

May 13, 2010

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-09-0181 – PROPOSED RULE:  
PHYSICAL PROTECTION OF BYPRODUCT MATERIAL (RIN  
3150-A112)

The Commission has approved the staff's recommendation to publish, for public comment, the proposed rule that would add a new Part 37 to Title 10 of the Code of Federal Regulations and make conforming changes to other parts of Title 10, subject to the changes noted below. The Commission also agrees with the staff's plan to publish the draft guidance documents during the public comment period.

1. The staff should consider whether observation of suspicious activities should also be included in the reporting requirements described in this proposed rule.
2. The staff should highlight the overall reporting requirements as one area for which public comments are specifically requested.
3. The staff should extend the effective date of the rule to 270 days or longer after publication of the final rule in the *Federal Register*.
4. When the staff submits the draft final rule to the Commission for its action, it should submit, as an accompanying enclosure to the SECY paper, an implementation plan for terminating the corresponding orders upon finalization of the rule.

Changes to the Federal Register Notice

5. On page 1, last paragraph, revise line 6 to read ' ... of Radioactive Sources **which NRC endorses**. The ....'
6. On page 7, revise line 14 to read ' ... expedited implementation of ~~additional~~ fingerprinting ....'
7. On page 9, paragraph 2, revise lines 2 and 3 to read ' ... to all licensees ~~and is implemented through an open and public process~~. **Further,** The notice ....'
8. On page 9, last paragraph, revise the next to last line to read ' ... distance of **.91** ....'
9. On page 26, revise line 14 to read ' ... radioactive material **since Section 149 of the Atomic Energy Act only authorizes the collection of fingerprints for the purposes of unescorted access or access to safeguards information**. The Commission has

requested statutory changes to the Atomic Energy Act that would permit fingerprints of reviewing officials without requiring access for these purposes. The NRC ....'

10. On page 31, revise question 10 to read ' ... *Part of a Background Check Investigation Refuses ... ?*'
11. On page 32, last paragraph, revise line 7 to read ' ... investigation. However, as required by Section 149.c(2)(c) of the Atomic Energy Act, the licensee ....'
12. On page 35, last paragraph, revise the last line to read ' ... issued a final rule, 10 CFR 73.61, relieving certain ....'
13. On page 61, 1<sup>st</sup> full paragraph, revise line 3 to read ' ... with the governor's office or designee of each state ....'
14. On page 71, paragraph 3, revise line 4 to read ' ... a distance of 0.91m (3 ft) from any ....'
15. On page 120, paragraph (3), revise lines 4 and 5 to read ' ... to the appropriate Regional Administrator NRC regional office specified in 30.6.'
16. On pages 156 and 157, include the mailing address for the Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

#### Change to the Draft Regulatory Analysis

17. On page 13, left column under Option 3, revise line 2 under Industry to replace the period with a comma.

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:

5/27/10)

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

