

March 12, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

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

SUBJECT: STAFF REQUIREMENTS - SECY-07-0011 - INTERIM
IMPLEMENTATION OF FINGERPRINTING REQUIREMENTS IN
SECTION 652 OF THE ENERGY POLICY ACT OF 2005

The Commission has approved the staff's plan to issue orders imposing fingerprinting requirements for individuals with unescorted access to radioactive material possessed by Security Order Licensees which includes licensees who (1) are licensed for a spent fuel storage facility, fuel cycle facility, or decommissioning reactor; or (2) possess and ship spent nuclear fuel. (Recommendation 1) These orders should serve as an interim step while the rule to require fingerprinting is developed and finalized.

The Commission has approved the staff's recommendation to issue a generic communication to NRC and Agreement State Increase Control requirement recipients and known non-manufacturer and distributor service providers. (Recommendation 4) The generic communication should be prepared in close coordination with the Agreement States, to ensure there is a full and common understanding of the path forward among the affected programs and that potentially affected licensees in the States promptly receive the generic communication. Subsequently, the staff should issue impose on non-manufacturer and distributor service provider licensees that prefer unescorted access the same trustworthiness and reliability requirements and fingerprinting requirements that manufacturer and distributor service provider licensees must currently meet for unescorted access. The staff should develop a more formal method to identify non-manufacturer and distributor service providers that have the same intimate knowledge of risk-significant sources as manufacturer and distributor providers.

The Commission has disapproved the staff's proposal to not impose fingerprinting requirements by order on licensees required to implement increased controls while the staff develops the rulemaking. (Recommendation 2) The staff should expeditiously engage the Agreement States to develop a plan to require fingerprinting for this group of licensees under public health and safety, with a goal of issuing the requirements as enhancements to the Increased Controls within six months. The staff should keep the Commission fully informed of the progress and any significant difficulties.

The Commission has disapproved the staff's proposal to issue an immediately effective rule to

exempt research, and test reactor (RTR) licensees from fingerprinting requirements while the staff develops a second rulemaking to define “unescorted access” as it would apply to RTR licensees. (Recommendation 3) Instead, the staff should expeditiously develop a definition of “unescorted access” that would apply to RTR licensees and issue orders to RTR licensees to require fingerprinting for individuals that fall within this definition. To ensure compliance with Section 104c. of the Atomic Energy Act to impose only the minimum amount of regulation needed for RTR licensees, the orders should require fingerprinting only for individuals with unescorted access to risk-significant areas or materials within the facilities. The staff should then proceed with the rulemaking to determine if additional personnel should be fingerprinted.

For future Commission papers involving State issues, the staff should address States’ views in the coordination section of the paper either by noting the Organization of Agreement States and/or Conference of Radiation Control Program Directors views or describing the interactions, if any, that have taken place. In a small number of cases information cannot be shared with the states before it is provided to the Commission for deliberation. In these cases a brief statement as to why it was not coordinated with the states would be appropriate.

The Commission has no objection to sharing this SRM with Agreement States and affected licensees with appropriate controls.

cc: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA