

May 3, 2013

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-12-0071 – FINAL RULE:
DOMESTIC LICENSING OF SOURCE MATERIAL -
AMENDMENTS/INTEGRATED SAFETY ANALYSIS
(RIN 3150-AI50)

The Commission has disapproved publication of the draft final rule at this time. The staff should revise the rule and associated guidance to address the following issues and resubmit the rule for Commission consideration. The staff should inform the Commission if it determines that the extent of the revision to the draft final rule will require the rule to be re-noticed. If this is the case, the staff should send the Commission a revised proposed rule instead of revised final rule.

The staff should modify the performance requirements in section 40.81 to ensure that they are representative of the potential consequences at a conversion, or de-conversion, or any other facility subject to the rule. The staff should also provide clear information regarding the hazards to be addressed in ISAs including thresholds for soluble intake for workers and the most up to date standards for acute chemical exposure to an individual from licensed material or hazardous chemicals produced from licensed material at a conversion, or de-conversion, or any other facility subject to the rule. The staff should also complete the guidance for demonstrating compliance with the chemical performance requirements.

The staff should revise the regulatory analysis provided with SECY-12-0071 to reflect the experience gained since the draft rule was issued, including a discussion of issues that have been encountered during the implementation of the ISA rule imposed on 10 CFR Part 70 licensees and how these implementation issues have been addressed in a way to try to avoid their occurrence at Part 40 licensees. Stakeholder comments took issue substantively with the accuracy of the staff's cost analysis and it should be modified to assure that all costs associated with implementing ISAs at Part 40 facilities are captured.

The staff should develop criteria for determining the adequacy of an emergency plan for licensees subject to 10 CFR 40.31(j) requirements. The staff should clearly identify the nature of the accident sequence licensees are required to evaluate and explain how licensees should utilize information in ISAs developed as a result of this proposed rule. This can be provided in the guidance.

The staff should provide guidance for existing Part 40 facilities on how natural phenomena hazards can be addressed based on the results of the ISA and an approach for demonstrating compliance with the performance requirements with and without necessarily modifying their facility. The staff should also provide detail in the guidance explaining how licensees with and

without ISAs should transition to an ISAs based safety program resulting from the publication of this rule.

In accordance with the Commission's direction in SRM-SECY-11-0032, "Consideration of the Cumulative Effects of Regulations in the Rulemaking Process", the staff should issue the revised guidance on these issues with the final rule. However, in advance of publication, all revised guidance related to the rule should be made available to the Commission to inform a decision on the approval of any draft final rule.

Commenters indicated that more discussion may be needed to clarify issues related to application of the rule to Part 70 facilities that also possess material subject to the rule. Given the need for additional guidance and discussion, the staff should provide opportunities for discussion of these or any other implementation issues that arise. The staff should keep the Commission informed of its efforts to resolve these implementation issues through Daily Notes and other routine communications.

The staff should work closely with all affected states as this rule is finalized. In particular, the staff should assess whatever circumstances occurred with regard to the State of Washington and the Organization of Agreement States concerns that they were not given adequate opportunity to engage in the rulemaking process in this instance, both as input to NRC's continuous improvement processes and for application to the further development of the issues associated with this rule.

The staff should strengthen its basis for the common defense and security determination to address future commercial nuclear activities.

As a separate effort and in parallel to revising the rule, the staff should also provide information to the Commission discussing how the ISAs would be conducted in the absence of the ANS standard.

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