

December 1, 1998

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-98-185 - PROPOSED  
RULEMAKING - REVISED REQUIREMENTS FOR THE  
DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

The Commission has disapproved publication of the proposed rule amending 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." The staff should continue to discuss all relevant documents with stakeholders (Nuclear Energy Institute, Department of Energy, and others) in public, including use of the Internet, and submit a revised proposed rulemaking package to the Commission for approval six months from the date of this Staff Requirements Memorandum. In addition to incorporating insights gained during the public comment period, the staff should consider the following issues in developing its revised proposal.

The Commission agrees that Part 70 should require licensees to perform, document, maintain and update an Integrated Safety Analysis (ISA). Part 70 should also require licensees/applicants to address baseline design criteria and develop preliminary ISA for new processes and new facilities. The Commission may support the proposed requirement for the conduct of a decommissioning ISA if it can be justified on a health and safety or cost-benefit basis. However, the Commission is concerned that this requirement appears somewhat redundant with that required by NRC's 1997 decommissioning rule (Part 20) that applies to Part 70 as well as other licensees. The Commission was not persuaded that it is necessary for the results of the ISA to be included in the license and is concerned that such a requirement would bring with it the need for what appears to be an unworkable 10 CFR 50.59-like change process. With regard to changes to the ISA or safety program, Part 70 does need to capture for submittal to NRC those few significant changes that currently would require license amendments. The staff should decide what is fundamental for NRC's regulatory purposes for inclusion as part of a license or docket and what can be justified from a public health and safety and cost-benefit basis. Also, in soliciting public comments, the staff should request input on how applicable ISA methodologies should be employed in the licensing of new technologies for use within new or existing facilities.

The Commission supports a requirement that any new backfit pass a cost-benefit test, without the "substantial" increase in safety test. The Commission believes that modest increases in safety at minimal or inconsequential cost could be justified on a cost benefit basis.

The rule should contain criteria for protection against the occurrence of certain consequences and require reporting of certain significant events to NRC because of their potential to impact worker or public health and safety. However, the Commission does not support the proposed rule with regard to chemical safety and consequence criteria. This issue warrants further

discussion with affected agencies and industry to fully understand their respective authorities and the degree to which those authorities are implemented. The NRC should maintain its primary focus on its nuclear and radiological safety mandate. Consideration should be given to clarifying the basis for use of chemical safety and chemical consequence criteria in the rule, particularly within the context of Memoranda of Understanding with OSHA and other government agencies.

The staff should critically review the Standard Review Plan in its entirety to ensure that, by providing specific acceptance criteria and program attributes to demonstrate compliance with the performance-based rule, it does not inadvertently prevent licensees or applicants from suggesting alternate means of demonstrating compliance.

(EDO)

(SECY Suspense:

5/19/99)

Consistent with the Commission's experience on the privatization of USEC and the current Part 35 rulemaking effort, the Commission wishes to be kept closely informed of this rulemaking effort over the next several months. To facilitate effectively and timely communication on issues associated with the Part 70 rulemaking effort, individual Commissioners designated the following members of their staffs to serve as points of contact for interactions with the NRC staff:

Jim Smith, Office of the Chairman  
Joel Lubenau, Office of Commissioner Dicus  
Pat Castleman, Office of Commissioner Diaz  
Janet Schlueter, Office of Commissioner McGaffigan  
Lynne Stauss, Office of Commissioner Merrifield

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