



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 3, 2005

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-05-0151

TITLE: PROPOSED RULE: 10 CFR PARTS 30, 31, 32,
AND 150 - EXEMPTIONS FROM LICENSING,
GENERAL LICENSES, AND DISTRIBUTION OF
BYPRODUCT MATERIAL: LICENSING AND
REPORTING REQUIREMENTS (RIN 3150-AH41)

The Commission (with Chairman Diaz approving and Commissioners McGaffigan, Merrifield, Jaczko, and Lyons approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 3, 2005.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-05-0151

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	10/3/05
COMR. McGAFFIGAN	X	X			X	10/26/05
COMR. MERRIFIELD	X	X			X	10/6/05
COMR. JACZKO	X	X			X	10/14/05
COMR. LYONS	X	X			X	10/12/05

COMMENT RESOLUTION

In their vote sheets, Chairman Diaz approved and Commissioners McGaffigan, Merrifield, Jaczko, and Lyons approved in part and disapproved in part and 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 November 3, 2005.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0151 - PROPOSED RULE: 10 CFR PARTS 30, 31, 32, AND 150 – EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved lwj Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: attached

lwj
SIGNATURE

Oct 3, 05
DATE

Entered on "STARS" Yes No _____

effort was an assessment of the potential and likely doses to workers and the public under these exemptions. The assessment of doses associated with most of these exemptions can be found in NUREG-1717¹, "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials," June 2001. For some exemptions, the difference between potential (possible under the conditions of the exemption) and likely doses is significant because actual use of the exemption is limited or nonexistent, or significantly lower quantities are used in products than is potentially allowed under the exemption.

This proposed action concerns only conclusions of the reevaluation of regulations governing byproduct material. Any potential revisions to the regulations governing source material would be addressed in the future. In addition to the exemptions themselves, the NRC has reviewed the existing regulations governing the distribution of byproduct material to persons for use under the exemptions.

Generally, the systematic assessment of exemptions determined that no significant problems exist with the current uses of byproduct materials under the exemptions from licensing. Actual exposures of the public likely to be occurring are in line with Commission policy concerning acceptable doses from products and materials used under exemptions from licensing. However, in some cases, the regulatory constraints and controls in place may not be

¹NUREG 1717 is a historical document developed using the models and methodology available in the 1990s. The NUREG provides the estimate of the radiological impacts of the various exemptions from licensing based on what was known about distribution of material under the exemptions in the early 1990s. NUREG 1717 was used as the initial basis for evaluating the regulations for exemptions from licensing requirements and determining whether those regulations adequately ensured that the health and safety of the public was protected consistent with NRC policies related to radiation protection. The agency will not use the results presented in NUREG-1717 as a sole basis for any regulatory decisions or future rulemaking without additional analysis.

Copies of NUREGs may be purchased from the Superintendent of Documents, U. S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC public Document Room, One White Flint North, 11555 Rockville Pike, Public File Area O1-F21, Rockville, MD.

of Wisconsin noted particularly the revision to § 31.5(c)(8) and suggested that the NRC suspend the proposed revision of § 31.5 until the Commission has evaluated a recently submitted OAS petition for rulemaking to determine if the petition offers a better alternative. Illinois supported the revision of § 31.5(c)(8), but disagreed with that of § 31.5(c)(10), which would allow longer time for some general licensees to report losses and thefts under Part 20. Illinois also suggested revising the labeling requirements (in § 32.19(d)(2)) so that the label would state that exempt quantities “shall” not be combined (rather than “should”).

The OAS petition referred to by Wisconsin suggests that those devices used under general license and covered by the registration requirement in § 31.5(c)(13), be required to be specifically licensed instead. The change proposed by the staff in this rule only effects general licenses that are not covered by the registration requirement. As a result, ~~t~~The NRC has determined that the actions suggested by the OAS petition, if taken, would not negatively impact the proposed changes in this action; the issues are sufficiently independent that the NRC does not believe these changes should await resolution of the petition.

The NRC does not believe that the revision to § 31.5(c)(10) would result in any increase in risk to the public. Reports are required immediately or within 30 days depending on radionuclide and quantity, after the loss or theft becomes known to the licensee. The change simply allows the longer time period for some additional devices. No effective change in the likelihood of the notification resulting in recovery of the devices is anticipated, and, as discussed above, the devices for which this change is applicable present limited risks in any case.

The labeling requirement in § 32.19(d) is a notification from a licensee to a non-licensee. The label provides information to the user; however, this direction is not enforceable. A revision to the exemption in § 30.18 itself is being proposed in order to make the intent demonstrated by

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

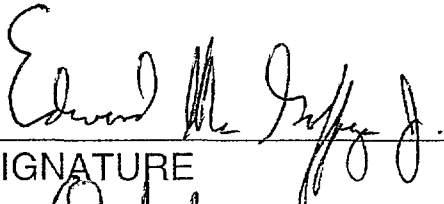
SUBJECT: **SECY-05-0151 - PROPOSED RULE: 10 CFR PARTS 30, 31, 32, AND 150 – EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved ^{in part} Disapproved ^{in part} Abstain _____

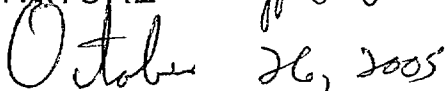
Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE



DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-05-0151

I approve in part and disapprove in part, the staff's recommendations concerning proposed revision to 10 CFR Parts 30, 31, 32, and 150.

I support the edits and comments of both Chairman Diaz and Commissioner Merrifield. I have stated publicly that I believe the analyses contained in NUREG-1717 are overly conservative and flawed. I have supported placing a caveat in NUREG -1717 to inform the public that the Commission has not and will not rely on the analysis contained in that NUREG without further analyses. So I support the Chairman's footnote to that point.

I also agree with my fellow Commissioners and disapprove the staff recommendation to exempt general licensees for radioactive material not in the registration program from immediately reporting the loss or theft of material. I agree with the staff that the risks associated with the loss of this material is extremely low. However, in this time of increased scrutiny and public concern over the loss of material it is not wise to give the public the impression that we are allowing material to be lost without reporting.

E. McGaffigan
10/26/05

NOTATION VOTE

RESPONSE SHEET

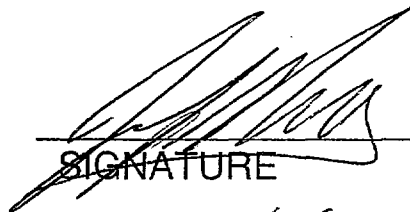
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0151 - PROPOSED RULE: 10 CFR PARTS 30, 31, 32, AND 150 – EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved *in part* Disapproved *in part* Abstain _____

Not Participating _____

COMMENTS:

See attach comments.



SIGNATURE
10/6/05

DATE

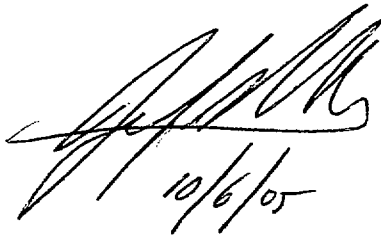
Entered on "STARS" Yes X No _____

Comments from Commissioner Merrifield on SECY-05-0151:

I approve, with modifications/revisions, discussed below the staff recommendations in SECY-05-0151 concerning proposed rulemaking for 10 CFR Parts 30, 31, 32, and 150.

First, I support and approve the two revisions proposed by the Chairman. Whenever the staff references NUREG 1717 in a document, a footnote should be provided that places the NUREG in its appropriate context. The Chairman's vote also clarifies why it is acceptable to proceed with this rulemaking even though there is a petition for rulemaking by the Organization of Agreement States that addresses general licensees because the final decision on that petition would not be affected by this rulemaking.

Second, I disapprove the staff recommendation to exempt general licensees for radioactive material not in the registration program from immediately reporting the loss or theft of the material. I clearly understand the staff basis for this recommendation. However, I do not believe that it is prudent to send the unintended message to general licensees that loss of their material is not important. Reducing the immediate reporting requirement in our regulations could send such a message. In addition, I also believe this sends the wrong message to the general public. However, this vote does not mean the staff should change its current practice for dealing with such licensees.



10/6/05

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER JACZKO

SUBJECT: **SECY-05-0151 - PROPOSED RULE: 10 CFR PARTS 30, 31, 32, AND 150 – EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved Disapproved Abstain

Not Participating

COMMENTS: See attached comments.



SIGNATURE

10/14/05

DATE

Entered on "STARS" Yes No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER LYONS

SUBJECT: **SECY-05-0151 - PROPOSED RULE: 10 CFR PARTS 30, 31, 32, AND 150 – EXEMPTIONS FROM LICENSING, GENERAL LICENSES, AND DISTRIBUTION OF BYPRODUCT MATERIAL: LICENSING AND REPORTING REQUIREMENTS (RIN 3150-AH41)**

Approved X Disapproved X Abstain _____
 in part in part

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE

10/12/05

DATE


Entered on "STARS" Yes ✓ No _____

Comments from Commissioner Lyons on SECY-05-0151:

I approve in part and disapprove in part the staff recommendations in SECY-05-0151 concerning proposed rulemaking for 10 CFR Parts 30, 31, 32 and 150.

I support the two modifications proposed by the Chairman. I agree that the OAS petition would not be negatively impacted by the changes proposed in this rule. It is my understanding that the issues identified in the OAS petition are sufficiently independent of the changes proposed to 10 CFR 31.5.

I also support Commissioner Merrifield's vote on disapproving the staff recommendation to exempt General licensees from immediate notification of NRC when a device is lost or stolen. My disapproval is based on concerns for ensuring public confidence rather than any public health and safety concerns with these low risk devices.


10/12/05