

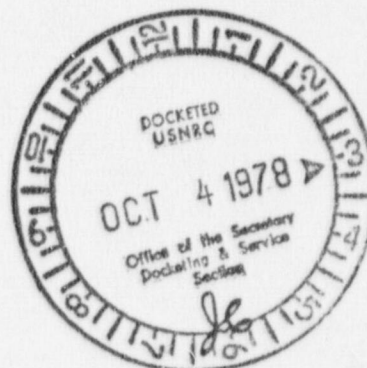
DOCKET NUMBER  
PROPOSED RULE PR-70,73 (43FR 35321) <sup>(14)</sup>



September 25, 1978

Secretary of the Commission  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing & Service Branch



COMMENTS PURSUANT TO REVISED PROPOSED RULEMAKING -  
PHYSICAL PROTECTION OF PLANTS AND MATERIALS

On August 9, 1978, the Nuclear Regulatory Commission published in the Federal Register (43 FR, No. 154, 35321), revised proposed amendments to 10CFR Parts 70 and 73, and subsequently invited comments.

Our comments are as follows:

Although Paragraphs 73.20 and 73.25 limit general performance requirements, Paragraph 73.25 still indicates the words, "unless otherwise authorized by the Commission"; Paragraph 73.26 indicates "shall include, but are not necessarily limited to, the measure as specified in Paragraphs (b) through (1) of this section". Similar words also appear in Paragraph 73.45 and 73.46.

It is not readily clear how relief from unlimited ratcheting without benefit of rulemaking as indicated by the removal of the phrase, "but not necessarily limited to" accrues to licensees as described in the supplementary information.

In addition, while the particular phrase noted above has been removed from Paragraph 73.20, it has not been removed from Paragraph 73.55(a)(2). This appears to be an example of an attempt at inconsistent rulemaking, which applies one standard or requirement to the security of nuclear power reactors and another standard or requirement to the security of fixed sites and transportation of nuclear materials. No explanation or reasoning has been put forth concerning this apparent inconsistency. We feel that clarification and the equitable application of standards to all rules in all areas of security is indicated.

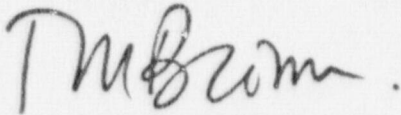
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Another example of unexplained inconsistency is the change to Paragraph 73.46(b)(6) wherein, "all packages shall be searched upon a random basis". A similar phrase in Paragraph 73.55 has not been changed, but requires all packages to be searched. Clarification on the above points is also recommended and indicated.

The title to Paragraph 73.55 has been changed to protection against "Radiological Sabotage" in lieu of "Industrial Sabotage". No apparent reason is given for the change in the title, although a definition of radiological sabotage is indicated. Likewise, no philosophy behind the change is indicated, nor the overall significance to the change in the language pertaining to possible staff interpretations.

Please consider us to be interested persons within the meaning of 10CFR2.802 inasmuch as the Toledo Edison Company jointly owns and is primarily responsible for the operation of the Davis-Besse Nuclear Power Station.

A handwritten signature in dark ink, appearing to read "TMBrown". The signature is fluid and cursive, with a period at the end.

THOMAS BROWN  
SECURITY DIRECTOR  
(419) 259-5281

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