

September 14, 2000

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - SECY-00-0160 - WITHDRAWAL OF PROPOSED RULE AND DENIAL OF PETITION FOR RULEMAKING SUBMITTED BY THE PUBLIC CITIZEN LITIGATION GROUP AND THE CRITICAL MASS ENERGY PROJECT

The Commission has approved publication of the Federal Register notice denying the petition for rulemaking to amend the regulatory criteria for an extraordinary nuclear occurrence (ENO) and withdrawing the associated rule proposed in 1985. The changes in the attachment should be incorporated prior to publication.

(EDO)

(SECY Suspend: 10/13/00)

As noted in the paper, the staff should contact the petitioners and provide them with the details behind the final decision and the reasons for the delay. In addition, the staff should convey the Commission's regret that the final decision was delayed for such a long period. The staff should be prepared to address questions from the media regarding the basis for the denial and the reasons for the delay in reaching a decision.

The staff should advise the Commission of any actions that are necessary to ensure the rulemaking prioritization process has been or will be changed to prevent such inordinate delays in the future.

The staff should provide additional information about any pending petitions that were received by the NRC on or before June 1, 1996. The staff should detail the status of any rulemakings or other actions, the reason for the delay, whether the petitioners are aware of the bases for the delay, and the staff's best estimate for completing action on the petition, options that would allow the schedule to be expedited, and the implications if the staff's schedule were expedited.

Attachment: [Changes to the Federal Register Notice in SECY-00-0160](#)

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
CIO  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

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SECY NOTE: THIS SRM, THE SUBJECT SECY PAPER, AND THE RELATED COMMISSION VOTING RECORD WILL BE MADE PUBLICLY AVAILABLE 5 BUSINESS DAYS AFTER THE LETTERS HAVE BEEN DISPATCHED TO THE PETITIONERS.

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ATTACHMENT

## Changes to the Federal Register Notice in SECY-00-0160

1. On page 1, paragraph 1, revise the last line to read ' ... none of the options in the proposed rule are acceptable.'
2. On page 3, revise line 2 to read ' ... action constitute d the Commission's ....'
3. On page 3, last paragraph, revise line 6 through the end on page 4 to read ' ... two-part test is **specifically contemplated** ~~statutorily required<sup>1</sup> by Section 11.j of the AEA .~~ **Section 11.j** that defines an ENO as an event **(1) causing an offsite discharge of certain radioactive material or in which offsite radiation levels that are deemed to be substantial and (2) that has resulted in, or probably will result in, substantial** damages to persons or property ~~offsite have resulted, or probably will result, in substantial damages offsite. Thus, applying the criteria specified in 10 CFR 140.84, the NRC first must first find that a substantial offsite discharge of radioactive material has occurred or a substantial offsite radiation level offsite has resulted. occurred, applying the criteria specified in 10 CFR 140.84. Second, if this finding is made, the NRC must then make a finding that whether substantial damages to persons or property offsite have been or probably will be incurred , applying the criteria specified in 10 CFR 140.85. If both this finding s are is- also made, the Commission must then must find that the event ....'~~ Also, delete footnote 1.
4. On page 5, 1<sup>st</sup> full paragraph, revise the last line to read ' ... petitioners' first request ~~is was~~ denied.'
5. On page 6, 1<sup>st</sup> full paragraph, revise line 5 to read ' ... suggested that a more slow **ly** developing accident ....'
6. On page 7, 1<sup>st</sup> full paragraph, revise lines 1 through 4 to read 'Option 1 **would** modify ~~y~~ ~~ied~~ §140.84(a) to **provide that a finding of** define a substantial discharge of radioactive material or substantial radiation level offsite **should be** based on **a determination** finding "that one or more ... doses" in excess of ~~certain~~ the specified limits.
7. On page 7, last paragraph, revise line 7 to read ' ... 2 threshold ~~is was~~ that a ....'
8. On page 7, last paragraph, revise lines 8 and 9 to read ' ... during the course of an accident as evidence ~~that substantial damages to persons or property offsite have been sustained.~~'
9. On page 8, last paragraph, revise line 3 to read ' ... **Illinois** Department of Nuclear Safety of the State of Illinois said that it ....'
10. On page 9, paragraph 1, revise lines 6 and 7 to read ' ... arose not from the criteria , **but from the fact that** ~~but because~~ the accident ....'
11. On page 9 paragraph 1, revise line 9 to read ' ... regulatory criteria ~~can~~ **would** relieve the Commission ....'
12. On page 9, last paragraph, revise lines 1 and 2 to read ' ... changing the criteria ~~for determining that an ENO had occurred~~ stated that the reduction of the dose level **to sustain a finding of** a substantial offsite ....'
13. On page 11, 2<sup>nd</sup> full paragraph, revise line 1 to read 'In addition, **section 11.j** of the AEA (42 USC Sec. 2014) ~~indicates~~ ~~states~~ that the dual ....'
14. On page 12, the sentence at the top of the page should be included with the previous paragraph and not stand alone as a separate paragraph. It should be revised to read '... that **the** a determination **that an ENO has occurred requires findings of substantial releases and of substantial damages** of substantial ~~d~~ damages should only be made if a finding of substantial releases has been made. Also,

delete footnote 7.

15. On page 13, in paragraph (2), delete the second, third and fourth sentences (The legislative history ... justify changing them.) and move them with their footnotes to the end of the paragraph. Begin the replaced sentence with '**Furthermore, t**  
The legislative history ....' Revise the beginning of the old 5<sup>th</sup> sentence to read '~~Furthermore, t~~The Commission ....'
16. On page 13, revise the last line to read ' ... in the *Federal Register* notice  
for the 1985 proposed rule, ~~was~~**not seen so much as** a difficulty with ....'
17. On page 14, revise line 1 to read ' ... criteria to TMI-2, but , **rather, was seen as**  
a perceived inadequacy ~~of~~the ENO ....'
18. On page 14, revise line 2 to read '**But t**  
The PAGs were established ....'
19. On page 14, revise line 12 to read ' ... regulations have been conservatively **determined**  
~~arrived at~~and for a ....'
20. On page 15, paragraph (1), insert the following after the 1<sup>st</sup> sentence: '**The Commission believes that, contrary to the *Federal Register* notice for the proposed rule, the derivation of timely and accurate estimates of monetary damages is possible. The Commission is confident that, should an event meriting an ENO determination occur again, individuals and consulting firms with experience in estimating evacuation costs, changes in property values, loss of time from work, and other parameters can be assembled to make estimates of monetary damages. Moreover, as**  
As previously noted ....'
21. On pages 15 and 16, in paragraph (1), delete the last two sentences (Furthermore, the Commission believes ... of monetary damages.)
22. On page 16, the second full paragraph (the paragraph after (2)) should be marked as (3).
23. On page 17, revise line 3 from the top to read ' ... ENO determinations defined **in** Section 11.j. of the ....'
24. On page 17, delete footnote 12.