

September 14, 2000

MEMORANDUM TO: William D. Travers
Executive Director for Operations

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

SUBJECT: STAFF REQUIREMENTS - SECY-00-0160 - WITHDRAWAL OF
PROPOSED RULE AND DENIAL OF PETITION FOR
RULEMAKING SUBMITTED BY THE PUBLIC CITIZEN
LITIGATION GROUP AND THE CRITICAL MASS ENERGY
PROJECT

The Commission has approved publication of the Federal Register notice denying the petition for rulemaking to amend the regulatory criteria for an extraordinary nuclear occurrence (ENO) and withdrawing the associated rule proposed in 1985. The changes in the attachment should be incorporated prior to publication.

(EDO)

(SECY Suspense:

10/13/00)

As noted in the paper, the staff should contact the petitioners and provide them with the details behind the final decision and the reasons for the delay. In addition, the staff should convey the Commission's regret that the final decision was delayed for such a long period. The staff should be prepared to address questions from the media regarding the basis for the denial and the reasons for the delay in reaching a decision.

The staff should advise the Commission of any actions that are necessary to ensure the rulemaking prioritization process has been or will be changed to prevent such inordinate delays in the future.

The staff should provide additional information about any pending petitions that were received by the NRC on or before June 1, 1996. The staff should detail the status of any rulemakings or other actions, the reason for the delay, whether the petitioners are aware of the bases for the delay, and the staff's best estimate for completing action on the petition, options that would allow the schedule to be expedited, and the implications if the staff's schedule were expedited.

Attachment: Changes to the Federal Register Notice in SECY-00-0160

SECY NOTE: THIS SRM, THE SUBJECT SECY PAPER, AND THE RELATED COMMISSION VOTING RECORD WILL BE MADE PUBLICLY AVAILABLE 5 BUSINESS DAYS AFTER THE LETTERS HAVE BEEN DISPATCHED TO THE PETITIONERS.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Changes to the Federal Register Notice in SECY-00-0160

1. On page 1, paragraph 1, revise the last line to read ‘ ... none of the options in the proposed rule ~~are~~ **is** acceptable.’
2. On page 3, revise line 2 to read ‘ ... action constituted ~~s~~ the Commission’s’
3. On page 3, last paragraph, revise line 6 through the end on page 4 to read ‘ ... two-part test is **specifically contemplated** ~~statutorily required~~’ by Section 11.j of the AEA. **Section 11.j** ~~that~~ defines an ENO as an event **(1) causing an offsite discharge of certain radioactive material or in which offsite radiation levels that** are deemed to be substantial **and (2) that has resulted in, or probably will result in, substantial** damages to persons or property ~~offsite have resulted, or probably will result, in substantial damages offsite.~~ Thus, **applying the criteria specified in 10 CFR 140.84,** the NRC ~~first~~ must ~~first~~ find that a substantial ~~offsite~~ discharge of radioactive material **has occurred** or a substantial ~~offsite~~ radiation level ~~offsite~~ has **resulted.** ~~occurred, applying the criteria specified in 10 CFR 140.84.~~ Second, if this finding is made, the NRC must then make a finding **that** ~~whether~~ substantial damages to persons or property offsite have been or probably will be incurred ~~, applying the criteria specified in 10 CFR 140.85.~~ If **both** ~~this~~ findings **are** ~~is~~ also made, the Commission must then **must** find that the event’ Also, delete footnote 1.
4. On page 5, 1st full paragraph, revise the last line to read ‘ ... petitioners’ first request ~~is~~ **was** denied.’
5. On page 6, 1st full paragraph, revise line 5 to read ‘ ... suggested that a more slowly developing accident’
6. On page 7, 1st full paragraph, revise lines 1 through 4 to read ‘Option 1 **would** modify ~~ied~~ §140.84(a) to **provide that a finding of** define a substantial discharge of radioactive material or substantial radiation level offsite **should be** ~~as~~ based on **a determination finding** “that one or more ... doses” in excess of **certain** ~~the~~ specified limits.
7. On page 7, last paragraph, revise line 7 to read ‘ ... 2 threshold ~~is~~ **was** that a’
8. On page 7, last paragraph, revise lines 8 and 9 to read ‘ ... during the course of an accident ~~as evidence that substantial damages to persons or property offsite have been sustained.~~
9. On page 8, last paragraph, revise line 3 to read ‘ ... **Illinois** Department of Nuclear Safety of the State of Illinois said that it’
10. On page 9, paragraph 1, revise lines 6 and 7 to read ‘ ... arose not from the criteria, **but from the fact that** ~~but because~~ the accident’
11. On page 9 paragraph 1, revise line 9 to read ‘ ... regulatory criteria ~~can~~ **would** relieve the Commission’

12. On page 9, last paragraph, revise lines 1 and 2 to read ‘ ... changing the criteria for ~~determining that an ENO had occurred~~ stated that the reduction of the dose level to **sustain a finding of** for a substantial offsite’
13. On page 11, 2nd full paragraph, revise line 1 to read ‘In addition, **section 11.j of** the AEA (~~42 USC Sec. 2014~~) **indicates** states that the dual’
14. On page 12, the sentence at the top of the page should be included with the previous paragraph and not stand alone as a separate paragraph. It should be revised to read ‘... that **the a determination that an ENO has occurred requires findings of substantial releases and of substantial damages** of ~~substantial damages~~ should only be made if a ~~finding of substantial releases~~ has been made. Also, delete footnote 7.
15. On page 13, in paragraph (2), delete the second, third and fourth sentences (The legislative history ... justify changing them.) and move them with their footnotes to the end of the paragraph. Begin the replaced sentence with ‘**Furthermore, t** The legislative history’ Revise the beginning of the old 5th sentence to read ‘**Furthermore, t** The Commission’
16. On page 13, revise the last line to read ‘ ... in the *Federal Register* notice ; for the 1985 proposed rule, **was** is not **seen so much as** a difficulty with’
17. On page 14, revise line 1 to read ‘ ... criteria to TMI-2, but, **rather, was seen as** is a perceived inadequacy **of** in the ENO’
18. On page 14, revise line 2 to read ‘**But t** The PAGs were established’
19. On page 14, revise line 12 to read ‘ ... regulations have been conservatively **determined arrived at** and for a’
20. On page 15, paragraph (1), insert the following after the 1st sentence: ‘**The Commission believes that, contrary to the *Federal Register* notice for the proposed rule, the derivation of timely and accurate estimates of monetary damages is possible. The Commission is confident that, should an event meriting an ENO determination occur again, individuals and consulting firms with experience in estimating evacuation costs, changes in property values, loss of time from work, and other parameters can be assembled to make estimates of monetary damages. Moreover, as** As previously noted’
21. On pages 15 and 16, in paragraph (1), delete the last two sentences (Furthermore, the Commission believes ... of monetary damages.)
22. On page 16, the second full paragraph (the paragraph after (2)) should be marked as (3).
23. On page 17, revise line 3 from the top to read ‘ ... ENO determinations defined **in** Section 11.j. of the’
24. On page 17, delete footnote 12.