July 21, 2010

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-09-0162 – PROPOSED RULE: 10 CFR 73.37, PHYSICAL PROTECTION OF IRRADIATED FUEL IN TRANSIT (RIN 3150-AI64)

The Commission has approved the staff's recommendation to publish the proposed amendments to Part 10 CFR 73.37 in the Federal Register, subject to the comments and changes noted below.

(EDO) (SECY Suspense: 9/30/10)

1. With respect to PRM-73-10, the staff should work closely with the Office of General Counsel to ensure that any potential clarifications to the definition of "radiological sabotage" are consistent with the intent of the rule and that there are no corresponding unintended effects on other aspects of Part 73 that also utilize the same definition or other existing or proposed security regulations that also use the same definition.

2. With respect to PRM-73-10 item 3 on advance route approval requirements, the staff should provide in the proposed rule further clarification what is required as part of the NRC regulations and what is covered under DOT requirements. The staff should also clarify in the *Federal Register* notice issuing the proposed rule for comment why NRC and DOT requirements differ and the different roles of the NRC and DOT with regard to routing requirements. The staff should also seek comments on this aspect of the proposed rule in order to ensure stakeholders clearly understand what will be required under the new rule.

3. Regarding the requirements for background investigations, the staff should include a provision similar to 10 CFR 73.56(d)(1) in 10 CFR 73.38.

4. Regarding the requirements for background investigations, the staff should reorganize the separate provisions for verifying employment, education, and military history in sections 10 CFR 73.38(a)(3), (4), and (5) into a consolidated structure like that found in 10 CFR 73.56(d)(4).

5. The staff should publish its draft revision of NUREG-0561, "Requirements for Physical Protection of Irradiated Reactor Fuel in Transit," for public comment during the public comment period on this proposed rule.

6. The proposed *Federal Register* Notice should be revised to discuss the staff's general plan to sunset the existing enhanced security orders once the final rule is in place. In

addition the staff should submit to the Commission, with the draft final rule, its detailed plan for sunsetting the existing security orders.

7. In addition to incorporating the edits, the staff should review the draft regulatory analysis, in its entirety, for accuracy and consistency prior to publication.

8. The staff should transmit its draft press release in support of SECY-09-0162 to the Commission for its review and comment, in accordance with existing Commission procedures.

9. The staff should include a brief discussion of the approach taken by the Department of Energy in shipping spent nuclear fuel. This discussion should highlight similarities to the proposed rule and explain any significant differences.

10. As part of the proposed rulemaking process, the staff should proactively solicit input from the States on the rule language regarding planning and coordination for a spent nuclear fuel shipment.

11. The staff should make the following editorial changes to the *Federal Register* notice.

    a. On page 4, revise D. to read ' ... Nuclear Fuel in ....'

    b. On page 6, 1st full paragraph, revise line 8 to read ' ... 2001. The petition was denied, in part, by the NRC on December 7, 2009 (74 FR 64012). This proposed rulemaking would consider and address ~~certain~~ the remaining ....'

    c. On page 9, 1st full paragraph, revise lines 4 and 5 to read ' ... sabotage. Rulemaking on t~~T~~he first and eighth items of PRM-73-10 was denied by the NRC on December 7, 2009 (74 FR 64012). ~~will be addressed in a separate NRC notice.~~ The remaining ....'

    d. On page 9, 3rd full paragraph, revise line 1 to read ' ... The NRC ~~staff~~ considers ....'

    e. On page 20, last paragraph, revise line 1 to read ' ... requires an ....'

    f. On page 24, last paragraph, revise line 7 to read ' ... shipment is passing ~~through~~). ....'

    g. On page 25, revise line 2 from the top to read ' ... on the ~~what~~ jurisdiction in which the ....'

    h. On page 27, 3rd full paragraph, revise line 2 to read ' ... maintain, and ....'

    i. On page 28, revise line 1 from the top to read ' ... contact the movement ....'

    j. On page 46, remove the blank line after paragraph (ii)(A).

    k. On page 53, remove the blank lines after paragraph (f).

    l. On page 53, paragraph (g), revise lines 2 and 3 to read ' ... protect ~~that~~ that ....'

12. The staff should make the following editorial changes to the Draft Regulatory Analysis.

a. On page ii, 1st bullet, revise lines 4 and 5 to read ‘ ... the protection of SNF ....’

b. On page 6, paragraph 2, revise line 5 to read ‘ ... or cross~~es~~, on average, ~~of~~ 5 ....’

c. On page 6, paragraph 3.1.3, 2nd bullet, revise line 4 to read ‘ ... security and does not ....’

d. On page 7, 5th bullet from the top, revise to read ‘ ... would ~~l~~ be affected ....’

e. On page 7, 8th bullet from the top, revise line 2 to read ‘ ... diversion, or ....’

f. On page 11, paragraph 3.2.6, revise line 3 to read ‘ ... (industry). This is ~~There are~~ NRC’s ....’

g. On page 11, paragraph 3.2.6.2, revise to read ‘ ... would ~~be bore~~ result from ....’

h. On page 11, paragraph 3.2.6.3, revise line 2 to read ‘ ... would ~~be bore~~ result from ....’

i. On page 12, paragraph 2, revise line 3 to read ‘ ... compared to the No-Action ....’

j. On page 15, paragraph 2, revise line 10 to read ‘ ... shipment by a movement ....’

k. On page A-1, paragraph 1, revise line 7 to read ‘ ... which there was a Non-LLEA armed ....’

l. On page A-1, last paragraph, revise line 4 to read ‘ ... through which transport will occur and to ....’

m. On page A-2, paragraph 1 under “Written advance notices,” revise line 4 to read ‘through which transport will occur and to ....’

n. On page A-3, paragraph 1, revise line 2 to read ‘ ... would require ~~include~~ new ....’

o. On page A-3, paragraph 2 under “Shipping costs,” revise line 1 to read ‘ ... contractors to ~~ship~~ conduct SNF ~~through~~ shipments. The ....’

p. On page A-4, last paragraph, revise line 1 to read ‘ ... require~~s~~ NRC ....’ Revise line 7 to read ‘ … each phone call to take ….’

q. On page A-5, paragraph 1, revise line 4 to read ‘ ... be rare. ~~This is a rare occurrence.~~ It is ....’

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