



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

February 19, 2010

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0007

TITLE: DENIAL OF PETITION FOR RULEMAKING REQUESTING  
AN EXPEDITED RULEMAKING TO REVISE THE 10 CFR  
SECTION 73.55 COMPLIANCE DATE (PRM-73-14)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 19, 2010.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Klein  
Commissioner Svinicki  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-10-0007

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	1/27/10
COMR. KLEIN	X				X	2/5/10
COMR. SVINICKI	X				X	2/17/10

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 19, 2010.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Jaczko  
**SUBJECT:** SECY-10-0007 – DENIAL OF PETITION FOR RULEMAKING REQUESTING AN EXPEDITED RULEMAKING TO REVISE THE 10 CFR SECTION 73.55 COMPLIANCE DATE (PRM-73-14)

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below  X  Attached \_\_\_\_\_ None \_\_\_\_\_

I approve the staff's recommendation to deny PRM-73-14 and commend the staff for reviewing this petition in a thorough and expeditious manner. In SECY-10-0007, the staff demonstrated its clear understanding and faithful application of the NRC's established procedures in the rulemaking process associated with the revisions of 10 CFR 73.55. It was the type of open and inclusive rulemaking process that leads to sound decisions and that helps build greater public confidence in the NRC. It provided stakeholders, including industry representatives, numerous opportunities to seek additional clarification as to what was expected by the revisions to the rule. For these reasons, I believe that the use of exemptions is the correct approach to requests from licensees who have a compelling need to request exemptions to the March 31, 2010 implementation date for compliance. I do not, however, believe that regulating through exemption is or should be a routine practice. I expect that the staff will complete a thorough review of such requests.



\_\_\_\_\_  
SIGNATURE

1/27/10

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER KLEIN  
SUBJECT: SECY-10-0007 – DENIAL OF PETITION FOR  
RULEMAKING REQUESTING AN EXPEDITED  
RULEMAKING TO REVISE THE 10 CFR SECTION  
73.55 COMPLIANCE DATE (PRM-73-14)

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE

2/5/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Dr. Dale Klein's Comments**  
**on**  
**SECY-10-0007**

I agree with staff's conclusion that PRM-73-14 should be denied and I commend the staff for their thorough and expeditious review of the petition.

In the draft final rule sent to the Commission, staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, it was also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, NRC rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that NRC regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date. Further, because the identified problem appears to affect a fraction of licensees who need schedule relief from a small subset of the overall requirements in 10 CFR 73.55, the specific exemption request process appears to be a better regulatory method by which licensees can address the situation.

  
February 5, 2010  

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Dr. Dale E. Klein                      Date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-10-0007 – DENIAL OF PETITION FOR  
RULEMAKING REQUESTING AN EXPEDITED  
RULEMAKING TO REVISE THE 10 CFR SECTION  
73.55 COMPLIANCE DATE (PRM-73-14)

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below XX Attached XX None \_\_\_\_\_

Approved subject to the attached edits.

  
\_\_\_\_\_  
SIGNATURE

02/17/10  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-73-14]

[NRC-2009-0493]

Nuclear Energy Institute;

Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Denial.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by the Nuclear Energy Institute (NEI) (the petitioner). The petitioner requested that the NRC amend the <sup>compliance</sup> ~~implementation~~ date for specific requirements in 10 of the *Code of Federal Regulations* (10 CFR) Part 73. The NRC decided to deny PRM-73-14 for the reasons stated in this document. X

**ADDRESSES:** You can access publicly available documents related to this petition for rulemaking using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1-800-397-4209,

301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**Federal Rulemaking Website:** Supporting materials related to this petition for rulemaking can be found at <http://www.regulations.gov> by searching on Docket ID: **NRC-2009-0493**. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-1462 or e-mail: [Timothy.Reed@NRC.Gov](mailto:Timothy.Reed@NRC.Gov).

**SUPPLEMENTARY INFORMATION:**

**The Petition**

In a letter to Chairman Gregory B. Jaczko dated September 25, 2009, NEI, the petitioner, requested that the NRC undertake an expedited rulemaking to revise the compliance date for specific requirements within 10 CFR section 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The NRC reviewed the request for rulemaking and determined that the request met the minimum sufficiency requirements of 10 CFR 2.802, "Petition for Rulemaking" and therefore was considered as a petition for rulemaking. Accordingly, the NRC docketed the request as PRM-73-14 and notified the petitioner of this decision by letter dated October 1, 2009. Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request, convening a petition review board (PRB) on November 9, 2009.

X

The petitioner requested the NRC amend its regulations to change the implementation

*compliance*  
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approval, and issuance of a final rule; approval of the final rule by OMB if there are paperwork provisions).

- If the NRC were to pursue a more narrow revision to the compliance provisions of 10 CFR 73.55, this rule would require the NRC to tailor rule provisions to specific facilities and situations. Developing this more complex and specific compliance language with the supporting regulatory basis would, at a minimum, require additional interactions with external stakeholders. X
- Revising the 10 CFR 73.55 compliance date is an overly broad solution to the petitioner's problem. A revision to the compliance date would relieve all power reactor licensees from implementing all the new requirements by March 31, 2010. However, it is clear that (1) according to the data provided by the petitioner, that fewer than half of the licensees intend to request relief, and (2) the requirements in the new rule that seem particularly problematic represent a very small percentage of the total number of requirements in the rule. Under such circumstances, the exemption process appears to be the best regulatory tool to address the situation. The staff is currently addressing this potential license compliance issue through review of scheduler exemptions.

#### **Public Comments on the Petition**

Due to the exigent circumstances associated with the request, the NRC did not prepare a notice of receipt and request for comment, and instead gave immediate consideration to the request. Accordingly, there are no public comments on this petition.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

Mr. Anthony R. Pietrangelo  
Senior Vice President and  
Chief Nuclear Officer  
Nuclear Energy Institute  
1776 I Street, NW, Suite 400  
Washington, DC 20005

Dear Mr. Pietrangelo:

I am responding to your letter of September 25, 2009, to Gregory B. Jaczko, Chairman of the U.S. Nuclear Regulatory Commission (NRC), requesting the NRC to conduct an expedited rulemaking to change the <sup>compliance</sup> implementation date for specific requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical Protection of Plants and Materials." By letter dated October 1, 2009, the NRC informed you that it treated your submission as a petition for rulemaking (PRM) under 10 CFR 2.802, "Petition for Rulemaking" and assigned it docket number PRM-73-14. Due to the exigent circumstances associated with your request, the agency did not publish a notice of receipt and request for public comment on PRM-73-14 in the *Federal Register*; instead the NRC gave immediate attention to your request and convened a petition review board on November 9, 2009.

As discussed further in the enclosed notice, which will be published in the *Federal Register*, the NRC is denying your request for expedited rulemaking. The NRC has concluded its evaluation of PRM-73-14; therefore, this PRM is considered closed.

Please direct any questions you may have regarding this matter to NRC staff member Timothy Reed, by phone at 301-415-1462 or by e-mail at [Timothy.Reed@nrc.gov](mailto:Timothy.Reed@nrc.gov).

Sincerely,

Annette L. Vietti-Cook  
Secretary of the Commission

Enclosure:  
*Federal Register Notice*