

October 6, 2010

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-10-0095 – PROPOSED RULE:
ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF
TRANSPORT OF CERTAIN TYPES OF NUCLEAR WASTE (RIN
3150-AG41)

The Commission has approved the staff's proposal to publish in the Federal Register the amendments to 10 CFR 71 and 73 that would: (1) require licensees to provide to federally recognized Tribal governments advance notification regarding shipments of irradiated reactor fuel and certain nuclear waste listed in 10 CFR 71.97 for any shipment that passes through Tribal reservations; and (2) relieve tribal officials of obligations to undergo a background check prior to being granted access to Safeguards Information (SGI), subject to the changes and comments below.

(EDO)

(SECY Suspense:

11/5/10)

Before publication, the staff should clearly outline in the proposed rule its justification for the provision that would relieve Indian Tribes from fingerprinting and background checks for access to SGI, consistent with the analysis that has been provided by the Commission in past rulemakings. The staff should notify the Commission if appropriate justification cannot be found for relieving Tribes from fingerprinting and background investigations for access to SGI.

As an alternative, depending on whether a blanket justification for relieving Tribes from fingerprinting and background investigations for access to SGI can be provided, the staff should also consider whether such relief should be provided on a case-by-case basis similar to the provision in 10 CFR 73.59(f) or (j) for representatives of foreign governments or IAEA representatives, where either the Commission approves such entities for access or the entity is "certified" by the NRC.

Before publishing the proposed rule, the staff should revise the supplemental information to the proposed rule to provide a rationale for limiting the relief provided to only SGI related to advance notification of shipments under provisions of § 73.37(f).

The wording regarding the Tribal official should specify that the rule is referring to the *head* Tribal official or that official's designee, and not other officials that may be elected to various positions within the Tribal organization.

The staff should ensure that in addition to providing a list of Tribal contacts on the website, they should also provide a map delineating the locations of the Tribal reservations so that licensees can properly identify when shipments may be crossing into those areas.

The staff should continue to ensure the final rule reflects comments and concerns of the Tribal governments. The staff should also communicate with the Tribal governments regarding the legal obligation associated with protecting SGI and the consequences associated with not protecting the information appropriately. To this end, the staff should seek comments in the proposed rule as to the best methods to impress upon the Tribal governments regarding the obligations associated with possessing SGI. The staff should expand on the planned adjustments to communication vehicles during development of the rule as necessary to ensure the rule addresses tribal interests to the maximum extent possible.

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