

May 14, 2007

MEMORANDUM FOR: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 12:45  
P.M., MONDAY, MAY 14, 2007, COMMISSIONERS'  
CONFERENCE ROOM, ONE WHITE FLINT NORTH,  
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-07-0062 - Final Rule: Requirements for Expanded Definition of Byproduct  
Material (RIN: 3150-AH84)

The Commission<sup>1</sup> approved a final rule amending 10 CFR Parts 20, 30, 31, 32, 33, 35, 50, 61, 62, 72, 110, 150, 170, and 171 to establish the regulatory framework for certain radium sources, accelerator-produced material, and certain discrete sources of naturally occurring radioactive material (NARM). The final rule revises the definition of "byproduct material," adds a definition for "discrete source," and amends existing regulations and adds certain provisions in order to provide the regulatory framework for the newly added byproduct material.

Following incorporation of the changes and comments noted below, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

6/15/07)

Changes and Comments to the Final Rule in SECY-07-0062

1. The definition of "discrete source" should be revised as follows: A discrete source is "a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities." The accompanying Statements of Consideration (SOC) text should clearly describe the meaning and purpose of the remaining two conditions in the definition of "discrete source." The specific revision to the Statements of Consideration should be informally transmitted to the Commission before the final rule is sent to the publisher to give the Commission a final quick review of what is being proposed.

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<sup>1</sup> Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Jaczko was not present when this item was affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Jaczko, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote.

2. The SOC should be absolutely clear that the military exclusion for accelerator-produced material and discrete sources of radium-226 is limited to materials in the possession of military operational forces, and that other military uses of these materials, including medical or research activities conducted by the Department of Defense, fall squarely under NRC jurisdiction. The SOC should indicate that the NRC will interact with the Department of Defense to obtain a common understanding of the uses of discrete sources of radium-226 and accelerator-produced material by the military and to resolve any specific potential conflicts on a case by case basis.
3. On page 133, paragraph 2, revise line 5 to read ‘ ... contamination levels ~~(such as taking more samples or scaling)~~ must be ....’
4. On page 232, paragraph 31.12(c)(2) and (3), replace the term “device” with “products”.
5. On page 232, paragraph 31.12(c)(4), revise lines 1 and 2 to read ‘ ... containing radium-226 ~~by export only as provided by Paragraph (c)(3) of this section,~~ at a disposal ....’

The staff should consider developing a regulatory information summary or some other form of communication to inform the public and general and specific licensees of their responsibilities under the rule to prevent the inadvertent handling, transfer, or disposal of these materials. The new requirements and upcoming changes should be prominently highlighted on NRC’s web site.

The staff should conduct a review of the effectiveness of this rulemaking after it has gained some experience with implementing the new regulations. This review should occur no sooner than 18 months after the effective date of the rule and include recommendations for studies or rule changes that may be needed to more effectively implement the EPCRA.

Consistent with the effort in this rulemaking, for all future rulemakings involving a working group with Agreement State participation, the staff should, to the extent practical, involve the working group whenever the Commission is considering a change to the rule language that could impact the States. The staff should ensure that existing guidance and procedures on sharing NRC Documents with the States and appropriate working groups are uniformly and consistently implemented.

cc: Chairman Klein  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
EDO  
OGC  
CFO  
OCAA  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR