

July 13, 2000

COMMISSION VOTING RECORD

DECISION SECY-00-0121

ITEM:

TITLE: PROPOSAL TO EXTEND NRC MATERIALS LICENSE RENEWALS FOR TWO YEARS AND ASSEMBLE A WORKING GROUP TO IDENTIFY LONG-TERM RECOMMENDATIONS

The Commission (with Chairman Meserve and Commissioners Dicus, Diaz and McGaffigan agreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum ([SRM](#)) of July 13, 2000. Commissioner Merrifield approved the paper.

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

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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

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VOTING SUMMARY - SECY-00-0121

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
CHRM. MESERVE		X			X	7/5/00
COMR. DICUS		X			X	6/30/00
COMR. DIAZ		X			X	6/28/00
COMR. MCGAFFIGAN		X			X	6/21/00
COMR. MERRIFIELD	X				X	6/20/00

COMMENT RESOLUTION

In their vote sheets, Chairman Meserve and Commissioners Dicus, Diaz and McGaffigan disapproved the staff's recommendation and provided some additional comments. Commissioner Merrifield approved the paper with comment. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 13, 2000.

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**Commissioner Comments on SECY-00-0121**

**Chairman Meserve**

I am mindful that the proposal to defer license renewals is the outgrowth of the staff's efforts to apply the PBPM process and I am reluctant to override the application of this systematic and comprehensive decision process. Nonetheless, for many of the cogent reasons expressed by Commissioners Dicus and McGaffigan, I join in the disapproval of the staff's recommendations.

## Commissioner Dicus

After reviewing SECY 00-0121, and as a result of the information I received during my June 27, 2000 staff briefing and my review of additional information, I disapprove staff's recommendation to extend NRC material license renewals for two additional years, beyond the one-time five year extension that the Commission approved in SECY 95-114. At this juncture, I recommend that license renewal be appropriately staffed and carried-out to accommodate timely renewal.

In 1995 the Commission approved a one-time 5 year extension to all existing materials licenses to allow focus of NMSS resources on improvements to the licensing process. The one-time approval to extend NRC material license renewals for five years specified acceptance criteria that would disqualify licensees from receiving this extension, which in total, were meant to identify licensees with operations that posed relatively greater safety risks and those that have not demonstrated acceptable performance. Those licensees were not eligible for the one-time extension. The current proposed two year extension does not include these same conditions, and would provide a blanket extension to all NRC material licensees, regardless of the risks associated with their operations or the adequacy of their performance. Additionally, staff confirmed that the more complicated, complex licenses would not be given elevated priority. From a risk-informed performance-based standpoint, I find this unacceptable, and question how a 12-year duration before conducting license renewal reviews for approximately 5,000 licenses, reasonably ensures that we are supporting our fundamental mission to protect public health, safety, and the environment.

I am very disappointed with the approach staff proposed in SECY 00-0121, to once again realign resources supporting license renewal activities to support another administrative process. Especially, when these resources are being diverted from health and safety activities to support such activities as the collection of data for new strategic plan metrics that do not appear to have nearly as direct an impact on health and safety as license renewal activities. While understanding that NRC Regional Offices and other stakeholders were also involved in formulating this decision, it is also clear that there was not total agreement on the contribution of license renewals to the goal of maintaining safety. This included, according to my briefing, some reservations by regional staff who are among the very personnel who conduct license renewal activities. This is also significant from my perspective, since license renewals are mostly conducted at the Regional level.

As to the significance of license renewals to safety, I can only rely on a rather revealing statement that appeared in SECY-96-252 where the staff discussed a permanent extension for all materials licenses to 10 years. The staff stated:

Traditionally, the license renewal process has been used as an opportunity for the Commission to review: (1) the history of the licensee's operating performance (e.g. the record of compliance with regulatory requirements); and (2) the licensee's program, to insure that it employs up-to-date technology and practices in the protection of public health, safety and environment and compliance with any new or amended regulations.

As part of a license renewal, the licensee is asked to provide information on the current status of its program, as well as any proposed changes in: operations (types and quantities of authorized materials); personnel (authorized users and radiation safety officers); facility; equipment; or applicable procedures. **The renewal process benefits both the licensee and the Commission, because it requires both to take a comprehensive look at the licensed operation.** However, in practice, most of the proposed changes are identified and requested by licensees as amendments, rather than during the license renewal period.

SECY-96-252, p. 3-4 [emphasis added].

If, for example, we focus resources on planning activities that have only an indirect impact on health and safety issues to a point that it results in redirecting staff resources from any of our health and safety objectives, not just renewal, then I believe that we are placing ourselves in a position of putting planning ahead of the NRC's primary mission. In realizing the merits of strategic planning, I also recognize that planning goals and processes should not put the NRC in a position where resources are strained to a point where we are not adequately supporting our primary safety and health mission.

In light of the aforementioned, and with respect to my review of additional information following the June 27 staff briefing, specifically, SECY 96-252 and the February 6, 1997 FRN (62 FR 5656), I am even further concerned as to the proposal in SECY 00-0121. From these documents and my briefing the following development of this issue is useful to consider. The Staff, after consultation with the Commission, issued the February 1997 Federal Register to announce the extension of duration for new or renewed materials licenses to 10 years. That decision followed a review which included consideration of comments from the public concerning the appropriate duration of materials licenses, which were received during the rulemaking for the one-time 5 year extension of materials licenses. The one-time five year extension rulemaking included a specific request for the public to comment on the appropriate license duration for materials licenses. After reviewing the comments received and considering the issue the staff issued SECY-96-252 for Commission approval. As stated in SECY 96-252, where the staff sought Commission approval of the blanket 10 year license duration for new or renewed materials licensees:

Staff also considered the option of extending the license term to 20 years. Although this option would significantly reduce resources, **the staff is not ready to support it at this time.** Staff concluded that license terms should be extended to 10 years, with the option of issuing licenses for a shorter duration if the Commission deems it appropriate. **After gaining experience with longer-term licenses** and with the methods for

maintaining periodic contact with material licenses, it is possible that the staff will recommend a change in license duration to license terms beyond 10-years." [emphasis added]

The fundamental problem is that, after having said that experience with the new 10 year license period was necessary to make any decision on longer term licenses, the staff now proposes a working group to consider longer term licenses without having conducted renewals to determine the success in maintaining safety of the 1997 decision to extend all materials licenses. Therefore, we should not consider any additional renewal extensions beyond the existing 10-year period until we have established an adequate basis for doing so (i.e., conducting at least a reasonable percentage of renewals for the initial 10-year renewal process, and have had the opportunity to review and evaluate the associated results). This practical approach will provide the appropriate data to facilitate decision making in determining if public health, safety, and the environment are being adequately protected, which will help instill greater public confidence and afford expanded empowerment opportunities to NRC staff. This experience and insight is precisely what is needed to be gained, so that informed decisions can be made. I was also concerned that, if we did go forward with the current proposal, the two year renewal would be sprung on the Agreement States with essentially no advance notice, although it has the potential to create problems between the agreement states and their licensees. Accordingly, if the staff decides after some experience with these renewals to develop a proposal for Commission consideration addressing license duration issues, they should assure that early and effective discussions with the Agreement States precede any final proposal to the Commission.

The fundamental objective of the license renewal process is to provide an opportunity for the NRC to review the history of the licensee's operating performance and their safety, health, and environmental programs. This provides an opportunity to evaluate compliance with applicable regulatory requirements and related programs, in order to ensure that the programs employs up-to-date technology and practices in the protection of health, safety, and the environment and compliance with any new or amended regulations. Since inspections for a number of our licensees are conducted at greater than annual frequencies, with some exceeding several years, I find great value and necessity in the license renewal process.

I also support the general concerns expressed by Commissioner McGaffigan, and more specifically, his concern with the timing of identifying this issue to the Commission when the initial inflow of renewals begins this July and also, his concerns with the implementation and utilization of related guidance that will help streamline the review process. Additionally, based on my briefing, a potential issue on this subject was identified in March of this year. Therefore, it would appear that there was ample opportunity prior to the June time-frame to inform the Commission of potential problems. As previously stated, I do not support any further delay in this renewal process and recommend that staff immediately prepare to conduct these activities.

## **Commissioner Diaz**

Based on the information recently provided by the staff to the Commission, I am disapproving this paper.

## **Commissioner McGaffigan**

I disapprove the staff recommendation to extend certain materials licenses for an additional two years while the staff forms a working group to identify long-term recommendations on materials license terms. I offer the following comments for consideration by my fellow Commissioners and the staff.

I am disappointed that the staff waited until June to consult with the Commission when, as the paper points out, 50-100 materials licenses will expire each month beginning in July and continuing over the next 5 years. As the staff is aware, the Commission supported the staff's plan in 1996 to extend, on a one-time basis, the term of certain materials licenses from 5 years to 10 years so that resources could be focused on developing a consolidated set of updated licensing and inspection program guidance. The paper points out that the consolidated guidance effort has increased the efficiency of the licensing process and reduced the estimated resources for license renewals by half. In my opinion, it is time to use the updated guidance and implement the more streamlined review process developed by the staff on the pending license renewals so that resource savings may be realized. Applying the guidance will also help to determine whether modifications to the guidance are needed. Also, I firmly believe there are clear benefits derived from the license renewal process itself. For example, it forces the NRC and licensee to conduct a periodic audit of the license and supporting documentation to ensure that it accurately reflects the licensed program and that the licensed program is in compliance with applicable requirements. As the paper points out, older licenses become increasingly more unwieldy and difficult to interpret because of the number of, and in some cases complexity of, license amendments that accrue over time in the absence of the renewal "housekeeping" process. I also believe that rectifying unwieldy out of date licenses will ultimately cost the agency more resources than simply proceeding to renew the pending 10 year licenses on the schedule dictated by the previous 5-year extension.

I am also concerned that, by extending certain materials licenses by an additional two years at this time, we are simply postponing addressing a budget issue and creating a "bow wave" for FY 2002 and beyond. Unfortunately, this "bow wave" would coincide with a peak in the number of power reactor license renewal applications expected during the FY 2003-2004 time frame. Also, compared to the benefits derived from efficiently renewing pending 10 year licenses, the benefits derived from funding the various Planning, Budgeting, and Performance Management (PBPM) initiatives briefly identified in the paper are unclear. I also am concerned that the PBPM related work proposed to be put ahead of licensing work falls into the Part 171 annual fee category rather than the Part 170 fee for service category which reflects our important licensing and inspection program activities. Many stakeholders have complained about the high percentage of our budget recovered from Part 171 fees. The staff proposal will exacerbate this.

Finally, it is not clear from the paper why the staff did not establish the proposed working group during the 1996-2000 time

frame when the one-time 5-year license renewal was in effect. I assume that the factors to be considered now by the working group have existed over the past 5 years. At some time in the future, I agree that we need to make a rational judgment regarding the appropriate term for materials licenses. But right now, NRC and its licensees are experiencing the longest termed materials licenses in the history of the agency (10 years), in the absence of any formal analysis, with the proposal now to go to 12 years, again without any formal analysis. Therefore, if resource savings are realized with the more efficient renewal process, the staff should decide when and if resources should be devoted to forming a working group to make recommendations on materials license terms. However, if the working group is formed, those efforts should not negatively impact the rate at which licenses due for renewal, beginning in July 2000, are processed. I should also make clear that, at this time, I am not supportive of the "no term" or "living license" concept for most materials licenses and instead believe that NRC and its licensees derive clear benefits from the formal, periodic license renewal process historically used by NRC.

### **Commissioner Merrifield**

I approve the staff recommendation to propose a two year extension of certain material licenses and authorize the staff to implement this license extension with a direct final rulemaking. In addition, I approve the staff plans to form a Working Group to identify long-term recommendations for the policy governing the term of materials licenses.

I recognize that in 1996, the Commission extended the term of existing materials licenses for a period of five years as a one time occurrence to allow these licenses to have a ten year term. However, the current proposal by the staff to extend the licenses by another two years is a natural result of the Planning, Budgeting, and Performance Management (PBPM) process. The staff had budgeted resources to conduct these license renewals but desire to use some of these resources to address higher priority issues identified in the PBPM process. At the same time, the staff has identified the need to define an appropriate term for materials licenses. At all times, the staff is maintaining the primary goal of the agency to provide adequate protection of the public health and safety and the environment. Therefore I believe the staff recommendations are appropriate and I highly encourage the staff to continue such innovative thinking in the PBPM process.