accounting principles or procedures to be employed, insured institutions were to prepare financial statements and reports to the Board or the FSLIC in accordance with GAAP. 12 CFR 563.23–3(c).

As a result of continuing practice problems, the AICPA's AcSEC issued in February 1986 a Third Notice to practitioners superseding the two previous notices. *Notice to Practitioners on ADC Loans*, CPA Letter, February 10, 1986, at 3. This Third Notice was intended to clarify and expand upon the guidance provided in the two previous notices.

On March 4, 1987, the Board proposed to amend its ADC policy by adopting the Third Notice substantially in its entirety. The proposed policy would have deviated from GAAP, however, in that the lender's loan and accrued interest, real estate investment, or joint venture investment would be subject to recoverability under the market value concept of the Board's then-effective appraisal policies as set forth in staff memorandum R41c rather than the net realizable value concept which might be approriate for GAAP purposes.

The proposal also specifically sought comment on the effective date and transition rule of the amendment. Comments were sought because of inconsistencies between the effective date contained in the Third Notice and the determination by the Notice to a broader range of ADC arrangements. The proposal presented three alternatives: the AICPA effective date (the Third Notice governs only ADC transactions entered into after February 10, 1986); the SEC transition rule (the Third Notice applies to all ADC arrangements, regardless of when originated, but only financial statements prepared for periods ending on or after January 1, 1986 must reflect the asset reclassifications); and the Board compromise rule (the Third Notice applies to all ADC arrangements regardless of the date of origination, but only financial statements prepared for periods ending on or after the date of publication of the final policy statement must reflect this classification).

Summary of Comments Received on the Proposal

The Board received a total of 26 comment letters in response to its proposal. Seventeen comments were received from FSLIC-insured institutions, 5 from thrift trade associations, 2 from professional accounting societies, 1 from a thrift