

POLICY ISSUE
NOTATION VOTE

SECY-00-0121

June 5, 2000

FOR: The Commissioners
FROM: William D. Travers
Executive Director for Operations
SUBJECT: PROPOSAL TO EXTEND NRC MATERIALS LICENSE RENEWALS FOR TWO YEARS AND ASSEMBLE A WORKING GROUP TO IDENTIFY LONG-TERM RECOMMENDATIONS

- PURPOSE:
- BACKGROUND:
- DISCUSSION:
- CONCLUSIONS:
- COORDINATION:
- RECOMMENDATION:

PURPOSE:

To obtain Commission approval of the staff's proposal to extend the license renewals for most byproduct, source, and special nuclear materials licenses⁽¹⁾ for a period of two years, and form a Working Group to identify long-term recommendations for the policy governing the term of materials licenses. This would extend these licenses by adding two years to the current expiration dates. This paper also requests approval of a staff proposal to proceed with a direct final rulemaking action to implement this change.

BACKGROUND:

In 1996, the Commission supported a plan proposed by the Office of Nuclear Material Safety and Safeguards (NMSS) to extend, on a one-time basis⁽²⁾, most of the Commission's several thousand materials license expiration dates by five years. The Commission gave notice of this action in the Federal Register on January 16, 1996 (61 FR **EXIT** 1109). In 1997, the Commission approved the staff's proposal to extend the license term for materials licenses from 5 years to 10 years, with provisions for issuing licenses for less than 10 years. The Commission gave notice of this action in the Federal Register on February 6, 1997 (62 FR 5656). These actions provided resources that allowed NMSS and the regions to update licensing and inspection program guidance, rather than review these renewals. A substantial amount of this guidance has been developed, which will be beneficial to applicants and licensees, and to NRC and Agreement State license reviewers. The license terms for many of the 5,200 NRC materials licensees receiving the one-time five year extension are now beginning to expire. Beginning in July 2000, and continuing over the next five years, between 50 to 100 materials licenses will expire each month.

As part of its Planning, Budgeting, and Performance Management (PBPM) deliberations, NRC staff has given more thought to the nexus between its regulatory framework, licensee performance and safety, and the level of public confidence in its regulatory approach. The staff has explored options for conducting its operations in a more effective and efficient manner, while looking for approaches that would eliminate regulatory burdens that do not contribute to one of our regulatory goals. To this end, the staff ranked all of its budgeted activities from first to last in terms of their relative contributions to one or more of the four PBPM goals. This process greatly facilitated the formulation of the NMSS fiscal year (FY) 2002 budget. Although materials licensing activities in general, scored highly under this ranking protocol, many managers within this arena felt that the relative contributions of renewals were less strongly linked to safe licensee performance. However, there were differing opinions among various staff members and management on the contribution of renewals to each of the performance goals, especially the goal of maintaining safety. This lack of a clear consensus led the staff to conclude that a more systematic review, outside the confines of the PBPM process, is required. This conclusion also caused the staff to reconsider its 1996 position, and propose the extension of renewals for a second time, but for a shorter period (only two years). The two-year extension is proposed for three reasons:

- 1) Two years is a period that will allow the staff to begin full-scale implementation of several other key PBPM initiatives described later in this paper, and to test and evaluate their effectiveness.
- 2) This period gives sufficient time for a joint NRC/Agreement State Work Group to consider the efficacy of the renewals program from all dimensions and perspectives.
- 3) It will enable the staff to make key policy recommendations to the Commission in a relatively short time frame.

DISCUSSION:

Many of the license terms that were extended in 1996 will begin to expire over the next several years, with some expiring as

early as this summer. Since the previous renewal cycle, considerable progress was made in updating and consolidating our licensing guidance to reduce the burden on licensees and make the guidance more risk-informed and performance-based. Also, a combined Headquarters/regional management team developed streamlined license renewal processes. This guidance uses performance indicators to establish a two-tiered license review process that focuses review resources on applications from poor performers and on programmatic areas with significant changes that could affect safety. Based on these factors, we estimate these renewals could be reviewed and acted on more efficiently, with an estimated cost of approximately 5 to 7 FTEs per year. Previous estimates, based on data collected prior to the guidance consolidation, ranged from 10 to 14 FTEs per year. With respect to source material processing and greater than critical mass special nuclear material (other than fuel fabrication) licenses, approximately 3 FTEs would be needed to review and approve these renewals per year.

Based on NMSS and regional experience over the past 5 years, the extended renewal cycle has not, to this point, resulted in discernable safety problems. This enabled the materials arena managers to propose an additional two-year extension of materials licenses. This would conserve all of the above resources that would otherwise be devoted to license renewal reviews, yielding additional savings beyond what would be provided by the streamlined reviews. A number of points support this proposal:

- Licensees will continue to be required to adhere to the regulations and their license conditions, and to apply for amendments for certain proposed changes to their programs.
- Licensees will continue to be inspected at the current inspection frequencies, with scheduling intervals adjusted (i.e., shortened or lengthened) based on individual licensee performance.
- The consolidated materials licensing guidance ([NUREG-1556](#)) is available for licensees who wish to pursue streamlining through major amendments.
- Any cases of abandonment of NRC licenses will be identified through inspection or non-payment of the annual fees and regional follow-up.
- Licenses can be effectively incorporated into the new Agency Documents Access and Management System (ADAMS), if necessary, at the time of their next amendment.
- Staff will continue to make licensees aware of health and safety issues through the issuance of [generic communications](#) (such as Information Notices, generic letters, bulletins, and the NMSS Licensee Newsletter).
- By extending the licenses for two years, considerable resource savings result in FY 2001 and 2002. These savings become available to fund other higher-priority PBPM initiatives that were identified as necessary to achieve Strategic Plan performance goals. These include: an integrated communication plan to foster and build effective internal and external communications; better risk communication; expanded empowerment to allow staff to make regulatory decisions that are within the scope of their assigned positions; improvements to verify and validate the data that NRC collects for the new Strategic Plan metrics; upgrading NRC's ability to record and evaluate input to reduce burden on materials licenses; and participation in Work Groups supporting the national materials program initiative.

The above considerations led the staff to conclude that we can extend renewals for an additional two years and still maintain safety.

In fact, many of the above considerations would support a revision to the current policy of issuing materials licenses to a term of greater than 10 years. Before making a final decision on the length of a revised materials licensing term, the staff proposes the formation of a Working

Group, which would consider the issue more thoroughly. There are a number of factors that must be carefully considered. These include:

- It may be premature to conclude that safety will be maintained over the long term.
- Renewals often serve as a stimulus for licensee self-audits.
- There may be potential confusion for licensees, and for our license reviewers and inspectors, as the older licenses become more unwieldy and difficult to interpret because of the amendments that will accrue over time. This could eventually lead to inefficiencies that will erode some of the potential savings.
- One more round of renewals would allow each license to be incorporated more systematically into ADAMS.
- The savings possible from the guidance consolidation project would not be maximized if one more cycle of renewals is not completed. This is an effectiveness and efficiency factor.
- The renewal cycle is an opportunity for public hearings-- a factor in public confidence.
- Renewals provide the opportunity to clear up enforcement issues related to existing license conditions that may no

longer be applicable, or have been superseded by regulatory changes.

- The diverse range of internal and external stakeholders, particularly the Agreement States, must be involved in the development of a new program approach.

The staff believes that the length of license term issue requires further evaluation and stakeholder input. To implement the proposed license extension action, the staff proposes to conduct a rulemaking, followed by written notifications to affected licensees of the two year license extension. The staff considers this a non-controversial issue. The staff does not anticipate significant adverse comments on the two-year extension, based on experience from the previous five-year extension. However, the fact that many materials licenses are approaching their expiration dates does add a degree of urgency to the action. Therefore, staff recommends a direct final rulemaking to be issued under the authority of the Executive Director for Operations. For the same reason, the staff believes that a rulemaking plan is not required, and would proceed directly into the development of the rule.

During this two-year period, a Working Group will be established to consider the long-term efficacy of extending the term of materials licenses, and especially their contribution to the new Agency Strategic Plan performance goals. The Group will include internal and external stakeholders. It will include representatives from: NMSS; the Office of State and Tribal Programs (STP); the regions; the Technical Training Center; and the Agreement States. Legal advice and support will be provided by the Office of the General Counsel. State representatives would provide valuable insight and, at the same time, their participation would demonstrate NRC's commitment to involve State regulators in the important early stages of substantive policy decisions. The two-year period will allow the Group to make recommendations that will risk-inform the policy governing the term of materials licenses. The Group would be asked to complete its work within a time frame that would allow sufficient time for consideration of the recommendations by NRC management, endorsement by the Commission, and implementation through rulemaking-- all within the two-year period. This Group will coordinate its efforts closely with the related activities of the National Materials Program Working Group, and with other groups considering programmatic changes to materials inspection activities. The new group will be funded with minimal impact (i.e., no more than 0.25 FTE for each representative per year) on existing budgets over the next two years.

CONCLUSIONS:

In summary, the staff proposes the two-year extension because it represents an opportunity to re-examine the policy governing the term of materials licenses, in a more risk-informed, performance-based manner. At the same time, it will engage key stakeholders in an important policy decision. Finally, it will result in positive near-term FTE savings, and potential longer-term Agency savings, and burden reduction for licenses. These near-term FTE savings will provide a pool of resources that will allow NMSS and the regions to initiate important PBPM initiatives. Many of these initiatives center around increasing communication channels with our licensees and stakeholders, and identifying other means of making our programs more efficient.

COORDINATION:

NMSS has coordinated this paper with the regions, STP, and the Office of Enforcement. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections. These resource adjustments were discussed as part of the NMSS FY 2002 budget proposal to the Program Review Committee. The Office of the General Counsel has no legal objections. If the Commission approves this proposal, NMSS will work with STP to coordinate with the Agreement States.

RECOMMENDATION:

The staff recommends that the Commission: (1) approve the proposed two-year extension of license renewals; (2) authorize the staff to proceed with a direct final rulemaking; and (3) approve the staff plans to form a Working Group to identify long-term recommendations for the policy governing the term of materials licenses.

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1. For the purposes of this paper, this means all byproduct, source, and special nuclear materials licenses regulated by NRC (including uranium recovery licenses), except for the Part 70 fuel fabrication facilities, and the Part 40 uranium conversion facility, which the staff plans to address separately.

2. The staff would note that the Commission originally contemplated only a single extension. The 1996 Federal Register Notice stated: "The extension will be a one-time occurrence. The Commission does not envision that any similar extensions will be granted in the future" (61 FR 1109). The staff's proposal in this paper is a departure from this original Commission

expectation.