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CERTIFICATION OF

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PUBLIC SERVICE COMMISSION ADMINISTRATIVE RULES

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DEPARTMENT OF STATE

I do hereby certify:

/x/ (1) That all statutory rulemaking requirements of Chapter 120, F.S., have been complied with; and

/x/ (2) There is no administrative determination under subsection 120.56(2), F.S., pending on any rule covered by this certification; and

/x/ (3) All rules covered by this certification are filed within the prescribed time limitations of paragraph 120.54(3)(e), F.S. They are filed not less than 28 days after the notice required by paragraph 120.54(3)(a), F.S., and;

// (a) Are filed not more than 90 days after the notice; or

// (b) Are filed not more than 90 days after the notice not including days an administrative determination was pending; or

/x/ (c) Are filed more than 90 days after the notice, but not less than 21 days nor more than 45 days from the date of publication of the notice of change; or

// (d) Are filed more than 90 days after the notice, but not less than 14 nor more than 45 days after the adjournment of the final public hearing on the rule; or

// (e) Are filed more than 90 days after the notice, but within 21 days after the date of receipt of all material authorized to be submitted at the hearing; or

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// (f) Are filed more than 90 days after the notice, but within 21 days after the date the transcript was received by this agency; or

// (g) Are filed not more than 90 days after the notice, not including days the adoption of the rule was postponed following notification from the Joint Administrative Procedures Committee that an objection to the rule was being considered; or

// (h) Are filed more than 90 days after the notice, but within 21 days after a good faith written proposal for a lower cost regulatory alternative to a proposed rule is submitted which substantially accomplishes the objectives of the law being implemented; or

// (i) Are filed more than 90 days after the notice, but within 21 days after a regulatory alternative is offered by the small business ombudsman.


Attached are the original and two copies of each rule covered by this certification. The rules are hereby adopted by the undersigned agency by and upon their filing with the Department of State.

Rule No.

26-5.0423

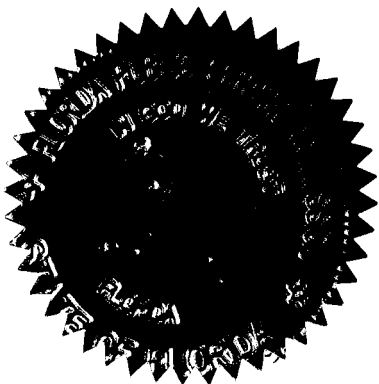
Under the provision of subparagraph 120.54(3)(e)6., F.S., the rules take effect 20 days from the date filed with the Department of State or a later date as set out below:

Effective: _____
(month) (day) (year)



ANN COLE
Commission Clerk

Number of Pages Certified



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1 25-6.0423 Nuclear Power Plant Cost Recovery

2 (1) Purpose. The purpose of this rule is to establish alternative cost recovery
3 mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction
4 of nuclear power plants in order to promote electric utility investment in nuclear power plants
5 and allow for the recovery in rates of all such prudently incurred costs.

6 (2) Definitions. As used in this rule, the following definitions shall apply:

7 (a) "Nuclear power plant" or "plant" is an electrical power plant that utilizes nuclear
8 materials as fuel, as defined in Sections 403.503(13) and 366.93(1)(c), Florida Statutes.

9 (b) "Cost" includes, but is not limited to, all capital investments including rate of
10 return, any applicable taxes and all expenses, including operation and maintenance expenses,
11 related to or resulting from the siting, licensing, design, construction, or operation of the
12 nuclear power plant as defined in Section 366.93(1)(a), Florida Statutes.

13 (c) "Site selection." A site will be deemed to be selected upon the filing of a petition
14 for a determination of need for a nuclear power plant pursuant to Section 403.519, Florida
15 Statutes.

16 (d) "Site selection costs" are costs that are expended prior to the selection of a site.

17 (e) "Pre-construction costs" are costs that are expended after a site has been selected in
18 preparation for the construction of a nuclear power plant, incurred up to and including the date
19 the utility completes site clearing work.

20 (f) Site selection costs and pre-construction costs include, but are not limited to: any
21 and all costs associated with preparing, reviewing and defending a Combined Operating
22 License (COL) application for a nuclear power plant; costs associated with site and technology
23 selection; costs of engineering, designing, and permitting the nuclear power plant; costs of
24 clearing, grading, and excavation; and costs of on-site construction facilities (i.e., construction
25 offices, warehouses, etc.).

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1 (g) "Construction costs" are costs that are expended to construct the nuclear power
2 plant including, but not limited to, the costs of constructing nuclear power plant buildings and
3 all associated permanent structures, equipment and systems.

4 (3) Deferred Accounting Treatment. Site selection and pre-construction costs shall be
5 afforded deferred accounting treatment and shall, except for projected costs recovered on a
6 projected basis in one annual cycle, accrue a carrying charge equal to the utility's allowance
7 for funds used during construction (AFUDC) rate until recovered in rates.

8 (4) Site Selection Costs. After the Commission has issued a final order granting a
9 determination of need for a nuclear power plant pursuant to Section 403.519, Florida Statutes,
10 a utility may file a petition for a separate proceeding, to recover prudently incurred site
11 selection costs. This separate proceeding will be limited to only those issues necessary for the
12 determination of prudence and alternative method for recovery of site selection costs of a
13 nuclear power plant.

14 (5) Pre-Construction Costs and Carrying Costs on Construction Cost Balance. After
15 the Commission has issued a final order granting a determination of need for a nuclear power
16 plant pursuant to Section 403.519, Florida Statutes, a utility may petition the Commission for
17 recovery of pre-construction costs and carrying costs of construction cost balance as follows:

18 (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost
19 Recovery Clause, its actual and projected pre-construction costs. The utility may also recover
20 the related carrying charge for those costs not recovered on a projected basis. Such costs will
21 be recovered within 1 year, unless the Commission approves a longer recovery period. Any
22 party may, however, propose a longer period of recovery, not to exceed 2 years.

23 1. Actual pre-construction costs incurred by a utility prior to the issuance of a final
24 order granting a determination of need pursuant to Section 403.519, Florida Statutes, shall be
25 included in the initial filing made by a utility under this subsection for review, approval, and a

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1 finding with respect to prudence.

2 2. The Commission shall include pre-construction costs determined to be reasonable
3 and prudent in setting the factor in the annual Capacity Cost Recovery Clause proceedings, as
4 specified in subparagraph (5)(c)3. of this rule. Such costs shall not be subject to disallowance
5 or further prudence review.

6 (b) Carrying Costs on Construction Cost Balance. A utility is entitled to recover,
7 through the utility's Capacity Cost Recovery Clause, the carrying costs on the utility's annual
8 projected construction cost balance associated with the nuclear power plant. The actual
9 carrying costs recovered through the Capacity Cost Recovery Clause shall reduce the
10 allowance for funds used during construction (AFUDC) that would otherwise have been
11 recorded as a cost of construction eligible for future recovery as plant in service.

12 1. For nuclear power plant need petitions submitted on or before December 31, 2010,
13 the associated carrying costs shall be computed based on the pretax AFUDC rate in effect on
14 June 19, 2006;

15 2. For nuclear power plant need petitions submitted after December 31, 2010, the
16 utility's pretax AFUDC rate in effect at the time the petition for determination of need is filed
17 is presumed to be appropriate unless the Commission determines otherwise in its need
18 determination order;

19 3. The Commission shall include carrying costs on the balance of construction costs
20 determined to be reasonable or prudent in setting the factor in the annual Capacity Cost
21 Recovery Clause proceedings, as specified in Paragraph (5)(c) of this rule.

22 (c) Capacity Cost Recovery Clause for Nuclear Costs.

23 1. Each year, a utility shall submit, for Commission review and approval, as part of its
24 Capacity Cost Recovery Clause filings:

25 a. True-Up for Previous Years. By March 1, a utility shall submit its final true-up of

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1 pre-construction expenditures, based on actual preconstruction expenditures for the prior year
2 and previously filed expenditures for such prior year and a description of the pre-construction
3 work actually performed during such year; or, once construction begins, its final true-up of
4 carrying costs on its construction expenditures, based on actual carrying costs on construction
5 expenditures for the prior year and previously filed carrying costs on construction
6 expenditures for such prior year and a description of the construction work actually performed
7 during such year.

8 b. True-Up and Projections for Current Year. By May 1, a utility shall submit for
9 Commission review and approval its actual/estimated true-up of projected pre-construction
10 expenditures based on a comparison of current year actual/estimated expenditures and the
11 previously-filed estimated expenditures for such current year and a description of the pre-
12 construction work projected to be performed during such year; or, once construction begins,
13 its actual/estimated true-up of projected carrying costs on construction expenditures based on
14 a comparison of current year actual/estimated carrying costs on construction expenditures and
15 the previously filed estimated carrying costs on construction expenditures for such current
16 year and a description of the construction work projected to be performed during such year.

17 c. Projected Costs for Subsequent Years. By May 1, a utility shall submit, for
18 Commission review and approval, its projected pre-construction expenditures for the
19 subsequent year and a description of the pre-construction work projected to be performed
20 during such year; or, once construction begins, its projected construction expenditures for the
21 subsequent year and a description of the construction work projected to be performed during
22 such year.

23 2. The Commission shall, prior to October 1 of each year, conduct a hearing and
24 determine the reasonableness of projected pre-construction expenditures and the prudence of
25 actual pre-construction expenditures expended by the utility; or, once construction begins, to

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1 determine the reasonableness of projected construction expenditures and the prudence of
2 actual construction expenditures expended by the utility, and the associated carrying costs.
3 Within 15 days of the Commission's vote, the Commission shall enter its order. Annually, the
4 Commission shall make a prudence determination of the prior year's actual construction costs
5 and associated carrying costs. To facilitate this determination, the Commission shall conduct
6 an on-going auditing and monitoring program of construction costs and related contracts
7 pursuant to Section 366.08, Florida Statutes. In making its determination of reasonableness
8 and prudence the Commission shall apply the standard provided pursuant to Section
9 403.519(4)(e), Florida Statutes.

10 3. The Commission shall include those costs it determines, pursuant to this subsection,
11 to be reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual
12 Fuel and Purchased Power Cost Recovery proceedings. Such prior year actual costs associated
13 with nuclear power plant construction subject to the annual proceeding shall not be subject to
14 disallowance or further prudence review.

15 4. The final true-up for the previous year, actual/estimated true-up for the current year,
16 and subsequent year's projected nuclear power plant costs as approved by the Commission
17 pursuant to subparagraph (5)(c)2. will be included for cost recovery purposes as a component
18 of the following year's capacity cost recovery factor in the Fuel and Purchased Power Cost
19 Recovery. The utility must file all necessary revisions to the fuel and purchased power cost
20 recovery filings no later than October 15 of the current year.

21 5. By May 1 of each year, along with the filings required by this paragraph, a utility
22 shall submit for Commission review and approval a detailed analysis of the long-term
23 feasibility of completing the nuclear plant.

24 (6) Failure to Enter Commercial Service. Following the Commission's issuance of a
25 final order granting a determination of need for the nuclear power plant, in the event the utility

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1 elects not to complete or is precluded from completing construction of the nuclear power
2 plant, the utility shall be allowed to recover all prudent site selection costs, pre-construction
3 costs, and construction costs.

4 (a) The utility shall recover such costs through the Capacity Cost Recovery Clause
5 over a period equal to the period during which the costs were incurred or 5 years, whichever is
6 greater.

7 (b) The amount recovered under this subsection will be the remaining unrecovered
8 Construction Work in Progress (CWIP) balance at the time of abandonment and future
9 payment of all outstanding costs and any other prudent and reasonable exit costs. The
10 unrecovered balance during the recovery period will accrue interest at the utility's overall
11 pretax weighted average midpoint cost of capital on a Commission adjusted basis as reported
12 by the utility in its Earnings Surveillance Report filed in December of the prior year, utilizing
13 the midpoint of return on equity (ROE) range or ROE approved for other regulatory purposes,
14 as applicable.

15 (7) Commercial Service. As operating units or systems associated with the nuclear
16 power plant and the nuclear power plant itself are placed in commercial service:

17 (a) The utility shall file a petition for Commission approval of the base rate increase
18 pursuant to Section 366.93(4), Florida Statutes, separate from any cost recovery clause
19 petitions, that includes any and all costs reflected in such increase, whether or not those costs
20 have been previously reviewed by the Commission; provided, however, that any actual costs
21 previously reviewed and determined to be prudent in the Capacity Cost Recovery Clause shall
22 not be subject to disallowance or further prudence review except for fraud, perjury, or
23 intentional withholding of key information.

24 (b) The utility shall calculate the increase in base rates resulting from the jurisdictional
25 annual base revenue requirements for the nuclear power plant in conjunction with the Capacity

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1 Cost Recovery Clause projection filing for the year the nuclear power plant is projected to
2 achieve commercial operation. The increase in base rates will be based on the annualized base
3 revenue requirements for the nuclear power plant for the first 12 months of operations
4 consistent with the cost projections filed in conjunction with the Capacity Cost Recovery
5 Clause projection filing.

6 (c) At such time as the nuclear power plant is included in base rates, recovery through
7 the Capacity Cost Recovery Clause will cease, except for the difference between actual and
8 projected construction costs as provided in subparagraph (5)(c)4. above.

9 (d) The rate of return on capital investments shall be calculated using the utility's most
10 recent actual Commission adjusted basis overall weighted average rate of return as reported by
11 the utility in its most recent Earnings Surveillance Report prior to the filing of a petition as
12 provided in paragraph (7)(a). The return on equity cost rate used shall be the midpoint of the
13 last Commission approved range for return on equity or the last Commission approved return
14 on equity cost rate established for use for all other regulatory purposes, as appropriate.

15 (e) The jurisdictional net book value of any existing generating plant that is retired as a
16 result of operation of the nuclear power plant shall be recovered through an increase in base
17 rate charges over a period not to exceed 5 years. At the end of the recovery period, base rates
18 shall be reduced by an amount equal to the increase associated with the recovery of the retired
19 generating plant.

20 (8) A utility shall, contemporaneously with the filings required by paragraph (5)(c)
21 above, file a detailed statement of project costs sufficient to support a Commission
22 determination of prudence, including, but not limited to, the information required in
23 paragraphs (8)(b) - (8)(e), below.

24 (a) Subject to suitable confidentiality agreements or, to the extent necessary, protective
25 orders issued by the Commission, a utility will ensure reasonably contemporaneous access,

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1 which may include access by electronic means, for review by parties of all documents relied
2 on by utility management to approve expenditures for which cost recovery is sought. Access
3 to any information that is "Safeguards Information" as defined in 42 U.S.C. 2167 and 10
4 C.F.R. 73.21, incorporated by reference into this Rule, shall only be in accordance with
5 applicable Nuclear Regulatory Commission requirements.

6 (b) Regarding technology selected, a utility shall provide a description of the
7 technology selected that includes, but is not limited to, a review of the technology and the
8 factors leading to its selection.

9 (c) The annual true-up and projection cost filings shall include a list of contracts
10 executed in excess of \$1 million to include the nature and scope of the work, the dollar value
11 and term of the contract, the method of vendor selection, the identity and affiliation of the
12 vendor, and current status of the contract.

13 (d) Final true-up filings and actual/estimated true-up filings will include monthly
14 expenditures incurred during those periods for major tasks performed within Site Selection,
15 Preconstruction and Construction categories. A utility shall provide annual variance
16 explanations comparing the current and prior period to the most recent projections for those
17 periods filed with the Commission.

18 (e) Projection filings will include monthly expenditures for major tasks performed
19 within Site Selection, Preconstruction and Construction categories.

20 (f) Annual Reports Required by Rule 25-6.135, F.A.C. On an annual basis following
21 issuance of the final order granting a determination of need and until commercial operation of
22 the nuclear power plant, a utility shall include the budgeted and actual costs as compared to
23 the estimated in-service costs of the nuclear power plant as provided in the petition for need
24 determination in its annual report filed pursuant to Rule 25-6.135, F.A.C. The estimates
25 provided in the petition for need determination are non-binding estimates. Some costs may be

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1 higher than estimated and other costs may be lower. A utility shall provide such revised
2 estimated in-service costs as may be necessary in its annual report.

3 Specific Authority 350.127(2), 366.05(1) FS

4 Law Implemented 366.93 FS

5 History: New _____.

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CERTIFICATION OF
MATERIALS INCORPORATED BY REFERENCE
IN RULES FILED WITH THE DEPARTMENT OF STATE

Pursuant to Rule 1S-1.005, Florida Administrative Code, I do hereby certify that the attached are true and correct copies of the following materials incorporated by reference in Rule 25-6.0423. Under the provisions of subparagraph 120.54(3)(e)(6), F.S., the attached materials take effect 20 days from the date filed with the Department of State, or a later date as specified in the rule.

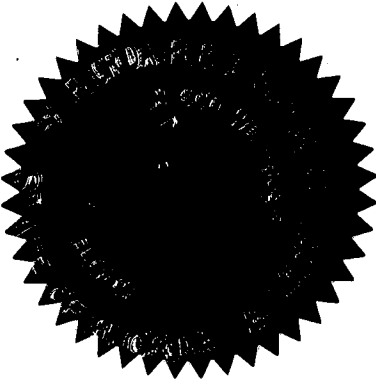
Title 42, United States Code, Chapter 23, Section 2167
Atomic Energy - Control of Information – Safeguards information

Title 10, Code of Federal Regulators, Chapter I, Part 73, Section 73.21 – Requirements for the protection of safeguards information



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Commission Clerk

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*** CURRENT THROUGH P.L. 110-2, APPROVED 2/2/2007 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 23. DEVELOPMENT AND CONTROL OF ATOMIC ENERGY
ATOMIC ENERGY
CONTROL OF INFORMATION

42 USCS § 2167

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TALLAHASSEE, FLORIDA

§ 2167. Safeguards information

(a) In addition to any other authority or requirement regarding protection from disclosure of information, and subject to subsection (b)(3) of *section 552 of title 5 of the United States Code* [5 USCS § 552(b)(3)], the Commission shall prescribe such regulations, after notice and opportunity for public comment, or issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information which specifically identifies a licensee's or applicant's detailed--

(1) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

(2) security measures (including security plans, procedures, and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

(3) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2) if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority of this subsection--

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and

(B) upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Nothing in this Act [42 USCS §§ 2011 et seq.] shall authorize the Commission to prohibit the public disclosure of information pertaining to the routes and quantities of shipments of source material, by-product material, high level nuclear waste, or irradiated nuclear reactor fuel. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act [42 USCS § 2282]. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

(b) For the purposes of section 223 of this Act [42 USCS § 2273], any regulations or orders prescribed or issued by the Commission under this section shall also be deemed to be prescribed or issued under section 161(b) of this Act [42 USCS § 2201(b)].

(c) Any determination by the Commission concerning the applicability of this section shall be subject to judicial review pursuant to subsection (a)(4)(B) of *section 552 of title 5 of the United States Code* [5 USCS § 552].

(d) Upon prescribing or issuing any regulation or order under subsection a. of this section, the Commission shall submit to Congress a report that:

42 USCS § 2167

(1) specifically identifies the type of information the Commission intends to protect from disclosure under the regulation or order;

(2) specifically states the Commission's justification for determining that unauthorized disclosure of the information to be protected from disclosure under the regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provides justification, including proposed alternative regulations or orders, that the regulation or order applies only the minimum restrictions needed to protect the health and safety of the public or the common defense and security.

(e) In addition to the reports required under subsection (d) of this section, the Commission shall submit to Congress on a quarterly basis a report detailing the Commission's application during that period of every regulation or order prescribed or issued under this section. In particular, the report shall:

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Commission's justification for determining that unauthorized disclosure of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion or sabotage of such material or such facility, as specified under subsection (a) of this section; and

(3) provide justification that the Commission has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

HISTORY:

(Aug. 1, 1946, ch 724, Title I, Ch. 12, § 147, as added June 30, 1980, P.L. 96-295, Title II, § 207(a)(1), 94 Stat. 788.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Act Oct. 24, 1992, P.L. 102-486, Title IX, § 902(a)(8), 106 Stat. 2944, amended the Atomic Energy Act of 1954, which appears generally as *42 USCS §§ 2011 et seq.*, by inserting "TITLE I-ATOMIC ENERGY" before the Chapter 1 heading.

NOTES:

Code of Federal Regulations:

Nuclear Regulatory Commission--Physical protection of plants and materials, 10 CFR Part 73.

Related Statutes & Rules:

This section is referred to in *42 USCS §§ 2169, 2231, 2286b, 2297f.*

Interpretive Notes and Decisions:

NRC was not required to comply with reporting requirements of *42 USCS 2167(d)* with respect to NRC orders denying plaintiffs' Freedom of Information Act requests where such orders were issued prior to enactment of § 2167. *Virginia Sunshine Alliance v Nuclear Regulatory Com.* (1981, App DC) 215 US App DC 402, 669 F2d 788.

*** THIS SECTION IS CURRENT THROUGH THE FEBRUARY 8, 2007 ISSUE OF ***
*** THE FEDERAL REGISTER ***

TITLE 10 -- ENERGY
CHAPTER I -- NUCLEAR REGULATORY COMMISSION
PART 73 -- PHYSICAL PROTECTION OF PLANTS AND MATERIALS
GENERAL PROVISIONS

Go to the CFR Archive Directory

10 CFR 73.21

§ 73.21 Requirements for the protection of safeguards information.

(a) General performance requirement. Each licensee who (1) possesses a formula quantity of strategic special nuclear material, or (2) is authorized to operate a nuclear power reactor, or (3) transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

(b) Information to be protected. The specific types of information, documents, and reports that shall be protected are as follows:

(1) Physical protection at fixed sites. Information not otherwise classified as Restricted Data or National Security Information relating to the protection of facilities that possess formula quantities of strategic special nuclear material, and power reactors. Specifically:

- (i) The composite physical security plan for the nuclear facility or site.
- (ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical protection system.
- (iii) Details of alarm system layouts showing location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.
- (iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.
- (v) Details of the on-site and off-site communications systems that are used for security purposes.
- (vi) Lock combinations and mechanical key design.
- (vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in physical security plans, safeguards contingency plans, or plant specific safeguards analyses for production or utilization facilities.
- (viii) The composite safeguards contingency plan for the facility or site.
- (ix) Those portions of the facility guard qualification and training plan which disclose features of the physical security system or response procedures.
- (x) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

10 CFR 73.21

- (xi) Size, armament, and disposition of on-site reserve forces.
 - (xii) Size, identity, armament, and arrival times of off-site forces committed to respond to safeguards emergencies.
 - (xiii) Information required by the Commission pursuant to *10 CFR 73.55 (c)(8)* and (9).
- (2) Physical protection in transit. Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of formula quantities of strategic special nuclear material and spent fuel. Specifically:
- (i) The composite transportation physical security plan.
 - (ii) Schedules and itineraries for specific shipments. (Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series.)
 - (iii) Details of vehicle immobilization features, intrusion alarm devices, and communication systems.
 - (iv) Arrangements with and capabilities of local police response forces, and locations of safe havens.
 - (v) Details regarding limitations of radio-telephone communications.
 - (vi) Procedures for response to safeguards emergencies.
- (3) Inspections, audits and evaluations. Information not otherwise classified as National Security Information or Restricted Data relating to safeguards inspections and reports. Specifically:
- (i) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Information regarding defects, weaknesses or vulnerabilities may be released after corrections have been made. Reports of investigations may be released after the investigation has been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (*5 U.S.C. 552*).
- (4) Correspondence. Portions of correspondence insofar as they contain Safeguards Information specifically defined in paragraphs (b)(1) through (b)(3) of this paragraph.
- (c) Access to Safeguards Information. (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:
- (i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by *10 CFR 73.57*;
 - (ii) A member of a duly authorized committee of the Congress;
 - (iii) The Governor of a State or designated representatives;
 - (iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;
 - (v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or
 - (vi) An individual to whom disclosure is ordered under § 2.709(f) of this chapter.
- (2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.
- (d) Protection while in use or storage. (1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual.
- (2) While unattended, Safeguards Information shall be stored in a locked security storage container. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need to know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

10 CFR 73.21

(e) Preparation and marking of documents. Each document or other matter that contains Safeguards Information as defined in paragraph (b) in this section shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information (portion marking is not required for the specific items of information set forth in paragraph § 73.21(b) other than guard qualification and training plans and correspondence to and from the NRC). Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(f) Reproduction and destruction of matter containing Safeguards Information. (1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents or other matter containing Safeguards Information may be destroyed by any method that assures complete destruction of the Safeguards Information they contain.

(g) External transmission of documents and material. (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be packaged to preclude disclosure of the presence of protected information.

(2) Safeguards Information may be transported by messenger-courier, United States first class, registered, express, or certified mail, or by any individual authorized access pursuant to § 73.21(c).

(3) Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted only by protected telecommunications circuits (including facsimile) approved by the NRC. Physical security events required to be reported pursuant to § 73.71 are considered to be extraordinary conditions.

(h) Use of automatic data processing (ADP) systems. Safeguards Information may be processed or produced on an ADP system provided that the system is self-contained within the licensee's or his contractor's facility and requires the use of an entry code for access to stored information. Other systems may be used if approved for security by the NRC.

(i) Removal from Safeguards Information category. Documents originally containing Safeguards Information shall be removed from the Safeguards Information category whenever the information no longer meets the criteria contained in this section.

HISTORY: [46 FR 51724, Oct. 22, 1981, as amended at 54 FR 17704, Apr. 25, 1989; 59 FR 38899, Aug. 1, 1994; 69 FR 2182, 2281, Jan. 14, 2004]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245; sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

NOTES: [EFFECTIVE DATE NOTE: 69 FR 2182, 2281, Jan. 14, 2004, revised paragraph (c)(1)(vi), effective Feb. 13, 2004.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission (NRC) Policy Statements, see: 51 FR 29211, (1986); 52 FR 20592, (1987); 60 FR 4071, Jan. 20, 1995; 65 FR 47654, Aug. 3, 2000]

[PUBLISHER'S NOTE: For Federal Register citations concerning the issuance of a Report on the Nuclear Regulatory Commission regulatory agenda, see: 59 FR 48558, Sept. 22, 1994; 60 FR 49327, Sept. 25, 1995; 61 FR 46537, Sept. 4, 1996.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission regulatory analysis guidelines, see: 69 FR 29187, May 21, 2004.]

[PUBLISHER'S NOTE: For Federal Register citations concerning Nuclear Regulatory Commission Waivers, see: 70 FR 51581, Aug. 31, 2005.]

SUMMARY OF RULE

The rule will establish cost recovery mechanisms that promote electric utility investment in nuclear power plants and allow for the recovery in rates of all costs prudently incurred in the siting, design, licensing, and construction of a nuclear power plant. The rule addresses the treatment of site selection costs, preconstruction costs, and carrying costs on construction cost balance. The rule provides for separate hearings to determine the amount of pre-construction costs and carrying costs on construction cost balance to be recovered through the annual Capacity Cost Recovery Clause. The rule also provides for annual prudence reviews of construction costs. When the plant goes into commercial service, the rule establishes that base rates will be increased to cover the projected revenue requirement for the first 12 months the plant is in service, as well as the undepreciated cost of any plant retired as a result of bringing the nuclear unit on-line. Since the time frame over which the undepreciated retired plant may be recovered is limited to a maximum of five years, the rule also requires that base rates be reduced by the amount included to recover any such undepreciated plant at the expiration of that recovery period.

SUMMARY OF HEARINGS ON THE RULE

A request for hearing was filed and subsequently withdrawn, and no hearing was held.

FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The Florida legislature codified its desire to promote fuel diversity and electric supply reliability by promoting investment in nuclear power in Section 366.93, F.S. The Legislature determined this could be done by ensuring the costs of planning and constructing a nuclear power plant will be recovered in a fair and timely manner. The PSC was directed to adopt rules to facilitate the recovery of costs for new nuclear plants through the annual capacity cost recovery clause proceedings.

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