

November 29, 2011

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, NOVEMBER 29, 2011, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

- I. SECY-11-0083 – U.S. DOE (High-Level Waste Repository), Docket No. 63-001; Staff Petition for the Commission to Exercise its Inherent Supervisory Authority to Review Board Orders Regarding Preservation of LSN Document Collection, and Staff Request for Stay

The Commission (with Chairman Jaczko concurring) approved a Memorandum and Order responding to a petition from the NRC Staff challenging the Construction Authorization Board's April 11, 2011, and June 9, 2011, case management orders, and seeking a stay of those orders. The Memorandum and Order denies the Staff's petition, and denies the Staff's stay request as moot. Commissioner Apostolakis did not participate in this matter.

(Subsequently, on November 29, 2011, the Secretary signed the Memorandum and Order.)

- II. SECY-11-0107 – Final Rule: Requirements for Fingerprint – Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Nonpower Reactors (Research or Test Reactors) (RIN-3150-AI25)

The Commission approved a final rule amending Title 10 of the *Code of Federal Regulations* (10 CFR) 73.57, "Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to a Nuclear Power Facility or Access to Safeguards Information," with the attached changes. This amendment adds nonpower reactor (NPR) licensees to the scope of those subject to fingerprinting requirements for unescorted access.

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.

(EDO)

(SECY Suspense:

12/30/11)

Attachment: Changes to the final rule in SECY-11-0107

cc: Chairman Jaczko
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-11-0107

1. Page 1, "Summary" line 4, add a comma after "(EPAAct),".
2. Page 3, "Background" lines 3-4, revise to read: "...special nuclear material (SNM)..."; lines 5-6, revise to read: "...special nuclear material SNM"
3. Page 4, line 13, add a comma after "NPRs,".
4. Page 5, line 15, change "January" to "March".
5. Page 6, line 23, revise to read: "The unescorted access order provided"
6. Page 6, footnote 2, make "2" superscript; change "Oct" to "October".
7. Page 8, line 9, change "commenter" to "commenters".
8. Page 8, line 19, change "The comment" to "The comments".
9. Page 10, line 5, add a comma after "(75 FR 42003),".
10. Page 12, line 1, change "*vital area*" to "*vital area*".
11. Page 12, line 8, change to read: "The commenters asserts"
12. Page 12, line 9, change "regulation" to "regulations".
13. Page 13, line 2, change to read: "...requirements set forth in"
14. Page 13, line 4, delete comma after "vital area".
15. Page 13, line 17, add a comma after "criteria,".
16. Page 13, last line, change to read "[Section 73.57(g)(2)(i)]".
17. Page 14, line 10, add a comma after "rule,".
18. Page 14, line 18, delete "and" after "grossly incorrect".
19. Page 15, lines 7 and 11, change "a NPR" to "an NPR".
20. Page 16, line 6, change "a FBI" to "an FBI".
21. Page 17, line 16, change to read: "criminal history records check".
22. Page 18, line 1, change to read: "criminal history records checks".
23. Page 18, line 11, "Section 149.b" and line 22, "Section 149e"; Page 30, lines 6 and 14, "Section 104c"; Page 43, line 10, "104c". Be consistent in the FRN regarding use of a period after "Section 149" or "Section 104" and before the subsection letter.

24. Page 18, line 11-12, revise to read: "... the Commission to, **by rule**, relieve ~~by rule~~ persons from"
25. Page 19, line 21, delete extra space before "(4)".
26. Page 21, line 18-19, change to read: "criminal history **records** checks".
27. Page 22, line 1, change to read: "criminal history **records** check".
28. Page 22, line 2, change to read: "criminal **history** records **s** check".
29. Page 23, line 1 -2, change to read: "... and research missions. **Some of the eleven comments provided views that were in addition to those supporting TRTR's comments.** The following are **those** additional comments received during the reopened public comment period.
30. Page 29, line 12, change the period to a comma after "NPRs,".
31. Page 29, line 15, change to read: "criminal history records checks".
32. Page 31, lines 1-2, revise to read: "... Section 73.57, the NRC will ~~consider~~ relaxing Order EA-07-074 and Order EA-07-098 **after compliance with the requirements of the final rule has been documented.** However, ~~a~~**All orders will remain in effect until the NRC notifies the current NPR licensee, in writing, that the orders are relaxed with respect to its facility** ~~takes specific action to relax them.~~
33. Page 31, starting with 3rd sentence under "C. Implementation Plans" revise to read: **The NRC believes that the majority of procedure and plan changes are currently in place as a result of the previously issued unescorted access order. But, some licensees stated that they would need additional time.** The extended date of this final rule will provide time for **those** licensees to develop or revise procedures and programs associated with the granting of unescorted access at their facilities to comply with the final 10 CFR 73.57(g) provisions. ~~The NRC believes that the majority of procedure and plan changes are currently in place as a result of the previously issued unescorted access order.~~ **There are no safety or security issues associated with this additional time because the security orders have already been in place for a number of years.** Additionally"
34. Page 32, line 1, add a comma after "regulation,".
35. Page 33, line 13, revise to read: "... the discretion ~~to~~ not **to**"
36. Page 33, line 20, change to read: "criminal history records checks".
37. Page 34, lines 1 and 2, adjust the indent to be consistent with the rest of the FRN.
38. Page 34, line 14, revise to read: "... with ~~proposed~~ **revised** Section 73.57."
39. Page 35, line 18-19, change to read: "criminal history records checks".
40. Page 36, line 9, add quotations around second instance of **"vital equipment"**.

41. Page 36, line 15, delete comma after “Section 73.57(g)(2)(ii).”
42. Page 36, line 18, revise to read: “performed by **the** NRC”
43. Page 36, lines 19-22, clarify the seamlessness discussed here and the interpretation/documentation discussion from 75 FR 2008 (proposed rule).
44. Page 36, last line, revise to read: “... a criminal history records checks”
45. Page 38, line 7, revise to read: “... use **an** NPR”
46. Page 38, line 15, revise to read: “... by ~~proposed~~ **revised** Section 73.57(g).”
47. Page 38, line 19, revise to read: “...criminal history **records** information”
48. Page 38, line 22, revise to read: “... ~~which~~ **that** is different”
49. Page 38, line 23, revise to read: “... findings ~~should~~ **shall** be”
50. Page 39, line 1, revise to read: “... behaviors ~~which~~ **that** indicates...”; line 2, revise to read: “... behaviors ~~which~~ **that** cast”
51. Page 42, line 10, indent the first sentence.
52. Page 43, line 11-12, revise to read: “... backfit provisions **s** in Section 50.109 ~~does~~ not apply”
53. Page 43, line 19, correct the indent.
54. Page 44, line 7, revise to read: “10 CFR p**P**art 73”
55. Page 48, line 10, delete the extra space in the telephone number.