

October 23, 2012

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

Brooke Poole, Director
Office of Commission Appellate Adjudication

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M.,
TUESDAY, OCTOBER 23, 2012, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-12-0096 – Exelon Generation Company, LLC (Limerick Generating Station, Units 1 and 2), Exelon's and NRC Staff's Appeals of LBP-12-8

The Commission approved a Memorandum and Order responding to appeals by Exelon Generation Company, LLC and the NRC Staff of the Atomic Safety and Licensing Board's decision in LBP-12-8, which granted a hearing to the Natural Resources Defense Council. The Memorandum and Order reverses the Board's decision, with a limited remand to the Board.

(Subsequently, on October 23, 2012, the Secretary signed the Memorandum and Order.)

II. SECY-12-0099 – Final Rule: Distribution of Source Material to Exempt Persons and to General Licensees and Revision of General License and Exemptions (RIN 3150-AH15)

The Commission approved a final rule, with the attached changes, amending the regulations in Title 10 of *Code of Federal Regulations* (10 CFR) Parts 30, 40, 70, 170, and 171 to require that the initial distribution of source material to exempt persons or to general licensees be explicitly authorized by a specific license, which includes new reporting requirements. The rule revises, clarifies, or deletes certain source material exemptions from licensing to make the exemptions more risk informed.

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.

After the notice is published, the staff should continue its outreach with the community of users and organizations impacted by the final rule to build awareness of the processes for obtaining a specific license and for qualifying for relief as a certified, small entity. The staff should also work closely with Agreement States in the implementation of this rule.

Attachment: Changes to the Final Rule in SECY-12-0099

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
EDO
OGC
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

Changes to the Final Rule in SECY-12-0099.

1. Federal Register Notice (FRN) page 8, line 13, revise to read: “part 40 ~~currently~~ **do not** include ~~no~~ requirements...”.
2. FRN page 12, line 4, delete “at the time”.
3. FRN page 12, line 10, add a comma after “year**;**”.
4. FRN page 14, line 17, revise to read: “Because **new** § 40.13(c)(10),...”.
5. FRN page 15, lines 7, revise to read: “...material **without a specific license** for...”.
6. FRN page 15, line 8, revise to read: “~~However~~ **Additionally**, if...”.
7. FRN page 17, lines 8 and 9, revise to read: “...distribution ~~which~~ **that** could...”.
8. FRN page 20, line 6, add a comma after “categories**;**”.
9. FRN page 20, line 7, change “impacts” to “impact”.
10. FRN page 20, line 10, revise to read: “...formula ~~which~~ **that** distributes...”
11. FRN page 22, line 7, change “recordkeeping” to “record”.
12. FRN page 22, lines 8 and 9, revise to read: “...devices **containing byproduct material**, longer recordkeeping **retention**...”
13. FRN page 22, line 20, revise to read: “...ensure **that** the...”
14. FRN page 23, line 21, add a comma after “40.22(a)**;**”.
15. FRN page 25, line 9, add a comma after “form**;**”.
16. FRN page 28, line 17, revise to read: “...procedures ~~which~~ **that** would...”.
17. FRN page 28, line 23, remove space after “Paragraph ~~(b)~~**(b)**(1)”.
18. FRN page 29, line 5, add a comma after “40.51**;**”.
19. FRN page 32, line 2, add a comma after “license**;**”.
20. FRN page 35, line 1, revise to read: “...the ~~unlikely~~ event...”.
21. FRN page 36, line 11, add a comma after “AEA**;**”.
22. FRN page 36, line 15, revise to read: “...are ~~intended to provide examples of other~~ activities ~~which NRC has become aware of that~~...”.

23. FRN page 36, line 16, revise to read: "...not intended to be considered processing when...".
24. FRN page 41, line 4, delete "H".
25. FRN page 41, line 5, revise to read: "continues The SOC further states, "this...".
26. FRN page 42, line 20, revise to read: "asked, that relative...".
27. FRN page 44, line 20, add a comma after "Th-232,".
28. FRN page 49, line 16, revise to read: "material which that contains...".
29. FRN page 52, lines 15-17, delete: "If highly contaminated, abandoned sites that operated under a general license continue to be continued to be identified, the NRC may reconsider this requirement".
30. FRN page 53, line 6, revise to read: "...The other second commenter...".
31. FRN page 53, line 10, add quotation marks "...death warrant"...".
32. FRN page 57, line 9, add value from Part 171.
33. FRN page 59, line 3, add a comma after "40.52(b),".
34. FRN page 63, line 18, revise to read: "...minimal. The NRC's analysis of the costs associated with this rule are contained in the regulatory analysis associated with the rule, which can be found at (insert ML number).".
35. FRN page 66, line 7, add a comma after "information,".
36. FRN page 68, lines 4-9 revise to read: "...industry. Some of the costs attributed to the rule by commenters are in fact due to clarification of the existing rules. For example, there was confusion as to the applicability of the exemptions for coated licenses. Because of how the general license in § 40.22 previously stood, it was not always necessary or practical to clarify when someone was covered by an exemption or if they in fact were using a product under the general license. The NRC's analysis of the costs associated with this rule are contained in the regulatory analysis associated with the rule, which can be found at (insert ML number).".
37. FRN page 68, line 10 revise to read: "In addition, aAlthough products...".
38. FRN page 68, line 11, revise to read: "...not appropriate for...".
39. FRN page 69, lines 15 and 16, revise to read: "...material. This conclusion is borne out even by some of the comments received fFor example...".
40. FRN page 73, line 2, add a comma after "NRC,".

41. FRN page 74, the staff should revise this section with engagement of OGC, to clarify that the justification and affidavit required by 2.390 must be provided for the first report and that NRC has typically waved these requirements for all other reports if appropriately marked; and, at an appropriate location within the Federal Register include the website address that licensees can use to find the contact and mailing information for each Agreement State.
42. FRN page 74, line 6, add a comma after “information,”.
43. FRN page 75, line 22, revise to read: “...material ~~which~~ **that** are...”.
44. FRN page 79, line 9, revises to read: “...rule ~~also improves the equitability in the charging of fees~~ **helps ensure that fees are appropriately allocated.**”
45. FRN page 83, line 9, add a comma after “AEA,”.
46. FRN page 85, line 12, add a comma after “ores,”.
47. FRN page 95, line 35, add a comma after “Category B,”.
48. FRN page 102, line 19, change to read: “...5846; ; Government...”.
49. FRN page 117, line 5, change to read: “...5851; ; Government...”.
50. FRN page 120, line 42, add a comma after “1984,” and “1990,”.
51. FRN page 120, line 43, add a comma after “1989,”.
52. FRN page 120, line 45, add a comma after “1989,”.
53. FRN page 120, line 46, revise to read: “...Costs ~~which~~ **that** exceed...”.
54. FRN page 120, line 48, add a comma after “1989,” and “1991,”.
55. FRN page 120, line 49, add a comma after “1991,”.