

COMSECY-01-0029

October 16, 2001

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: William D. Travers **/RA/**
Executive Director for Operations

SUBJECT: TO INFORM THE COMMISSION ON REVISIONS TO FINAL PART 63
RULEMAKING PACKAGE DUE TO THE TERRORIST ACTIVITIES OF
SEPTEMBER 11

The staff has completed its revisions to draft final Part 63 based on the Staff Requirements Memorandum of September 7, 2001. In light of the terrorist activities of September 11, the staff has made additional revisions to three responses to comments that raised concern over potential terrorist activities. The revisions were in the form of additional clarification of Commission activities as described in the press release of September 21, 2001, (revised responses are attached with added text emboldened).

The Office of Management and Budget approved Part 63 on October 9, 2001, under the Paperwork Reduction Act. Staff intends to submit final Part 63 to the Federal Register for publication in 5 working days unless otherwise directed by the Commission.

SECY, please track.

Attachment: Revisions to responses to comments

CC: SECY
OGC
OPA
OCA
OCFO

CONTACT: Tim McCartin, NMSS/DWM
(301) 415-7285

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2.5 EMERGENCY PLANNING CRITERIA

Issue 2: Will DOE's emergency plans be sufficiently comprehensive to include such scenarios as emergency evacuation procedures and responses to terrorist activity?

Comment. Some commenters were concerned whether DOE would have adequate, effective, and sufficiently comprehensive plans and procedures to address most, if not all, potential accidents, incidents, and/or contingencies.

Response. The rule requires DOE to have plans to cope with radiological accidents (emergency planning at § 63.161) and provide for physical protection [§ 63.21(b)(3)]. These plans are required to address a number of criteria to ensure that DOE is prepared to respond, both on site and off site, to accidents, and that DOE has the capability to detect and respond to unauthorized access and activities that could threaten the physical protection of HLW. As noted in the previous response, NRC and FEMA regulations, as well as DOE orders, require that DOE have adequate plans and procedures in place to address any potential accidents and incidents. DOE's emergency plan and physical protection plan are subject to NRC review. The Commission believes that the requirements for DOE's plans for emergencies and physical protection expressed in the proposed Part 63 are appropriate and has retained them in the final rule. **In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.**

Section 63.161 requires DOE to develop an emergency plan based on the criteria of § 72.32 [i.e., criteria provided for an Emergency Plan for an Independent Spent Fuel Storage Installation (ISFSI)]. The required Emergency Plan includes: identification of each type of accident; description of the means of mitigating the consequences of each type of accident; prompt notification of offsite response organizations; and adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition. If particular types of accidents require evacuation procedures to ensure the protection of public health and safety, they will be included in the Emergency Plan.

Section 63.21(b)(3) requires DOE to submit a detailed plan to provide physical protection of HLW in accordance with § 73.51 (requirements for physical protection of stored spent nuclear fuel and HLW). The requirements for physical protection include: (1) capabilities to detect and assess unauthorized access or activities and protect against loss of control of the facility; (2) limiting access to HLW by means of two physical barriers; (3) providing continual surveillance of the protected area in addition to protection by an active intrusion alarm; and (4) providing a primary alarm station located within the protected area and have bullet-resisting walls, doors, ceiling, and floor. These requirements provide high assurance that physical protection of the repository includes appropriate measures to prevent and respond to unauthorized access and activities, including the potential for armed intruders (e.g., terrorist activity).

5.2 OTHER COMMENTS

Issue 4: Over what time period must physical security be maintained over the site and how would this be maintained?

Comment. Some comments were made regarding how security would be maintained over the site for very long time periods. One commenter asked if the site would be safeguarded against sabotage.

Response. NRC's regulation requires that DOE will have a system of active institutional controls and (passive) site markers, specified at § 63.21(c)(18) [§ 63.21(c)(15) in the proposed rule] and § 63.51(3), that will prevent human intrusion into the repository by ensuring physical security indefinitely following permanent closure of any potential geologic repository at Yucca Mountain. That being said, by its very nature, geologic disposal is intended to provide a high degree of physical security by rendering the wastes difficult to access owing to their remote location deep underground (i.e., about 300 meters/1000 feet). As a practical matter, once the repository is closed – i.e., sealing and possibly backfilling of the underground drifts and access tunnels, the level of effort to reopen the repository and gain access to the wastes while preserving radiological safety will entail a substantial technical effort and expertise given current technology, and any action to do so would likely be detected.

As regards the potential risk of radiological sabotage to the repository during the preclosure phase of operations, the Commission's regulations for Yucca Mountain at § 63.21(b)(3) require that licensees have in place adequate physical security plans and attendant procedures to protect against radiological sabotage, consistent with § 73.51 – NRC's requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. **In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.**

6.2 TRANSPORTATION

Issue 1: What regulations or controls will be used to ensure nuclear waste is transported safely including operations at an intermodal transfer facility?

Comment. Commenters raised concern that the risks for transporting nuclear waste were not being addressed in proposed Part 63. Many commenters interpreted the absence of transportation criteria in proposed Part 63 as an indication that NRC has deemphasized transportation issues. One commenter raised concern over the possibility of terrorism and theft of spent fuel shipments.

Response. Nuclear waste transportation safety is not specifically addressed by the proposed Part 63 because it is beyond the scope of this rulemaking. Issues related to terrorism or theft of spent fuel shipments during transport are also beyond the scope of this Part 63 rulemaking. Nothing in this rule changes the existing regulatory regime governing the transportation of spent nuclear fuel and high-level radioactive waste. **In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.**

Section 180 of the NWSA requires DOE to use packages that have been certified by NRC for transportation of spent nuclear fuel and HLW. The NRC regulations in 10 CFR Part 71 specify the standards for certification. These standards provide that a package must prevent the loss or dispersion of radioactive contents, provide adequate shielding and heat dissipation, and prevent nuclear criticality under both normal and accident conditions of transportation.

Section 180 of the NWSA also requires that DOE abide by NRC regulations regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste. These advance notification requirements are set forth in 10 CFR 73.37. The NWSA also requires DOE to provide funds and technical assistance for training of local public safety officials (e.g., emergency responders) along the routes.

In Volume II of the *Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High Level Radioactive Waste at Yucca Mountain, Nye County, Nevada*, dated July 1999 (DEIS) (at J-23), DOE states that its proposed procedures for implementing Section 180 of the NWSA provide that routing for shipments to Yucca Mountain would comply with applicable regulations of the U.S. Department of Transportation (DOT) in effect at the time of such shipments. DOT regulations on route approval for transporting radioactive material by highway and State or Tribal designation of preferred routing [as an alternative to Interstate System highways] are contained in 49 CFR 397.101, 397.103, and 397.201.

A DOT-NRC Memorandum of Understanding (44 FR 38690; July 2, 1979) specifies that, in general, the DOT is responsible for regulating safety in transportation of all hazardous materials, including radioactive material. The NRC is responsible for regulating safety in receipt, possession, use, and transfer of radioactive materials. The NRC also reviews and approves package designs for transporting fissile material and other radioactive material in quantities exceeding Type A limits. Facilities which temporarily handle and store radioactive material during and incidental to their transport (i.e., movement), such as operations at an intermodal transfer facility, are subject to DOT requirements.