

April 13, 1998

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

Jesse L. Funches  
Chief Financial Officer

William M. Beecher, Director  
Office of Public Affairs

FROM: Annette L. Vietti-Cook, Acting Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-97-273 - STAFF  
REQUIREMENTS -- SECY-96-221 -- "IMPROVING NRC'S  
CONTROL OVER, AND LICENSEES' ACCOUNTABILITY FOR,  
GENERALLY AND SPECIFICALLY LICENSED DEVICES"

The Commission had disapproved the staff's recommendation and directs the staff take the following actions:

1. Terminate the rulemaking on 10 CFR Part 31.5 that was initiated in 1991 except those provisions that will enable NRC to request information from certain general licensees to provide the regulatory basis for initiation of a registration program in advance of the rulemaking described below. Those portions of the 1991 proposed rule should be renoticed for public comment.  
(EDO) (SECY Suspense: 8/21/98)
2. Provide a set of milestones to the Commission for information for implementing the rulemaking described below. The milestones should be in lieu of the standard rulemaking plan required by Management Directive 6.3, but should meet the requirement for coordination with Agreement States.  
(EDO) (SECY Suspense: 8/21/98)
3. Draft a proposed rule to implement a registration and follow up program for the

---

SECY NOTE: SECY-97-273 WAS RELEASED TO THE PUBLIC ON DECEMBER 2, 1997. THIS SRM AND THE COMMISSION VOTING RECORD CONTAINING THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

generally-licensed sources/devices identified by the NRC Agreement State Working Group, apply fees to these general licensees, and incorporate requirements for permanent labeling of sources/devices. The proposed rule should include the staff's preferred approach -- Attachment item 11, Option 3 -- to apply a registration fee, per licensee, at the time of initial registration and annual re-registration of sources/devices. The staff should explore the possibilities, advantages, and disadvantages of other fee approaches such as pro-rating the fees, e.g., per device (fixed or sliding scale) or per license and provide recommendations to the Commission. Determine the extent to which application of the small business rule will affect the fees.

(EDO/CFO) (SECY Suspense: 12/31/98)

4. Use the results of the materials risk assessment study to restructure the current licensing and materials programs. Consider the findings when determining whether additional sources/devices should be subject to registration and follow up, and for performing the risk ranking necessary if a phase-in approach is used to reduce the initial resource surge associated with an increased regulatory program. Review the basis of the general licenses for adequacy with respect to consideration of the consequences of off-site accidents, such as loss of shielding or melting in metal making furnaces. The staff should provide the technical basis document for the risk assessment together with recommendations on how to proceed.

(EDO) (SECY Suspense: 12/31/98)

5. Include provisions in the registration program for follow up of cases where there are no responses or where discrepancies are found between responses and NRC records. Explore with vendors their willingness to voluntarily assist the NRC (and Agreement States) in the follow up effort. Develop follow up procedures which integrate the following fundamental concepts:

- a. the extent of follow up should consider the risk to public health and safety that the source or device in question poses as well as the likelihood of finding the device;
- b. considering the associated level of risk, there should be a point at which the follow up of certain low risk sources and devices is terminated;
- c. all information about lost sources should be made public in a timely manner.

(EDO) (SECY Suspense: concurrent with effective date for final rule)

6. Implement an enforcement program that includes a short amnesty program for general licensees and increased civil penalties for both general and specific licensees for "lost" sources. The increased civil penalties should be significantly greater than the costs of proper disposal or transfer of a source or device. Work with Agreement States in

implementing enforcement programs such that their policies, practices, and procedures have the same impact as NRC's enforcement program.

(EDO) (SECY Suspense: concurrent with effective date for final rule)

7. Provide an estimate of the resources needed to fully support this program. Preparation of this estimate should include:
- o Estimating resource needs for the various phases of the registration program including, in particular, the substantial "spike" of resources needed to carry out the follow up program.
  - o Reviewing registration programs for general licensees that have been implemented by Agreement States for applicability of concepts, and exploring the possibility of utilizing other Federal agency registration programs and off-the-shelf commercial programs to minimize development and operating costs.
  - o Exploring the possibility of contracting with the States to carry out this part of the program under authority of Section 274i of the Atomic Energy Act, as amended.
  - o Identifying, through the Executive Council, resources to support the expanded program, and inform the Commission if other program areas need to be reduced. The Executive Council should consider program areas outside of NMSS. The Executive Council should also evaluate and inform the Commission of the impact of this change on the Strategic Plan, Strategic Goals, and specific programs.

(EDO) (SECY Suspense: 12/31/98)

8. Continue efforts to further address the orphan sources. A guiding principle is that non-licensees who find themselves to be in possession of radioactive sources that they did not seek to possess should not be expected or asked to assume responsibility and cost for exercising control or arranging for their disposal. These efforts should include:
- o Consulting with DOE, EPA, FEMA and the States to define jurisdictions and regulatory responsibilities for addressing the orphan source problem, and continued close coordination with the Conference of Radiation Control Program Directors to ensure that a similar regulatory framework is applied to source/devices containing Atomic Energy Act (AEA) material and sources/devices containing naturally-occurring or accelerator-produced radioactive material.
  - o The staff should aggressively pursue finalizing the MOU with DOE.

- o Consider the pros and cons of establishing a contract program that would enable licensees or DOE to take possession of and arrange for proper transfer or disposal of orphan sources and provide an estimate of the costs of such a program.

(EDO) (SECY Suspense: 12/31/98)

- o If NRC funding is necessary for an orphan source recovery program, the staff should provide recommendations for funding the program including, as directed by the Commission in its December 1996 SRM, "exploring with Congress the possibility of removing specific program costs from the NRC's user fee base (e.g., orphan source recovery fund)."

(CFO) (SECY Suspense: 12/31/98)

The Office of Public Affairs should issue a press release concerning the Commission's decision.

(OPA) (SECY Suspense: 4/15/98)

Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
CIO  
CFO  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR  
DCS