

April 12, 2012

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

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

SUBJECT: STAFF REQUIREMENTS – SECY-11-0175 – PROPOSED RULE:
AMENDMENTS TO MATERIAL CONTROL AND ACCOUNTING
REGULATIONS (RIN 3150-AI61)

The Commission has approved publication of the draft *Federal Register* Notice (FRN) for the proposed amendments to 10 CFR Parts 40, 70, 72, 74, and 150, subject to the changes and comments below.

The staff should revise the draft FRN to provide a full and clear justification for the staff's proposed changes and clearly delineate how each new requirement will be applied to each class of facility.

Rather than establishing a 350 gram threshold, the staff should seek input from stakeholders in the form of a question regarding the appropriate threshold for an item control system under 10 CFR Part 74. This input can then be applied to analysis that can result in a clear technical basis that staff can then provide to the Commission.

The *Federal Register* notice should note that the Commission is evaluating the use of the two-person rule as part of the enhancements to the current regulation and is seeking public comment. Once stakeholder interaction has been completed and additional analysis completed, staff may be in a position to provide an improved recommendation to the Commission.

The staff should either include a more thorough discussion of how the requirements in this proposed rule satisfy one or more of the backfit exception provisions of 70.76(a)(4) or the staff should provide a backfit analysis if the proposed rule is determined not to qualify for an exception.

In addition to further explaining the basis for the new requirements, the Statements of Consideration should also include specific questions regarding the need for the new requirements that go beyond consolidation and clarification in relation to the proportionate levels of risk represented by the processes and material quantities and forms at different types of licensee facilities. The FRN should also solicit information on alternatives that might address any purported concerns with equivalent outcomes but lesser burden.

The staff should consider the cumulative effect of regulations as directed by the Commission (SRM-SECY-11-0032 – Consideration of the Effects of Regulation in the Rulemaking Process).

The following edits should be made to the *Federal Register* Notice:

- a. Page 10, 1st full paragraph, last sentence, revise to read: "...paragraph designation ~~about~~ **regarding** implementation....consistent with the other ~~sites~~ **citations** listed..."
- b. Page 14, line 5, add a comma after "*significance*,"
- c. Page 14, question "H.", revise to read: "... 10 CFR Ppart 74..."
- d. Page 14, 2nd line from the bottom, add a comma after "Category II,"
- e. Page 76, 2nd to last sentence, revise to read: "... September 30 of each year and **be** submitted..."

The staff should provide a revised FRN to the Commission for its information, five days prior to its submittal for publication in the *Federal Register*.

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