

June 7, 2012

MEMORANDUM FOR: R. W. Borchardt  
Executive Director for Operations

Patrick Moulding, Acting Director  
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M.,  
THURSDAY, JUNE 7, 2012, COMMISSIONERS' CONFERENCE  
ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND  
(OPEN TO PUBLIC ATTENDANCE)

I. SECY-12-0009 – Final Rule: 10 CFR 73.37, “Physical Protection of Irradiated Fuel in Transit” (RIN 3150-A164)

The Commission approved a final rule amending the security requirements for irradiated fuel in transit in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, subject to the attached changes. This rule establishes generically applicable security requirements similar to the requirements currently imposed by NRC Order EA-02-109, “Issuance of Order for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams.” This rule also establishes acceptable performance standards and objectives for the protection of spent nuclear fuel shipments from theft, diversion, or radiological sabotage. Additionally, this rule addresses, in part, a 1999 petition for rulemaking from the State of Nevada (PRM-73-10) that requested the NRC strengthen its regulations governing the security of spent nuclear fuel shipments against malevolent acts.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

7/9/12)

The Commission has approved rescinding the Orders for spent nuclear fuel in transit on the effective date of the final rule in accordance with the Rescission Plan for Orders as provided in Enclosure 2 to SECY-12-0009.

For purposes of consistency, the staff should also revise the footnotes in Appendix M to Part 110 – “Categorization of Nuclear Material” to reflect the self-protecting standard radiation dose contained in the IAEA standard for physical protection of nuclear material –INFCIRC/225/Rev. 5, during a future revision to the regulation.

II. SECY-12-0026 - Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2), Referred Ruling in LBP-11-32 (Nov. 18, 2011); San Luis Obispo Mothers for Peace's Petition for Partial Interlocutory Review of LBP-11-32 (Dec. 5, 2011)

The Commission (with Chairman Jaczko concurring in part and dissenting in part) approved a Memorandum and Order responding to both the Licensing Board's referral of a portion of its decision that rejected a proposed new contention filed by the San Luis Obispo Mothers for Peace, as well as to a petition for interlocutory review of the remaining portion of the Board's decision. The Memorandum and Order declines review of the Board's referred ruling and denies the petition for interlocutory review without prejudice.

(Subsequently, on June 7, 2012, the Secretary signed the Memorandum and Order.)

III. SECY-12-0058 – Virginia Electric and Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (Combined License Application for North Anna Unit 3); Dominion's Petition for Review of LBP-11-22

The Commission approved a Memorandum and Order taking review of the Atomic Safety and Licensing Board's order denying Virginia Electric and Power Company's (Dominion's) motion to terminate the contested proceeding on its combined license application for the North Anna Unit 3. The Memorandum and Order reverses the Board's decision in LBP-11-22 to keep the adjudicatory record open and to retain jurisdiction, and remands the case to the Board for further proceedings.

(Subsequently, on June 7, 2012, the Secretary signed the Memorandum and Order.)

IV. SECY-12-0067 – Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), Docket No. 50-293-LR

The Commission<sup>1</sup> (with Chairman Jaczko dissenting) approved a Memorandum and Order responding to a petition for review by Pilgrim Watch of the Atomic Safety and Licensing Board's decision in LBP-12-1 to deny its request for hearing on a new contention based on the Fukushima Dai-ichi accident. The Memorandum and Order denies Pilgrim Watch's petition for review.

(Subsequently, on June 7, 2012, the Secretary signed the Memorandum and Order.)

Attachment: Changes to the Final Rule in SECY-12-0009

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<sup>1</sup> Commissioner Apostolakis did not participate in this matter.

cc: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
EDO  
OGC  
CFO  
OCAA  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ASLBP (via E-Mail)  
PDR

### Changes to the Final Rule in SECY-12-0009

The statements of consideration and guidance document should be revised to explain that the clarifications to the definition of radiological sabotage, as that definition pertains to the protection of spent fuel during transportation, do not change the level of security required during spent fuel shipments and these documents should explain that the clarifications should not be construed as a change to the definition of sabotage as it more broadly applies to other provisions of 10 CFR Part 73.

Further, the statements of consideration should clarify that the purpose of the clarification is to convey that if the current definition of sabotage and the requirements for spent fuel transportation are followed, economic consequences and the social disruption that might result from sabotage are likely to be minimized. Additionally, the following specific revisions should be made to the statements of consideration.

1. Federal Register Notice (FRN) page 14, line 19, revise to read: “..1 Sv **Gray** (100 rems **rad**) per hour...”
2. FRN page 8, line 21, revise to read: “... storage incident**al** to transport...”
3. FRN page 13, line 9, revise to read: “... Controlled Nuclear Information (~~UCNI~~) or Official Use Only (~~OUO~~)...”
4. FRN page 17, line 15, revise to read: “...SNF shipments ~~which~~ **that** are...”
5. FRN page 19, revise the 2nd sentence to read: “**In the proposed rule,** ~~The NRC determined that the existing definition already encompasses action of the type described by the petitioner~~ **does not need to be revised.**”
6. FRN page 19, revise the 4<sup>th</sup> sentence to read: “ The NRC **proposed** ~~addressing~~ **ed** this petition request by clarifying the definition of radiological sabotage in NUREG-0561, **which is the** associated regulatory guidance.”
7. FRN page 21, lines 19-21, revise to read: “The RAMTASC indicated that **specific routing requirements that minimize shipments through** populated areas could ~~require~~ **lead to** shipments ~~to being~~ transported...”
8. FRN page 22, line 2, revise to read: “...agreed that ~~each of the several~~ routing...”
9. FRN page 27, line 10, add a period to the end of the sentence.
10. FRN page 27, lines 13-14, revise to read: “...requires **that** the licensee’s physical protection ~~plan~~ **system** ~~to~~ include...”
11. FRN page 41, line 1, revise to read: “...Nuclear Infrastructure Council (~~NIC~~)...”
12. FRN page 42, revise “Response to Comment 2” to read: “**The NRC agrees with this comment and notes that the International Atomic Energy Agency (IAEA) standard for physical protection of nuclear material, INFCIRC 225/rev. 5, specifies a “radiation level”**”

in units of Gray/hr (rad/hr) in applying the self-protecting standard. In order to avoid confusion and to maintain consistency with DOT labeling guidelines for radioactive material the IAEA, all references to the self-protecting standard will use Gray (rad) as the units. Additionally, the phrase "0.91 meters (3 feet)" has been changed to "1 meter (3.3 feet)." In addition, based on 49 CFR 173.403, "Definitions," this change will conform to the units used in the definition of transport index (TI), which is a very similar concept." \

13. FRN page 43, line 6, add a comma after "revisions,"
14. FRN page 58, line 13, revise to read: "... this issue is being was addressed..."
15. FRN page 58, lines 15-16, revise to read: "... which was published as a proposed rule on December 8, 2010 (75 FR 75644) approved by the Commission on January 30, 2012."
16. FRN page 87, line 21, revise to read: "...With regards to..."
17. FRN page 87, line 22, revise to read: "...issue is being was addressed..."
18. FRN page 88, lines 1-2, revise to read: "...which was published as a proposed rule for public comment on December 8, 2010 (75 FR 75644) approved by the Commission on January 30, 2012."
19. FRN page 107, line 20, revise to read: "...requires licensees to..."
20. FRN page 120, line 6, revise to read: "...in excess of 1 GySv (100 rad rems) per hour..."
21. FRN page 125, lines 21-22, revise to read: "...notified, each Tribal official or to the Tribal official's designee previously notified, and ..."