

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-99-259 - EXEMPTION IN 10 CFR PART 40 FOR MATERIALS LESS THAN 0.05 PERCENT SOURCE MATERIAL - OPTIONS AND OTHER ISSUES CONCERNING THE CONTROL OF SOURCE MATERIAL**

Approved Disapproved Abstain

Not Participating

COMMENTS: *See attached comments.*



SIGNATURE

12/22/99

DATE

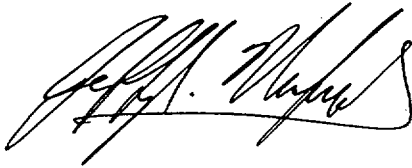
Entered on "AS" Yes No

Comments from Commissioner Merrifield on SECY-99-259:

I approve the staff proposal to initiate action with EPA, OSHA, and the States to explore the best approach to delineate the responsibilities of the NRC and those agencies with regard to low-level material. These discussions should include support for a potential legislative change if appropriate. I understand that because of the complexities of the interrelations between the different groups that the staff cannot provide a precise time line, at this time, with milestones. Nevertheless, the staff should keep the Commission informed (either formally or informally) on a periodic basis of the status of these interactions.

I approve the staff plans to proceed with rulemaking to amend § 40.51(b)(3) and (4) to require prior Commission approval for transfers to persons exempt under § 40.13(a) in order to fix current licensee problems with § 40.13(a). There is a concern with the current regulations which this quick fix will provide some protection. However, I view this as somewhat of an immediate but temporary fix to a larger problem. The proposed rule should be provided to the Commission six months from the date of the SRM for SECY-99-259.

I approve the development of a rulemaking plan to address 10 CFR Part 40 in total to fix known problems and change the regulation so it is more risk informed. The rulemaking plan should be submitted within twelve months of the SRM for SECY-99-259.



12/22/99



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 9, 2000

SECRETARY

MEMORANDUM TO: William D. Travers
Executive Director for Operations

Jesse L. Funches
Chief Financial Officer

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

SUBJECT: STAFF REQUIREMENTS - SECY-99-259 - EXEMPTION IN 10
CFR PART 40 FOR MATERIALS LESS THAN 0.05 PERCENT
SOURCE MATERIAL - OPTIONS AND OTHER ISSUES
CONCERNING THE CONTROL OF SOURCE MATERIAL

The Commission has approved the staff's recommendations to:

- 1) Initiate interaction with EPA, OSHA, and the States to explore the best approach to delineate the responsibilities of the NRC and those agencies with regard to low-level source material (as defined in 10 CFR Part 40) or materials containing less than 0.05% uranium and/or thorium. The Department of Energy should be included in such discussions because of the potential implications for its self-regulated activities. The Army Corps of Engineers (because of its responsibilities for DOE FUSRAP sites), the Department of Interior (because of its involvement in mineral mining), and the Department of Transportation (because of its involvement in the regulation of transport of materials) also should be consulted. As both part of the interactions discussed above and as part of the overall effort to rationally address the risks from NORM, TENORM, low-level source material, and materials containing less than 0.05% uranium and/or thorium, while ensuring adequate protection of public health and safety, the staff should work with other Federal agencies and the States to evaluate existing and planned regulation of such materials and assess the willingness of these agencies to assume responsibilities for certain levels of source material and other material. The staff should provide, within 12 months of the date of the SRM, or before if possible, a status report of its activities and a plan, including important milestones, for how to proceed.
(EDO) (SECY Suspense: 3/9/01)
- 2) Initiate the development of a proposed rule to amend 40.51(b)(3) and (4) to require prior Commission approval for transfers to persons exempt under 40.13(a). The staff should use the meetings with other Federal agencies and the States to get a sense of the possible number and type of material transfers for similar material that would remain outside NRC purview and see if the other potential regulators see merit in NRC's approach. The staff should be free to discuss its proposed rule in these interagency interactions. Regarding transfers of unimportant quantities of source material to exempt

persons, the statement of considerations accompanying the draft proposed rule should state that the staff would: 1) expect to approve transfers under this provision if the individual radiation dose is not expected to exceed 1 mSv/yr (100 mrem/yr); and 2) inform the Commission in cases where the individual dose is expected to exceed 0.25 mSv/yr (25 mrem/yr). The interested and affected parties should be made aware of NRC's current practice with regard to such transfers. Regarding transfers of unimportant quantities of source material for permanent disposal, the statement of considerations for the draft proposed rule should state that the staff would expect to approve transfers for disposal if the proposals meet the guidance contained in the December 17, 1998, SRM on COMSECY-98-022. The staff should identify the pros and cons of revising 10 CFR 40.13(a) to explicitly allow for the transfer of unimportant quantities of source material to exempt persons for the purpose of permanent disposal. This discussion could be included in the staff paper transmitting the proposed draft rule. The staff should also propose draft language to modify 10 CFR 40.13(a) in the paper if the staff determines that rulemaking is indicated.

(EDO)

(SECY Suspense:

9/8/00)

- 3) Develop a rulemaking plan to improve the control of distribution of source material to exempt persons and to general licensees, and the incorporation of the resolution of PRM-40-27 in order to make Part 40 more risk-informed. The staff should provide adequate justification for additional reporting requirements for distributors, exempt persons, and general licensees. If the staff believes it needs additional information about products and amounts of material distributed and used by persons exempt and general licensees, the staff should use the information developed as part of the reassessment of exemptions, including comments that will be provided on the draft report, obtain additional information as part of its interactions with EPA, OSHA, other Federal agencies, and the States, and consider the use of a contractor or survey of users to obtain the information.

When providing the rulemaking plan to the Agreement States, the staff should specifically solicit input from the Agreement States on whether the resolution of PRM-40-27 submitted by the State of Colorado and the Organization of Agreement States should be handled separately from the rulemaking effort.

(EDO)

(SECY Suspense:

3/9/01)

As this work benefits multiple classes of licensees and several surcharge categories -- such as regulatory support to Agreement States, small entities, nonprofit educational institutions, and other Federal agencies -- the costs associated with this effort should be allocated accordingly as fees are developed.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS