

October 9, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-03-0068

TITLE: INTERAGENCY JURISDICTIONAL WORKING
GROUP EVALUATING THE REGULATION OF
LOW-LEVEL SOURCE MATERIAL OR
MATERIALS CONTAINING LESS THAN 0.05
PERCENT BY WEIGHT CONCENTRATION
URANIUM AND/OR THORIUM

The Commission (with Chairman Diaz approving in part and disapproving in part, Commissioners McGaffigan approving, and Merrifield disapproving) responded to the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 9, 2003.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-03-0068

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X	X			X	10/7/03
COMR. McGAFFIGAN	X				X	9/25/03
COMR. MERRIFIELD			X		X	10/6/03

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz approved in part and disapproved in part, Commissioners McGaffigan approved, and Merrifield disapproved the staff's recommendation. All Commissioners provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on October 9, 2003.

Commissioner Comments on SECY-03-0068

Chairman Diaz

I approve in part, and disapprove in part the staff's proposal in SECY-03-0068 to limit NRC authority to uranium and thorium that are extracted or purposely concentrated for the use of uranium or thorium.

I disapprove moving forward at this time with a full-scale effort to pursue a legislative change primarily because I believe that the staff should focus its attention on high priority rulemakings in the materials arena such as the development of a proposed rule for the disposition of solid material. In addition, I agree with the views of Commissioners McGaffigan and Merrifield that an attempt to amend the Atomic Energy Act of 1954 on a narrowly focused issue such as the staff proposes will be difficult and has a limited chance of success. This disapproval should not be considered an outright rejection of the staff's recommendation as I may support the staff's proposal under the right set of circumstances.

The chances of success in pursuing legislation could be improved if the proposal has strong support from stakeholders. Thus, I approve the staff moving forward with a measured effort to determine the level of support that such a legislative proposal is likely to achieve from the States and other Federal Agencies. In addition, the staff should, as Commissioner Merrifield suggests, also explore alternative approaches that have the potential to achieve the same outcome as the legislative effort. However, in any such effort, the staff must ensure that schedules for higher priority rulemakings are not affected.

Commissioner McGaffigan

I approve the staff's recommend approach (Option 1) to decrease NRC authority by limiting NRC authority to uranium and thorium that are extracted/purposely concentrated for the use of uranium or thorium. I also approve of the staff's plans to formally solicit comments on the recommended approach from other impacted Federal agencies and individual States.

Overall I think this is a good paper. This paper contains the first comprehensive look at all of the issues associated with the regulation of low-level source material. I believe that the legislative approach suggested by staff is the best solution for these complex issues. Although I think it will be difficult to get legislation passed, I believe it is a better approach than continuing to waste resources trying to find a solution by modifying the regulations, which up to this point has proved fruitless.

This paper also reiterated that point I have made in the past which is that NUREG-1717 is very conservative in some areas and can significantly overestimate the doses in certain scenarios. I again caution that the staff should be very careful when using the information in this NUREG and should verify any dose calculations in the NUREG prior to their use.

Commissioner Merrifield

For the reasons noted below, I reluctantly disapprove the staff's proposal in SECY-03-0068 to propose legislation to limit NRC authority to uranium and thorium that are extracted or purposely concentrated for the use of uranium or thorium. Essentially, staff is proposing legislation as the only viable alternative to the status quo. In my comments, I provide an alternative proposal. First however, I want to praise the staff and the members of the Interagency Jurisdictional Working Group for sorting through a very detailed and complex issue and providing a reasonable proposed solution. While I believe that the proposed solution would provide finality to the issue, we need to find a more practical solution that can be implemented within existing regulatory authorities.

The staff proposes to accomplish the change in NRC authority through legislative change to the Atomic Energy Act of 1954 (AEA) and requests Commission approval to formally solicit comments on the recommended approach from other impacted Federal agencies and individual States and to coordinate its activities with the State Department regarding impacts on International Agreements of Cooperation. Although I strongly support the effort to rationally and equitably address the risks from NORM, TENORM, and low-level source material, and materials containing less than 0.05 % uranium or thorium, I have two reservations about proceeding with the staff's proposed approach. First, I am concerned that proceeding with this effort at this time will detract from or delay the completion of high priority rulemakings in the materials arena such as the development of a proposed rule for the disposition of solid material, the completion of the proposed final rule for enhanced security requirements for portable gauges, and other potential rulemakings related to security of radioactive sources. Second, although I agree with Commissioner McGaffigan that legislation is the best approach to resolving this issue, there is nothing in our past attempts to address narrowly focused issues through legislation (e.g., overlapping authority in decommissioning) to suggest that our attempt to amend the AEA will be successful. Consequently, we could see scarce resources applied to a predictably failed effort. Thus, I disapprove moving forward solely with a legislative proposal at this time.

The staff may continue to discuss the legislative alternative in future discussions but should also, on a limited basis, further explore other possible approaches to achieving the goal of rationally treating these materials. This can be done by either returning the topic to the Jurisdictional Working Group or by soliciting comments on viable alternatives from other impacted Federal agencies and individual States. The resources spent on this activity should not exceed the 1.5 FTE recommended for contacting the other agencies in SECY-03-0068.

In exploring the other possible approaches, staff should consider innovative solutions that will still provide adequate protection for the public health and safety. I am not restricting the staff on other alternatives to consider. One potential alternative for staff consideration is as follows. NRC could maintain primary regulatory authority if the material is processed primarily for its uranium or thorium content. But if the material is not being processed primarily for its uranium or thorium content, could the NRC rely on the regulatory authority of another Agency (State or Federal) to provide adequate protection of the public health and safety? This alternative solution would potentially apply regardless of the concentration of the source material, as long as the material was not being processed primarily for the source material. I recognize that the other Agency may not have direct regulatory authority over the AEA material. But if the ore or material contains other constituents over which the other Agency had regulatory authority and the Commission is willing to accept that regulatory control as being adequate from a public health and safety standpoint, then the Commission could, potentially by a policy statement and formal

agreement with the other Agency, declare that this other regulatory control satisfies our regulatory criteria in this area. One could argue that this solution is the status quo; but I believe otherwise because this more formal process would officially recognize that the Commission is deferring to these other Agencies only after carefully evaluating the health and safety aspects of such a deferral. We may have to look at the material less than 0.05% by weight of uranium or thorium because we have exempted it from NRC regulations and we, under this solution, may have to modify Part 40 to say that such material will be adequately regulated by these other Agencies through their regulatory control over other aspects of the material. Again, this is one suggestion and should not restrict the staff considering other potential alternatives.