

RULEMAKING ISSUE
(Notation Vote)

September 25, 2000

SECY-00-0201

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations /RA/

SUBJECT: PROPOSED RULE - 10 CFR PART 40 AMENDMENTS TO REQUIRE
NRC APPROVAL FOR TRANSFERS FROM LICENSEES TO EXEMPT
PERSONS

PURPOSE:

To request Commission approval of a draft proposed rule amending 10 CFR Part 40 to require NRC approval for transfers of unimportant quantities of source material from licensees to persons exempt under 10 CFR 40.13(a).

BACKGROUND:

On March 9, 2000, the Commission issued a Staff Requirements Memorandum (SRM), on SECY-99-259, "Exemption in 10 CFR Part 40 for Materials Less than 0.05% Source Material-Options and Other Issues Concerning the Control of Source Material," that directed the staff to take a number of actions to resolve issues associated with regulation of source material under Part 40 (Attachment 1). Among these actions was the development of a proposed rule to amend 10 CFR 40.51(b)(3) and (4) to require prior Commission approval for transfers of less than 0.05 wt. percent source material from licensees to persons exempt under 10 CFR 40.13(a). This paper is part of the response to that direction; it contains a draft Federal Register notice of proposed rulemaking to amend 10 CFR 40.51. Also, as directed by the SRM, the staff has identified the pros and cons of revising 10 CFR 40.13(a) to clarify the applicability of 10 CFR 40.13(a) to dispose of less than 0.05 wt. percent source material.

CONTACT: Clark Prichard, NMSS/IMNS
(301) 415-6203

DISCUSSION:

The draft proposed amendments contain a new paragraph 10 CFR 40.51(e) that states that transfers under 10 CFR 40.51(b)(3) and (4) are subject to NRC approval, and requires a licensee seeking to transfer material to submit information that would allow the NRC to determine the estimated dose from the transfer.

The SRM encouraged the staff to seek early input from stakeholders. A presentation on this proposed rule was made at a National Mining Association/NRC workshop in Denver on June 7, 2000, and the issue was discussed at a Conference of Radiation Program Control Directors annual meeting in Tampa on May 15, 2000. The staff did not hear strong objections to the purpose of the proposed rule at these meetings, although participants were concerned over how the proposed rule, if finalized, would be implemented.

The staff has established a working group to interact with other Federal agencies and States on issues involved in the regulation of low concentration source material. The staff will use these discussions to obtain information on the possible number and type of material transfers of less than 0.05 wt. percent source material that would remain outside NRC purview, and to get feedback from other potential regulators on the merit of NRC's approach.

The proposed amendments would achieve the objectives of the Commission's strategic plan by maintaining safety using a performance-based approach. The staff believes that the proposed rule does not impose a regulatory burden on licensees that is more than that necessary to maintain safety. In addition, these amendments clarify the regulations on transfers of less than 0.05 wt. percent source material.

(A) Criteria for Approval

The SRM directed the staff to state the expected criteria for Commission approval of transfers in the "Statement of Considerations." As directed, the "Statement of Considerations" for the draft proposed rule states that the staff expects to approve a request from a licensee to transfer less than 0.05 percent source material to persons exempt under 10 CFR 40.13(a) if the expected total effective dose equivalent is less than 1 mSv/yr (100 mrem/yr). It also states that, in cases where the expected dose is greater than 0.25mSv/yr (25 mrem/yr), the staff will inform the Commission.

(B) Current Practice Regarding Applications for Transfer

To inform stakeholders of current practice pending final promulgation of these proposed Part 40 amendments, the "Statement of Considerations" indicates that current Commission policy is to approve individual requests to transfer material to exempt persons using the 1 mSv/yr (100 mrem/yr) dose criteria.

(C) Pros and Cons of Revising 10 CFR 40.13(a) at this time.

The SRM also directed the staff to identify the pros and cons of revising 10 CFR 40.13(a) to explicitly allow the transfer of unimportant quantities of source material to exempt persons for the purposes of disposal.

PROS:

1. Revision would immediately clarify the applicability of 10 CFR 40.13(a) to disposal. The Office of the General Counsel (OGC) has stated that the present 10 CFR 40.13(a) does not provide a clear indication that transfer of less than 0.05 wt. percent source material for permanent disposal is either allowed or prohibited.
2. Final promulgation of these revisions to 10 CFR 40.51 would subject transfers from a licensee of less than 0.05 wt. source material to U.S. Nuclear Regulatory Commission review. Revision of 10 CFR 40.13(a) could remove any apparent conflict between the proposed 10 CFR 40.51, which allows transfer for disposal subject to Commission approval, and the current 10 CFR 40.13(a), which could be interpreted as not allowing disposal.

CONS:

1. Transfers from a licensee of unimportant quantities of source material for disposal will be subject to Commission approval if the rulemaking amending 10 CFR 40.51 becomes final, eliminating a regulatory gap regarding unlicensed/unregulated disposal. Revision of 10 CFR 40.13(a) at this time is not needed to address this problem.
2. The question of revision to 10 CFR 40.13(a) may better be addressed later, as part of the more general actions addressing regulation of source material. There could be issues of consistency with other areas of the regulations if “disposal” is added to the list of exempted activities in 10 CFR 40.13(a), but not in other areas. Including “dispose” in 10 CFR 40.13(a) and not in other exemptions from licensing in Parts 30 and 40 could be interpreted to imply that persons exempt from licensing under these other provisions are not allowed to dispose of those materials and products in an uncontrolled manner. Leaving any possible revision until later would allow a broader examination of the options.
3. Revision of 10 CFR 40.13(a) may not be needed to clarify its applicability to disposal. Stakeholders will be aware that the Commission does consider that 10 CFR 40.13(a) applies to permanent disposal as a result of the publication of this proposed rule. The “Statement of Considerations” makes this point, as directed in the SRM.

RECOMMENDATION:

The staff recommends amending 10 CFR 40.13(a) by adding the word “dispose” to the list of exempted activities in 10 CFR 40.13(a), as part of this proposed rule. This addition to 10 CFR 40.13(a) would clarify its applicability to disposal. The suggested language for amending 10 CFR 40.13(a) is attached.

RESOURCES:

Resources to complete and implement this rulemaking are included in the budget.

COORDINATION:

OGC has reviewed this paper and has no legal objections. The Office of the Chief Information Officer has reviewed the draft proposed rule for information technology and information management implications and concurs in it. However, the rule contains information collection requirements that must be submitted to the Office of Management and Budget for review no later than the date the rule is forwarded to the Federal Register for publication. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection.

RECOMMENDATION:

That the Commission:

1. Approve the Federal Register notice of Proposed Rulemaking for publication (Attachment 2).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities, in order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Note:
 - a. The rulemaking would be published in the Federal Register for a 75-day public comment period;
 - b. A draft regulatory analysis can be found in Attachment 3;
 - c. A draft environmental assessment and a finding of no significant impact have been prepared and are included in the Notice of Proposed Rulemaking;
 - d. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it, as required by the Regulatory Flexibility Act; and
 - e. This proposed rule contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et. seq.);

- f. The appropriate Congressional committees will be informed;
- g. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register.

/RA/

William D. Travers
Executive Director
for Operations

Attachments:

- 1. Staff Requirements Memorandum on SECY-99-259
- 2. Draft FRN of Proposed Rulemaking
- 3. Draft Regulatory Analysis
- 4. Language for Amending 10 CFR 40.13(a)

- a. The appropriate Congressional committees will be informed;
- b. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register.

/RA/

William D. Travers
 Executive Director
 for Operations

Attachments:

- 1. Staff Requirements Memorandum on SECY-99-259
- 2. Draft FRN of Proposed Rulemaking
- 3. Draft Regulatory Analysis
- 4. Language for Amending 10 CFR 40.13(a)

File Name: (O:\nmss\prichard\REV40CP823) ADAMS Package Accession Number ML003744505
 To receive a copy of this document, indicate in the box "C" = copy without attachment/enclosure, "B" = copy with attachment/enclosure,
 "N" = No copy
 *See previous concurrences.

OFFICE:	RGB/IMNS		RGB/IMNS		Editor		D/IMNS	
NAME:	CPrichard*		PHolahan*		EKraus*		DCool*	
DATE:	8/23/2000		8/24/2000		7/ 5/2000		8/28/2000	
OFFICE:	D/CFO		OSTP		CIO		OGC	
NAME:	JFunches*		PLohaus*		BShelton*		JGray* (NLO)	
DATE:	8/2/2000		8/ 23/2000		8/8/2000		8/24/2000	
OFFICE:	D/OE		ADM		D/NMSS		DEDR	
NAME:	WBorchardt*		DMeyer*		WKane*		CPaperiello	
DATE:	8/14/2000		7/28/2000		09/01/2000		9/25/00	
OFFICE:	EDO							
NAME:	WDTravers							
DATE:	9/25/00							

OFFICIAL RECORD COPY