

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Wright

SUBJECT: SECY-16-0115: Rulemaking Plan on Financial Assurance for Disposition of Category 1 and 2 Byproduct Material Radioactive Sealed Sources

Approved X Disapproved X Abstain Not Participating

COMMENTS: Below Attached X None

Entered in STARS

Yes X

No

Signature

November 3, 2021

Date

**Commissioner Wright's Comments on SECY-16-0115:
Rulemaking Plan on Financial Assurance for Disposition of Category 1 and 2 Byproduct
Material Radioactive Sealed Sources**

In this paper, the staff recommends expanding the financial assurance requirements in 10 CFR 30.35 to cover dispositioning of all Category 1 and 2 byproduct material radioactive sealed sources (RSS) tracked in the National Source Tracking System, regardless of risk. While I agree that end-of-life costs for dispositioning RSS can be significant and it makes sense to evaluate dispositioning financial assurance to prevent legacy sites and abandoned RSS, I do not agree with the staff's recommended approach or the source-security basis provided in this paper and SECY-16-0046, Byproduct Material Financial Scoping Study.

The staff's approach and source-security basis are not risk informed and are based solely on potential consequences of disused sources becoming abandoned and used in radiological exposure and dispersal devices if they are maintained in long-term storage. This prescriptive approach fails to consider certain aspects of risk such as the likelihood of the events and credible adversary characteristics and discounts the protection and mitigation measures afforded by existing regulations, including 10 CFR Part 37. Further, the staff does not provide operational data to support the basis for this approach. In briefings and in response to my questions on this paper, the staff indicated that it is not aware of a security vulnerability related to the approximately 80,000 Category 1 and 2 RSS in the U.S. that is not addressed by 10 CFR Part 37. Notably, the staff stated that since the 2013 implementation of 10 CFR Part 37, there have not been any incidents that have resulted in unrecovered Category 1 or 2 RSS and that compliance with the security requirements in 10 CFR Part 37 ensures the safe and secure management of sources throughout the lifecycle – from manufacture through disposal, including long-term storage if disposal is not an option. This assessment is consistent with the staff's response to multiple U.S. Government Accountability Office (GAO) audits related to source security.¹ Based on this information and experience, there is no indication that disused sources currently present a significant security vulnerability in the U.S.

There have also been several developments since 2016 that affected the regulated community and the conclusions in this paper and in SECY-16-0046. For example, commercial disposal pathways now exist for class A, B, and C waste. In addition, the NRC's draft regulatory basis for disposal of greater-than-class C and transuranic waste² found that the majority of Category 1 and 2 RSS considered GTCC waste is potentially suitable for near-surface disposal. There has also been significant progress in addressing the lack of Type B shipping containers for highest activity RSS.

For the reasons outlined above, I do not support the development of a rule that presumes that all Category 1 and 2 RSS would require dispositioning financial assurance. Instead, I support

¹ See, e.g., GAO-16-330, "Nuclear Security: NRC Has Enhanced the Controls of Dangerous Radioactive Materials, but Vulnerabilities Remain," and GAO-19-468, "Combating Nuclear Terrorism: NRC Needs to Take Additional Actions to Ensure the Security of High-Risk Radioactive Material."

² Draft Regulatory Basis for Disposal of Greater-Than-Class C (GTCC) and Transuranic Waste, ADAMS Accession No. ML19059A403.

the development of a risk-informed basis for establishing thresholds for and fixed dollar amounts of dispositioning financial assurance for RSS. The staff should seek public comment when developing this basis and consider the overall risk and total cost of disposal when determining the appropriate thresholds.