

January 30, 2012

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

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:25 P.M.,
MONDAY, JANUARY 30, 2012, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-11-0129 – Final Rule: Requirements for Distribution of Byproduct Material,
10 CFR Parts 30, 31, 32, 40, and 70 (RIN 3150-AH91)

The Commission approved a final rule amending Title 10 of the Code of Federal Regulations (10 CFR) Parts 30, 31, 32, 40, and 70, subject to removing the quantity limit for the new class exemption, revising the statements of consideration to clarify that the basis for the misuse criteria is safety, and making the changes noted in the attachment. The final rule revises the regulations to make the requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up to date. The final rule also redefines the categories of devices to be used under exemptions, adds explicit provisions regarding the sealed source and device registration process, and adds flexibility to the licensing of users of sealed sources and devices. The rule also makes licensing processes more efficient and effective.

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: 3/1/12)

The Commission has disapproved the staff's request to develop a proposed rule that would revise the existing safety criteria in Part 32. The staff should continue to follow the previous Commission direction to consider revision of the safety criteria as part of its effort to develop the technical basis for possible revision of the NRC's radiation protection regulations to be consistent with the 2007 Recommendations of the International Commission on Radiological Protection (ICRP-103). Should the staff encounter specific new information, such as an application for a device that could lead to safety or security concerns under the current regulations, that warrants Commission reconsideration of its previous direction, the staff should provide the Commission with a new notation voting paper that provides the basis for a change in course and options for moving forward.

II. SECY-11-0142 – Final Rule: Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste (RIN 3150-AG41)

The Commission approved a final rule amending 10 CFR Parts 71 and 73 with the attached changes. The final requires licensees to provide advance notification to participating Federally-recognized Tribal governments prior to shipping irradiated reactor fuel and certain radioactive wastes through Tribal reservations.

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: 3/1/12)

The staff should ensure that training on the handling of safeguards information is provided in a timely manner to those Tribes requesting to participate in the receipt of notifications, and prior to relief from the background investigation.

The staff should maintain the same level of outreach during the development of the list of participating Tribes, tribal contact information, and map delineating the participating Tribe's reservations that was accomplished during the rulemaking process.

Attachments:

1. Changes to the final rule in SECY-11-0129
2. Changes to the final rule in SECY-11-0142

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

SECY-11-0129 - Changes to be Incorporated in the Final Rule Prior to Publication

1. On p. 12, middle of first full paragraph, change “These in vitro kits...” to read “These in vitro kits...”
2. On p. 16, end of first full paragraph, change “...applicable industry standards or current security concerns...” to read “...applicable industry **current regulatory** standards or ~~current security concerns...~~”
3. On p. 26, third sentence of second full paragraph, revise to read “...possible misuse or ~~malicious use~~ would be...”

SECY-11-0142 - Changes to the Final Rule in SECY-11-0142

1. On page 11, 1st full paragraph, revise the last line to read: ‘...~~civil or criminal penalties~~ **civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.**’
2. On page 12, revise line 5 from the top to read ‘... history records~~s~~ checks’ Revise line 9 from the top to read ‘... incidents whom~~m~~ the’
3. On page 13, 1st full paragraph, revise lines 2 through 5 to read ‘... occupational status ~~and have either already undergone a background or criminal history check as a condition of their employment, or are~~ **which is** subject to direct oversight by **Tribal** Government authorities in their day to day job functions. Under’
4. On page 15, 1st full paragraph, revise line 2 to read ‘... opposition of ~~ef~~ **to** the’
5. On page 15, 2nd full paragraph, revise line 5 to read ‘... important ~~to~~ first **to** identify’
6. On page 16, revise line 3 from the top to read ‘... mechanism ~~in~~ **by** which’ Revise line 4 from the top to read ‘... governments’ ~~prospective~~ **perspectives** on’ Revise line 9 from the top to read ‘... training ~~as to~~ **regarding** the’ In line 11 from the top, delete the comma after “program.”
7. On page 17, 1st full paragraph, revise line 3 to read ‘... protection ~~responsibilities~~ **requirements.** Initially,’
8. On page 19, revise line 2 from the top to read ‘... 10 CFR ~~P~~**p**art 73’
9. On page 19, 1st full paragraph, revise line 6 to read ‘... perform ~~their~~ **its**’
10. On page 20, revise line 4 from the top to read ‘... acknowledges ~~a~~ **a** Tribe’s’ Revise line 5 from the top to read ‘... safety of ~~their~~ **its** citizens.’
11. On page 25, last paragraph, revise line 4 to read ‘... preparedness **related to this rulemaking, since the rule is limited to notification requirements. However, the NRC periodically conducts emergency exercises during which the agency coordinates with the tribes located within the emergency planning zones of NRC facilities.** In the’
12. On page 27, last paragraph, revise line 2 to read ‘... impact. **However, a regulatory analysis of the rule that provides an estimated cost to states and tribes was completed as part of the rulemaking process.** Tribes’
13. On page 29, 1st full paragraph, delete the last sentence (The DOE’s ... governments.)
14. On page 35, paragraph V., revise the title to read ‘**Civil and Criminal Penalties**’
15. On page 35, paragraph V., revise to read: “For the purposes~~s~~ of Sections~~s~~ 223 ~~and 234~~ of the AEA, the Commission is amending 10 CFR Parts 71 and 73 under one or more of Sections 161b, 161i, or 161o of the AEA. ~~Willful v~~**Violations** of the rule ~~would be subject to criminal enforcement~~ **could result in civil enforcement action, including civil monetary penalties, and Federal criminal prosecution.**”