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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Annette L. Vietti-Cook, Secretary
United States Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

SUBJECT: Comments on Proposed Rule, "Physical Protection of Byproduct Material,"
73 FR 69590 (November 19, 2008) (RIN 3150-A112)

Progress Energy is pleased to submit the following comments on the subject proposed rule. Progress Energy is committed to provide physical protection to prevent the theft of radioactive materials within our control.

The following comments are provided for your consideration.

1. 10 CFR 37.101(d): This regulation discusses "import" of category 1 materials and requires compliance with § 37.103(a)(2); yet if the source is transported overseas by ship (which is not regulated by 10 CFR 37, Subpart D) it will be virtually impossible to meet § 37.103(a)(2)(ii, iii, and iv) requirements.
2. § 37.103(a)(1) and (b): Unlike 10 CFR 71.97(e), there are no provisions for amending departure and arrival times due to unforeseeable acts (inclement weather, transport vehicle mechanical issues, etc.). As written, it appears that licensees would be expected to start including a date and time that can clearly be met rather than the "expected time" the shipment should arrive at its destination. Provisions should be added for amending departure and arrival times when needed similar to 10 CFR 71.97(e).
3. § 37.103(a)(2)(i): This section uses the term "minimal delay" which is ambiguous and subject to interpretation. A less ambiguous term should be used or the term "minimal delay" should be clarified/defined in the rule language or related guidance documents.
4. § 37.103(a)(2)(iv): The Department of Transportation (DOT) removed "safe haven" terminology from its regulations several years ago. Terminology in the proposed rule should be consistent with DOT regulations so as not to confuse licensees.
5. § 37.103(c): This section requires that the licensee shall immediately notify the shipping licensee upon arrival of the package. 10 CFR 20.1906(c) allows up to a 3 hour delay in monitoring the package following arrival at the licensee's facility. There appears to be a disconnect between proposed 10 CFR 37.103(c) and 10 CFR 20.1906(c). Additionally, "immediately" is subject to interpretation; does it mean within 15 minutes, 30 minutes, etc.? 10 CFR 37.103(c) should be revised to identify a specific period (i.e., 3 hours) in which the notification must be made to resolve this apparent disconnect and remove

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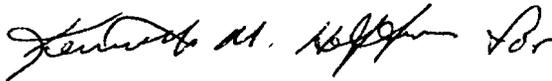
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ambiguity. For example, wording similar to 10 CFR 20.1906(c) could be used; "... as soon as practical after receipt but not later than 3 hours after the package is received ..."

6. § 37.107(a)(1)(ii): This section states, in part, "Alternate communications should not be subject to the same interference factors as the primary communication." This statement is broad and subject to interpretation. If there must be two truly diverse means of communications, licensees should be allowed to take credit for the established package tracking systems that are required by § 37.107(2)(i). Licensees should be allowed to credit tracking systems with duress capability to meet this "alternate communications" requirement.
7. § 37.107, quantities of radioactive materials described in Category 1 and Category 2 will generally be prohibited by aircraft. As discussed earlier, if any of these materials were to be "imported" as described in § 37.101(d) and (e); they would either have to come from North or South America or outside of North or South America by ship. § 37.107 does not provide regulatory guidance for shipping by waterway. 10 CFR 37, Subpart D should also address shipping by waterway.
8. The introduction of the "Category 2" materials category will require extensive changes to licensees' programs and procedures. Additionally, licensees will need to renegotiate transport contracts with various shippers to assure compliance with the proposed regulation. The NRC staff should solicit stakeholder input regarding the impact of these items so that they can be appropriately considered during the preparation of the regulatory analysis and when determining the appropriate implementation period for the rule.

Please contact D. Bryan Miller at (919) 546-5243 if you have any questions.

Sincerely,



Brian McCabe
Manager – Nuclear Regulatory Affairs

DBM

United States Nuclear Regulatory Commission
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Rulemaking Comments

From: Miller, David (Bryan) [DavidBryan.Miller@pgnmail.com]
Sent: Monday, January 05, 2009 1:15 PM
To: Rulemaking Comments
Subject: Progress Energy Comments on Proposed Rule, "Physical Protection of Byproduct Material," 73 FR 69590 (November 19,2008) (RIN 3150-AI12)
Attachments: 08-083 McCabe - NRC Letter - Comments on Proposed 10CFR37 Subpart D.pdf

Progress Energy comments on Proposed Rule, "Physical Protection of Byproduct Material," 73 FR 69590 (November 19,2008) (RIN 3150-AI12) are attached.

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From: "Miller, David (Bryan)" <DavidBryan.Miller@pgnmail.com>

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