

July 13, 2000

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-011

TITLE: DRAFT RULEMAKING PLAN: DOMESTIC LICENSING OF URANIUM AND THORIUM RECOVERY FACILITIES - PROPOSED NEW 10 CFR PART 41

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of July 13, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-99-0011

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	6/2/00
COMR. DICUS	X				X	6/3/00
COMR. DIAZ	X				X	4/5/00
COMR. McGAFFIGAN	X				X	6/30/00
COMR. MERRIFIELD	X				X	4/25/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 13, 2000.

Commissioner Comments on SECY-99-0011

Chairman Meserve

I approve the staff's recommendation to provide the Rulemaking Plan to the Agreement States for comment, including the identification of a new Part 41 dedicated to the regulation of uranium and thorium recovery facilities as the preferred option. As the staff has indicated, it is now appropriate to consolidate, update, and clarify the regulatory requirements for such facilities and disentangle the requirements for such facilities from the regulations governing other source material licensees.

The Rulemaking Plan should be revised before circulation to the Agreement States to reflect the Commission's guidance in [SECY-99-012](#), [SECY-99-013](#), and [SECY-99-277](#), as well as the Commission's decision in International Uranium (USA) Corp., [CLI-00-1](#) , 51 NRC 9 (2000). The Agreement States should be informed that, although the Commission has provided guidance to the staff on some matters reflected in the Rulemaking Plan, comments on the entirety of the Plan are welcome and will be carefully considered.

Commissioner Dicus

I approve staff's recommendation to incorporate the final Commission guidance provided in response to SECY papers 99-012 and 99-013 into the draft 10 CFR Part 41 Rulemaking Plan prior to providing the plan to Agreement States for their review and comment. Additionally, the staff should also incorporate into the draft 10 CFR Part 41 Rulemaking Plan final Commission guidance in response to SECY 99-277, "Concurrent Jurisdiction of Non-Radiological Hazards of Uranium Mill Tailings" and SECY 99-267, International Uranium Corporation Commission Review of LBP-99-5.

Commissioner Diaz

I approve the staff's recommendation to incorporate Commission guidance provided in response to SECY-99-012 and SECY-99-013 in the rulemaking plan and provide the plan to the Agreement States for comment. In addition, the staff should incorporate into the rulemaking plan Commission views and guidance provided in response to SECY-99-277 on concurrent jurisdiction of non-radiological hazards of uranium mill tailings and SECY-99-267 on International Uranium Corporation.

Commissioner McGaffigan

I approve the staff's preferred option of promulgating a new 10 CFR Part 41 to consolidate, codify, update, and revise the regulatory requirements for uranium and thorium recovery facilities. I also approve the staff's plan to incorporate the Commission's guidance on the related staff papers (SECY-99-012, 99-013, and 99-277) and the Commission's decision in the International Uranium Corporation case (CLI-00-01, 51 NRC 9 (2000)) into the rulemaking plan for dissemination to and discussion with the Agreement States and other stakeholders.

I do not believe that it is necessary to submit a final rulemaking plan to the Commission for approval. Instead, the staff should proceed directly with its plans to solicit input from stakeholders through public meetings, workshops, use of the NRC's website, etc., and develop a proposed rule for Commission approval. Throughout the duration of this rulemaking, the staff should keep the Commission informed of its efforts in a timely manner, including periodic briefings of Commissioners' Assistants.

During the rulemaking process, the staff should be mindful of and consider the potential costs to the industry--both to participate in the rulemaking process and to pay for the staff costs of the rulemaking through their Part 171 annual fees. The staff should try to be as efficient as possible because this is an industry in deep financial trouble as a result of the end of the Cold War, which has freed up large quantities of downblended high enriched uranium and pushed the price of uranium to all time low levels. Efficiency in rulemaking means that the staff should consider the potential value added for each resource-intensive activity, such as a workshop, that it undertakes. As another example, I am seriously concerned about the resources estimated by the staff to pursue Memoranda of Understanding to address jurisdiction issues associated with NRC regulation of groundwater at in-situ leach facilities, as discussed in my vote on SECY-99-013.

Finally, I appreciate the staff's efforts to date in this program area and commend the individuals who filed Differing Professional Views on SECY-99-012 and SECY-99-013 and participated in the June 1999 Commission briefing. Their views were seriously considered and appreciated. I will also be open to reconsidering my position on the issues in this and the related staff papers in light of public comments received during the rulemaking process.

Commissioner Merrifield

I approve the staff recommendation to develop a new 10 CFR Part 41 to specifically address domestic licensing of uranium and thorium facilities. At this time, the issues associated with the domestic licensing of uranium and thorium facilities are more appropriately addressed in a separate, dedicated section of the regulations and should be separated from the more general requirements of 10 CFR Part 40, which provides general criteria for the licensing of domestic source material. I also agree with the staff recommendation to provide the draft Rulemaking Plan to the Agreement States for comment after the plan has been updated to reflect preliminary Commission guidance in three other related Commission papers (SECY-99-012, SECY-99-013, and SECY-99-277). Although the Commission will provide guidance to the staff on the other three papers before the Rulemaking Plan is provided to the Agreement States for comment, the staff should emphasize to the Agreement States that the Commission will thoughtfully consider their comments on any portion of the Rulemaking Plan and may reconsider preliminary decisions on the other three papers based on the Agreement State comments.

The issues addressed in this rulemaking may be controversial. But I believe it is time to codify the numerous regulatory decisions and precedents that have been established over the years. The staff's rulemaking plan should include provisions to make the draft rule and draft regulatory guidance available on the internet to maximize public participation, something similar to what was done in the last few years for revisions to [10 CFR Parts 35 and 70](#). The staff should be careful in its communication to the public to indicate that although the Commission is considering modifying its approach to provide more consistency and improved efficiency in the regulation of domestic uranium and thorium facilities, in no case will the Commission consider unilateral withdrawal of its authority in any area. The Commission may or may not more closely define its regulatory authority in certain areas but it will do so only in manner that ensures the adequate protection of the public health and safety, the environment, and the common defense and security of our country. Any changes made in our regulatory requirements will only be done after consultations with appropriate government officials (such as the Department of Energy, the Environmental Protection Agency, and appropriate State governments) and after the public has an opportunity to comment on the specific proposals of the staff.

Also, the Commission should be periodically informed, either formally or informally, of the status of this rulemaking. In particular, the Commission should be informed of the results of significant meetings or the identification of areas of significant disagreement with other agencies or our stakeholders.