

RULEMAKING ISSUE  
(Notation Vote)

SECY-00-0201

September 25, 2000

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

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- **COORDINATION:**
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## **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.

## **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 ([Attachment2](#)).
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

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

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\(a\)](#)

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ATTACHMENT 2

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150 - AG64

Transfers of Certain Exempt Source  
Materials by Specific Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require NRC approval for transfers from licensees of unimportant quantities of source material (less than 0.05 percent by weight) to persons exempt from licensing requirements. The object of this proposed action is to ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety.

DATES: Submit comments by (Insert date 75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415-5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

Documents related to this action are available for public inspection at the Commission's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading room on the internet at [/reading-rm/adams.html](#). From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or by email to [pdrr@nrc.gov](mailto:pdrr@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6203, e-mail [cwp@nrc.gov](mailto:cwp@nrc.gov).

## SUPPLEMENTARY INFORMATION:

- [Agreement State Compatibility](#)
- [Plain Language](#)
- [Voluntary Consensus Standards](#)
- [Finding of No Significant Environmental Impact: Availability](#)
- [Paperwork Reduction Act Statement](#)
- [Public Protection Notification](#)
- [Regulatory Analysis](#)
- [Regulatory Flexibility Certification](#)
- [Backfit Analysis](#)
- [List of Subjects in 10 CFR Part 40](#)
  - [PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL](#)
  - [§ 40.51 Transfer of source or byproduct material.](#)

The NRC regulations in 10 CFR Part 40 exempt certain materials from licensing requirements. These exempt materials are referred to as "unimportant quantities." One of these exemptions, § 40.13(a), is for "chemical mixtures, compounds, solutions, or alloys" in which the source material is by weight less than 0.05 percent. Section 40.13(a) exempts any person from NRC licensing requirements "to the extent that such person receives, possesses, uses, transfers, or delivers source material in any chemical mixture, compound, solution, or alloy in which source material is by weight less than one-twentieth of 1 percent (0.05 percent) of the mixture, compound, solution, or alloy." This exemption stems from regulations adopted approximately 40 years ago. The 0.05 percent by weight limit appears to have been chosen on the basis of concentrations of source material that are necessary to be a useful source of fissionable material. (The 0.05-percent by weight limit is equivalent to approximately 339 picocurie uranium/gram (pCiU/gram) for natural uranium and 116 picocurie thorium/gram (pCiTh/gram) for natural thorium.)

Some NRC licensees are in possession of unimportant quantities of source material. They are licensed because they possess other, higher concentration source material that is not exempt. Specific licensees are subject to requirements for decommissioning in Part 40 (§ 40.42) and waste disposal requirements in Part 20. However, under current regulations, §§ 40.51(b)(3) and (b)(4), an NRC licensee (either general or specific) may transfer unimportant quantities of source material to exempt persons under § 40.13(a). After this material is transferred, it is no longer subject to NRC requirements because an exempt person is not subject to the requirements for decommissioning and disposal. For some limited types and quantities of materials that fall under the exemption in § 40.13(a), transfers could potentially result in scenarios where exposure limits in 10 CFR Part 20 could be exceeded.

Recent estimates of possible radiation doses from thorium and uranium suggest that quantities of source material in concentrations below the 0.05-percent limit in certain situations could result in individual doses of more than 1 millisievert/year (mSv/yr) (100 millirem/year (mrem/yr)). These estimates can be found in "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials," draft report for comment, NUREG-1717, December 1999. The draft report analyzed potential doses from handling of low concentration source material from mineral-derived products, such as in zircon processing activities, and handling waste-derived products, such as phosphate slag in building and road construction. The dose assessments for this exemption include estimates of doses from practices and materials known to present the greatest potential for exposure. The report found that the primary exposure pathways appear to be dust inhalation and direct irradiation.

This recent information on doses from less than 0.05 percent by weight source material has led the Commission to review its regulations concerning source material. This is especially important in light of decommissioning and decontamination of facilities where less than 0.05 percent by weight source material is present in significant quantities and often involves questions of disposal options for this material. Therefore, the Commission is proposing to amend § 40.51 to require NRC approval for transfers of material derived from specifically licensed material to ensure that these transfers do not pose a health and safety concern. This approval does not apply to the general license provisions in Part 40 -- the proposed approval

is limited to source material derived from specifically licensed material. This is because of the more limited quantities of material handled under general license. In addition, uranium and thorium are present naturally in very low concentrations in many materials, such as soil, and it would not be appropriate to require approval for transfers of this material. The concern referenced above is only where significant quantities of licensed material have ended up in lower concentrations meeting the exemption.

In making its determination regarding transfers of less than 0.05 percent source material the NRC staff would: (1) expect to approve transfers under this provision if the radiation dose to any individual is not expected to exceed 1 mSv/yr (100 mrem/yr); and (2) inform the Commission in cases where the individual dose is expected to exceed 0.25 mSv/yr (25 mrem/yr). A licensee seeking to transfer source material derived from specifically licensed material now under the concentration limit of § 40.13(a) would have to submit information on the type and quantity of material, where it would be transferred, the individual public dose estimates, and the parameters and assumptions used in estimating the dose.

Several licensees have requested NRC approval to transfer less than 0.05 percent source material to exempt persons in the past several years. The Commission has made decisions on a case-by-case basis. Pending publication of these amendments to § 40.51 as a final rule, the Commission will continue its current policy of approving requests to transfer material to exempt persons under § 40.13(a) on a case-by-case basis, using the 1 mSv/yr (100 mrem/yr) criterion.

In addition to this proposed rule, the NRC is presently developing a plan for a comprehensive rulemaking to improve the control of distribution of source material to exempt persons and to general licensees in order to make Part 40 more risk-informed.

## **Agreement State Compatibility**

Section 40.13 is presently a compatibility "B" item, and Section 40.51 is presently a compatibility "C" item, except for 40.51 (b)(6) which deals with exports and is reserved for NRC. The compatibility status reflects the extent to which Agreement State regulations must conform to NRC regulations, as detailed in "Policy Statement on Adequacy and Compatibility of Agreement State Programs", published September 3, 1997 (62 FR 46517). The proposed amendments, if made final, would not change the compatibility status of Section 40.13 or Section 40.51. Agreement States are expected to have the same 1 mSv/yr (100 mrem/yr) or more stringent criteria than NRC's when making their determination regarding transfers of less than 0.05 percent source material.

## **Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing", directed that the Government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the proposed revisions to improve the organization and readability of the existing language of paragraphs being revised. These types of changes are not discussed further in this notice. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading "ADDRESSES," above.

## **Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is presenting amendments to its regulations that allow transfers of unimportant quantities of source material (less than 0.05 percent by weight) to exempt persons under § 40.13(a). This action does not constitute the establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

## **Finding of No Significant Environmental Impact: Availability**

The Commission has determined that, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of Part 51, this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and that an environmental impact statement is not required. The licensees affected by this rule fall into two groups: those licensees who would continue to be allowed to transfer their unimportant quantities of source material to exempt persons and those licensees who would not be allowed to transfer their unimportant quantities of source materials to exempt persons. For the first group there are no environmental impacts associated with this rule because the only change brought about by this rule is the requirement to apply for such approval. There would be no change to human health or the environment as a result.

For the second group, transfers to exempt persons would not be approved. Consequently, unimportant quantities of source materials at these licensed facilities would need to remain on site or could be transferred to or disposed at other licensed facilities. As a result, this source material would continue to be managed in a regulated manner that would provide significantly greater protection to the public and the environment from exposure to radiation. Workers at licensed facilities are expected to be exposed to lower doses of radiation than the levels to which workers at unregulated exempt facilities would be exposed, because of the routine safety precautions required at licensed facilities.

Because under adoption of the proposed rule, there would be either 1) no change to human health or the environment or 2)

greater protection of human health and the environment (relative to the current regulation), this rulemaking is environmentally protective.

## **Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for this information collection is estimated to average 50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Records Management Branch (T6E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0020), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by (insert date 30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

## **Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

## **Regulatory Analysis**

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001; telephone (301) 415-6203.

## **Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule, if finalized, would require licensees to apply to the Commission for approval to transfer unimportant quantities of source material to exempt persons under 10 CFR 40.13(a). In total, the NRC estimates that, of the approximately 114 licensees under 10 CFR Part 40, approximately three to six licensees per year would apply to the Commission, i.e., about three to five percent of all Part 40 licensees. The NRC further estimates that the vast majority of licensees would need only submit an application to the NRC at an estimated one-time cost of about \$3,600 to \$5,300 per licensee. The NRC further estimates that, in rare circumstances, a licensee may be denied permission to transfer the material and, as a result, incur significant costs above the current (i.e., baseline) regulatory program. However, the NRC estimates that this would happen to about one licensee per year, i.e., less than one percent of all Part 40 licensees.

In sum, because the annual number of licensees submitting an application to NRC is expected to be very small (3-6 licensees annually), the NRC believes that the proposed rule would not impact a substantial number of entities, large or small.

## **Backfit Analysis**

The NRC staff has determined that the backfit requirements in 10 CFR Parts 50, 72, and 76, do not apply to this proposed rule and, therefore, a backfit analysis is not required.

## **List of Subjects in 10 CFR Part 40**

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553. the NRC is proposing to adopt the following amendments to 10 CFR Part 40.

## **PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL**

The authority citation for Part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321-349 (42 U.S.C. 2243).

Sec. 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 40.51 is amended to read as follows:

### **§ 40.51 Transfer of source or byproduct material.**

(a) No licensee shall transfer source or byproduct material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c), (d), and (e) of this section, any licensee may transfer source or byproduct material:

(1) To the Department of Energy;

(2) To the agency in any Agreement State that regulates radioactive materials pursuant to an agreement with the Commission or the Atomic Energy Commission under section 274 of the Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;

(4) To any person in an Agreement State subject to the jurisdiction of that State who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemptions;

(5) To any person authorized to receive such source or byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;

(6) To any person abroad pursuant to an export license issued under part 110 of this chapter; or

(7) As otherwise authorized by the Commission in writing.

(c) Before transferring source or byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the source or byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source or byproduct material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in their possession, and read, a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in their possession a written certification by the transferee that he or she is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certification number, issuing agency, and expiration date;

(3) For emergency shipments, the transferor may accept oral certification by the transferee that he or she is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certification number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates

of licenses and registrations; or

(5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source or byproduct material.

(e) The licensee shall obtain written approval from the NRC before transferring any source material derived from specifically licensed material to persons exempt under § 40.13(a) or equivalent Agreement State regulations. A licensee seeking NRC approval to transfer must submit a dose assessment with information containing the estimated annual total effective dose equivalent to a member of the public that would result from the transfer, and the parameters and assumptions used in the assessment.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

For the Nuclear Regulatory Commission.

\_\_\_\_\_  
Annette Vietti-Cook,  
Secretary of the Commission.

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ATTACHMENT 4

## Draft Rule Language for Possible Revision of 10 CFR 40.13(a)

Section 40.13(a) is amended to read as follows:

### **40.13(a) Unimportant quantities of source material.**

(a) Any person is exempt from the regulations in this part and from the requirements for a license set forth in section 62 of the Act to the extent that this person receives, possesses, uses, disposes, transfers, or delivers source material in any chemical mixture, compound, solution, or alloy in which the source material is by weight less than one-twentieth of 1 percent (0.05 percent) of the mixture, compound, solution, or alloy. The exemption contained in this paragraph does not include byproduct material as defined in this part.