

May 1, 2009

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-08-0137 – PROPOSED RULE:
LIMITING THE QUANTITY OF BYPRODUCT MATERIAL IN A
GENERALLY LICENSED DEVICE (RIN 3150-AI33)

The Commission has approved the staff's recommendation to publish proposed amendments to 10 CFR Part 31 in the *Federal Register* for a 75-day public comment period, subject to the comments and changes noted below.

1. The final rule becomes effective 60 days after publication, but the compliance date for existing holders of generally licensed devices that would be subject to the new requirements should be set at 90 days after the effective date.
2. During the public comment period on the proposed rule, the staff and the Agreement States should reach out to general licensees to ensure they are cognizant of the possible impacts on them of the potential regulatory changes resulting from this rulemaking process.
3. As the staff evaluates comments on this proposed rule and information regarding the rule's burdens and safety benefits, the staff should be open to adjusting the threshold above which a specific license should be required or limiting the need for specific licensing to a subset of current generally licensed sources at or above 1/10th of IAEA Category 3.
4. Once the Commission decides on a threshold for source tracking, tracking should, at that time, be required for sources possessed by both specific and general licensees.
5. The general license provision of 10 CFR 31.5 should be conditioned to indicate that it is not applicable when the user of the product also holds a specific license authorizing possession because, in that case, possession and use of the radioactive material would be subject to the terms and conditions of the user's specific license.
6. The following changes should be made to the *Federal Register* Notice.
 - a. On page 5, last paragraph, line 5, delete the extra space in the web site address.

- b. On page 9, lines 1 and 3 from the top, change the single quotation marks to double quotation marks around the "B" and "C."
- c. On page 10, line 8 from the top, change the single quotation marks to double quotation marks around the "B" and "C."
- d. On page 22, last paragraph, lines 3, 4, and 10, change the single quotation marks to double quotation marks around the "B" and "C."
- e. On page 23, last paragraph, change the period at the end to a question mark.

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