

Comments and Changes to the Final Rule in SECY-08-0099

1. The staff should renumber 73.55(e)(11) to be 73.55(e)(10)(ii) to be consistent with the statements of consideration and the expressed intent therein. This change will ensure that 73.55(e)(10) is a generic requirement to all types of barriers, water and land. The rule text should be changed to accomplish the following: a) clarify that the performance standard for vehicle control measures for both land and waterborne vehicles is to protect against the design basis threat of radiological sabotage, b) to clearly differentiate this standard with requirements that are specific to each vehicle type, and c) to avoid any inconsistency with the DBT language in 10 CFR 73.1(a)(1)(E). Conforming changes, if appropriate, should also be made to the Statements of Consideration and/or other sections of the rule. That this renumbering would also be consistent with the staff's response to the 165th public comment under 10 CFR 73.55. Such changes could be similar to the following suggested rule text (strikeouts are suggested deletions and underlined text are suggested additions to staff's proposed final rule):

73.55(e)(10) Vehicle control measures. Consistent with the physical protection program design requirements of § 73.55(b), ~~the licensee shall protect against vehicle use as a means of transporting unauthorized personnel or materials to gain proximity to a protected area or vital area, or otherwise penetrate the protected area perimeter.~~ and in accordance with the site-specific analysis, the licensee shall establish and maintain vehicle control measures, as necessary, to protect against the design basis threat of radiological sabotage vehicle bomb assault.

~~(11) (ii) Waterways. The licensee shall:~~ Waterborne vehicles. Licensees shall:

~~(i) In accordance with the site-specific analysis, establish and maintain waterborne vehicle control measures, as necessary, to protect against the design basis threat of radiological sabotage waterborne vehicle bomb assault.~~

~~(ii) (A) Identify areas from which a waterborne vehicle must be restricted, and where possible, in coordination with local, state, and Federal agencies having jurisdiction over waterway approaches, deploy buoys, markers, or other equipment.~~

~~(iii) (B) In accordance with the site-specific analysis, provide periodic surveillance and observation of waterway approaches and adjacent areas.~~

2. The staff should modify the date section in the rule as follows: "*Compliance Date:* Compliance with the final rule is required by March 31, 2010 for licensees currently licensed to operate under 10 CFR part 50." This will allow current power reactor licensees an implementation period extending one year beyond the March 2009 expected completion date for the regulatory guides. In addition, staff should make any conforming changes as necessary.
3. The staff should include in its bases for denials of PRM-73-13 a clearer articulation of the extent of the currently applicable existing requirements and guidance and how they serve to protect against the scenarios inferred or stated by the petitioner. Additionally, staff should clarify text, as appropriate, that could be interpreted as an overstatement. The staff's assertion that "There is no particular piece of information obtained during a background investigation that would automatically disqualify an individual from access"

is unnecessarily overstated. This language should be replaced with the following: "With the exception of individuals who have been denied access to another facility, the regulation does not specify types of information obtained during a background investigation that would automatically disqualify an individual from access." In addition, the following two sentences should be deleted:

"This principle applies even to criminal history record information required to be considered by statute (Section 149 of the AEA) and by § 73.57. Accordingly, if no one piece of information obtained during a background investigation for suitability for individuals precludes granting unescorted access, there is no information that would automatically prevent the individual from gaining escorted access to the protected area as suggested by the petitioner."

4. Proposed edits to Federal Register Notice:

a. Page 28, 2nd line from the bottom, delete duplicate "that"

b. Page 51, last line of first full paragraph, change "dependant" to "dependent"

c. Page 53, starting on line 13, revise as follows: "On-duty law enforcement personnel are **may be** granted access **by licensees** when there is a need for such access and are escorted while inside the PA. ~~In addition, the NRC has no basis for assuming, nor has the commenter supplied one, that law enforcement personnel pose an insider threat.~~"

d. Page 56, revise first line as follows: "...requires that the licensee will control passwords/**passcodes** used for security computers, electronic systems,..."

e. Page 73, re 73.55(p) – **include a reference to** ~~change SOC language to conform to the previous comment above. The purpose of these changes is to make the rule and SOC consistent with RIS 2008-26, dated October 29, 2008.~~

f. Page 109, item 6., change "T raining" to "Training"

g. Page 119, line 3, change as follows: "...as ~~for~~ **of** the effective date..."

h. Page 125, line 11, change "immediate" to "immediately"

i. Page 132, 2nd paragraph header, change "73,56(n)" to "73.**56**(n)"

j. Page 134, lines 6 and 10, change "Commission" to "**the** Commission"

k. On page 157, re. 72.212(iv) – replace "in lieu of closed circuit television" with "in lieu of video ~~capture~~ **surveillance technology**."

l. Page 176, 2nd line from the bottom, change "is" to "are"

m. Page 178, line 5, change "is" to "are"

n. Page 179, add a semi-colon after bullet (4)(i)(A) and bullet (4)(i)(B); add "; and" after bullet (4)(i)(C).

o. Page 183, revise second line of (k)(3) to read: "...or impede acts of ~~theft or~~ radiological sabotage by using force sufficient to counter the..."

p. Page 196, line 1, add "the" after "...status of"

q. Page 212, line 18, delete duplicate "unescorted access"

5. The following are specific comments about the staff response to public comments. (References are to Enclosure 3 to the SECY paper, "Integrated Comment Responses Supporting Final Rule: Power Reactor Security Requirements" in the order in which the comment and staff response appear.)

10 CFR 50.54(hh)

13. The staff response should be revised to address spent fuel fires or indicate that spent fuel pools are considered part of the "power reactor facility".
18. The staff response should be revised to indicate that extensive engineering analyses of airliner crashes have been conducted.

10 CFR 73.55

54. The staff's response should additionally note that 10 CFR 50.54(hh) includes a requirement for a licensee strategy to maintain or restore spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire.
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65. The staff should clarify the response concerning the requirement for barriers to delineate the areas to be protected. This response should be consistent with comment 68 in section 10 CFR 73.55.
66. The staff's response should be revised to reference the design requirement to address core damage and spent fuel sabotage, consistent with 73.55(b).
135. The staff's response should be revised to state that a licensee's ability to defend against the radiological sabotage DBT is not dependent on the availability of offsite responders. This language is intended to make the comment response consistent with the SOC on page 51.