IN RESPONSE, PLEASE
REFER TO: M090922A

September 22, 2009

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

Stephen G. Burns
General Counsel

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M., TUESDAY, SEPTEMBER 22, 2009, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-09-0059 – Final Rule Related to Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events (10 CFR 50.61a) (RIN 3150-A101)

The Commission approved a final rule, with the attached changes, which provides alternate fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized-water reactor (PWR) reactor vessels. This final rule provides alternate PTS requirements based on updated analysis methods.

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: 10/23/09)

II. SECY-09-0087 – Final Rule Establishing Criminal Penalties for the Unauthorized Introduction of Weapons Into Facilities Designated by the Nuclear Regulatory Commission

The Commission approved a final rule, with the attached changes, that would make it a Federal crime to, without authorization, willfully carry, transport or otherwise introduce or cause to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon certain facilities or installations subject to the regulatory authority of the Nuclear Regulatory Commission.

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: 10/23/09)

The Commission has disapproved the staff's request to conduct a separate, follow-on rulemaking addressing the inclusion of byproduct material facilities such as hospitals, academic facilities, and other types of facilities. Rather, the staff should conduct an assessment to determine whether including any such facilities is warranted considering existing federal, state, and local laws regarding the introduction of firearms and other weapons into these types of facilities, as well as other relevant facility specific considerations. The staff should engage with appropriate stakeholders, including the Organization of Agreement States. If the staff concludes, based on its assessment, that additional rulemaking is warranted, it should submit a rulemaking plan for the Commission's approval explaining the need for the rule and describing the views of stakeholders. If the staff proposes to include hospitals, it should evaluate the comments received from the Mayo clinic, which raised questions regarding the topics of materials security and patient psychological well being.

Attachment:
1. Changes to the final rule in SECY-09-0059
2. Changes to the final rule in SECY-09-0087

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

Attachment 1

Changes to the Final Rule in SECY-09-0059

Enclosure 2 – Summary and Analysis of Public Comments

1. On page 8, revise line 3 from the top to read ‘ … response to other public ….’

2. On page 9, paragraph 2 under NRC Response, revise line 3 to read ‘ … available if ~~further~~ a more ….’

3. On page 15, paragraph 1, revise line 6 to read ‘ … to account for the ….’

4. On page 26, last paragraph, revise line 1 to read ‘ … NRC agrees that ~~with~~ this ….’

5. On page 30, 2nd full paragraph, revise line 1 to read ‘ … statement ~~that~~ that the ….’ Revise line 4 to read ‘ … of plants which ~~who~~ may ….’

Enclosure 4 – OMB Supporting Statement

6. On page 7, last paragraph, revise line 2 to read ‘ … updated in their ~~its~~ entirety.’

7. On page 9, paragraph (1), revise line 3 to read ‘ … submittal ~~it~~ is estimated ….’

Attachment 2

Changes to the Final Rule in SECY-09-0087

1. Page 3, line 5, insert "Federal" before "crime"

2. Page 7, line 3, change "advanced" to "advance"

3. Page 8, line 8, delete "here" after "NRC"

4. Page 10, end of first sentence, delete "during operation of the facility."

5. Page 10, line 9, revise as follows: "~~However, if a~~An unauthorized … or explosive result~~s~~ing in …."

6. Page 10, line 11, revise as follows: "… ~~this would~~ already constitutes…"

7. Page 11, revise first sentence in the "Criminal Penalties, Investigation, and Prosecution" section as follows: "Under the final rule's terms,…"

8. Page 11, revise 2nd sentence in the "Criminal Penalties, Investigation, and Prosecution" section to read as follows: "Whoever willfully introduces, without authorization, weapons or explosives into or upon any other protected facility or installation would be, upon conviction, punishable by a fine of not more than $1,000, as set forth in section 229b of the AEA ~~will be subject to criminal penalties under Federal law~~.

9. Page 12, in Section III, "Discussion of the Final Rule," the last paragraph under "Criminal Penalties, Investigation, and Prosecution," should be revised to read the following:

   "The NRC is also not making violations of § 73.75 criminally punishable under AEA sections 229b and 229c. The Commission's objective in this rulemaking, which the Commission believes is consistent with the Congressional intent, is to ensure that the criminal penalties in sections 229b and 229c apply to persons who introduce weapons into facilities without authorization. Furthermore, the NRC has sufficient administrative sanctions at its disposal to enforce the posting requirements."

10. Page 17, line 13, insert "unauthorized" before "introduction"

11. Page 22, 2nd to last full sentence. Revise as follows: "The only costs associated with implementing the rule are the costs to procure, post, and maintain these signs~~.~~ since procedures and organization required to protect against the unauthorized introduction of weapons are already required."

12. Page 23, first full sentence, revise as follows: "The NRC considers this cost to be reasonable because of the express congressional requirement that any facilities covered by regulations promulgated under AEA § 229a.(1) post such regulations "conspicuously," and because the signs are required to be posted only at locations where entry into covered facilities would ordinarily occur~~, and because the signs will help prevent unintentional criminal violations~~."

13. Page 23, second sentence in "Backfit Analysis" section, change "Backfit" to "backfit"

14. Page 25, lines 6 and 7 of the "AUTHORITY" section, revise to read "…Pub. L. 96-295…" and "…Pub. L. 96-399…"

15. Page 25, Section 73.75 (a)(2), revise to read "… spent fuel storage ~~facilities~~ installations."

16. Page 27, the rule text proposed for § 73.81(c)(1), should be modified to add the following sentence to the end of § 73.81(c)(1):

    "Willful violations of this provision are punishable by the criminal penalties set forth in sections 229b and 229c of the Atomic Energy Act of 1954, as amended."

17. Page 27, line 10, revise to read: "…independent spent fuel storage ~~facility~~ installation…"

18. Page 28, the rule text proposed § 73.81(d) should be deleted in its entirety. (Any references to § 73.81(d) in other parts of the rule should also be deleted.)