

September 10, 1999

MEMORANDUM FOR: William D. Travers  
Executive Director for Operations  
John F. Cordes, Acting Director Office of Commission Appellate Adjudication

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 11:30 A.M., FRIDAY, SEPTEMBER 10, 1999, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

**I. SECY-99-207 -- Final Rule:Respiratory Protection and Controls to Restrict Internal Exposures, 10 CFR Part 20**

The Commission approved a final rule which amends 10 CFR Part 20, subject to the changes noted in attachment 1, to recognize new respiratory protection devices and procedures that have been proven effective, adopt new national consensus standards from the American National Standards Institute (ANSI **EXIT**), conform NRC requirements to new Occupational Safety and Health Administration (OSHA **EXIT**) regulations, reduce licensee burden without reducing worker safety, and are consistent with the Commission's intent to promulgate performance-based rules.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspend: 10/1/99)

The staff should issue revised [Regulatory Guide 8.15](#), "Acceptable Programs for Respiratory Protection," in final concurrent with the issuance of this final rule on respiratory protection.

In future rulemaking packages where the staff recommends partially adopting a voluntary consensus standard, the staff should explicitly identify to the Commission all portions of the consensus standard that are not being adopted, and provide a justification why those portions of the technical standard are inconsistent with applicable law or otherwise impractical.

The Occupational Safety and Health Administration allows a licensed health care professional to determine whether the user is medically fit to use respiratory protection equipment, as the paper indicates, but ANSI Z88.2-1992 specifies that a physician shall make the determination. On the next revision to the ANSI standard, the staff should encourage the ANSI Subcommittee to consider whether licensed health care professionals, such as occupational health nurses, are qualified to make medical fitness determinations.

**II. SECY-99-216 -- Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50-029-LA, Yankee Atomic's Motion for Leave to Withdraw Appeal of LBP-99-14**

The Commission approved a Memorandum and Order which grants Yankee Atomic Electric Company's May 26, 1999 motion to dismiss without prejudice its appeal of a Board order admitting four contentions and vacating both LBP-99-14 and LBP-99-17.

(Subsequently, on September 10, 1999, the Secretary signed the Memorandum and Order.)

Attachment: 1) [Comments and Changes to Rulemaking Package in SECY-99-207](#)  
2) [Changes to be Incorporated in the Memorandum and Order in SECY-99-216](#)

cc: Chairman Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
EDO  
OGC  
CIO  
CFO  
OCAA

Comments and Changes to Rulemaking Package in SECY-99-207

General Comments

1. The staff should revise the Federal Register Notice (FRN) and all attachments to avoid the implication that NRC is adopting the voluntary consensus standard in full.

Changes to the Federal Register Notice

1. On page 1, in the *Summary*, line 6, spell out OSHA (Occupational Safety and Health Administration) in the first paragraph.
2. On page 5, paragraph 2, line 1, delete 'unique'. In line 2 delete the comma.
3. On page 5, paragraph 3, revise the last line to read '... rather than adopt ~~rely on~~ OSHA regulations.'
4. On page 7, paragraph 1, delete the last sentence (There is little ... at greater risk.)
5. On Page 7, paragraph 2 incorrectly assumes that all regulatory guidance use by licensees is unenforceable. For most materials (non-reactor) licensees, incorporation of regulatory guides into their licenses as amendments is routine. This paragraph needs to be expanded and revised to reflect that in those cases, licensee commitments to use specific regulatory guidance are enforceable when incorporated in the license.
6. On page 7, the staff should enhance the discussion that addresses why NRC is retaining the Table in Appendix A in the rule rather than in guidance, including providing additional justification for the decision.
7. On page 8, paragraph 2, revise the last sentence to read 'Other program elements such as minimal training on ~~the~~ limitations of these devices and correct methods of use are required ~~would be considered essential~~.'
8. On page 10, revise line 4 from the top to read '... requests a respirator that will ~~, or if the respirator is~~ not be used ....'
9. On page 13, 2<sup>nd</sup> full paragraph, revise the last line to read '... user seal check on filtering facepiece respirators in the positive ....'
10. On page 13, last paragraph, line 6, spell out IDLH (Immediately Dangerous to Life or Health).
11. On page 16, paragraph 3, line 3, insert quotation marks after '(PAPR)'.
12. On page 18, 1<sup>st</sup> full paragraph, revise the last sentence to read '... or valve function, and that are ~~the presence or absence of which is~~ under the control of the respirator wearer, are ~~, may be~~ present ....'
13. On page 19, paragraph 3, revise line 5 to read '... is aware that most radionuclides ....'
14. On page 19, last paragraph and continuing to page 20, the staff should strengthen the justification that addresses why a physician, as opposed to a licensed health care professional, must determine whether the user is medically fit to use respiratory protection equipment. The Occupational Safety and Health Administration allows a licensed health care professional to make the determination, as the paper indicates, but ANSI Z88.2-1992 specifies that a physician shall make the determination.
15. On page 20, top paragraph, the last sentence should be ended after 'respirator'.
16. On page 21, last paragraph, revise line 2 to read '... persons must be immediately available to ....'
17. On page 22, paragraph 1, delete the last 3 sentences (Other differences are minor ... measurements of intake.)
18. On page 29, paragraph 2, revise line 4 to read 'All Licensees who ....' Revise line 5 to read '... program are expected ~~required~~ to submit a

program ....'

19. On page 38, 1<sup>st</sup> full paragraph, delete the 4<sup>th</sup> sentence (In the NRC's view ... questionable.)
20. On page 51, revise the last line to read ' ... initial fitting of a face sealing ....'

#### Changes to the Regulatory Analysis

1. On page 1, line 4, delete the apostrophe in 'its'. Revise line 8 to read ' ... 10 CFR Part 20 and revisions to ....' Revise line 21 to read ' ... are not practical practicable.' Revise lines 23-24 to read ' ... use of respirators in many ~~most~~ circumstances ....'
2. On page 3, paragraph number (5), revise line 3 to read ' ... physiological impact, and ....' In line 5, replace the comma with a semicolon.
3. On page 5, line 2 from the top, move the apostrophe in 'licensees' to the end of the word. In line 3, the end of the sentence appears incomplete or missing something and needs to be corrected.
4. On page 8, 2<sup>nd</sup> full paragraph, revise line 9 to read 'Therefore, under the new rule ....'
5. On page 9, line 5 from the top, insert the missing multiplication sign.
6. On page 10, 1<sup>st</sup> full paragraph, line 11, insert a comma after 'current'.

#### Changes to the Environmental Assessment

1. On page 1, next to the last line, delete the 's' at the end of 'revises'.
2. Changes to Congressional letters
3. In paragraph 2, revise line 1 to read ' ... are based in part on guidance ....' In line 5, move the apostrophe in 'workers' to the end of the word.

#### Changes to the Press Release

1. On page 1, paragraph 3, line 2, the staff should verify the revision date of 1992. The revision was published on May 21, 1991.

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ATTACHMENT 2

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#### Changes to be Incorporated in the Memorandum and Order in SECY-99-216

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1. On page 2, 1<sup>st</sup> full paragraph, at the end of line 7, insert the following footnote: 'The Commission is also declining to take review sua sponte of the Licensing Board's Memorandum and Order (LBP-99-27) terminating, without prejudice or conditions, all portions of the proceedings except for the instant appeal of LBP-99-14.'
2. On page 3, line 4 from the top, after the period, insert a new sentence as follows: 'The admitted contentions were focused on alleged deficiencies and inadequacies of the withdrawn LTP.' Revise the next sentence to read 'Moreover, ~~in any subsequent proceeding,~~ the intervenors ....'
3. On page 3, revise line 5 from the top to read ' ...same position in any subsequent proceeding as if they had ....'
4. On page 3, delete the sentence in lines 8 to 11 from the top (Similarly, the termination of this ... before the Commission.)
5. On page 3, in the 1<sup>st</sup> full paragraph, revise line 1 to read 'For ~~both~~ these reasons, we decline ....'
6. On page 4, insert the following sentence as a new second paragraph under 'CONCLUSION': 'Therefore, the proceeding is terminated.'