

POLICY ISSUE (Notation Vote)

February 15, 2001

SECY-01-0026

FOR: The Commissioners

FROM: William D. Travers
Executive Division for Operations /RA/

SUBJECT: ALTERNATIVES FOR RULEMAKING: DOMESTIC LICENSING OF
URANIUM AND THORIUM RECOVERY FACILITIES

PURPOSE:

To present three alternatives addressing the development of new regulations for the uranium industry in order to obtain Commission direction on additional work in this area.

BACKGROUND:

In SECY-99-011, the staff provided the Commission with a draft rulemaking plan for the domestic licensing of uranium and thorium recovery facilities. The staff's preferred option was to develop a new 10 CFR Part 41 devoted to the regulation of uranium and thorium recovery facilities and the disposal of 11e.(2) byproduct material. In the Commission's Staff Requirements Memorandum (SRM), the Commission approved the staff's recommendation and directed the staff to incorporate Commission direction from three related SRMs and send the draft rulemaking plan, with development of Part 41 as the preferred option, to Agreement States for comment. The Commission noted that comments on the entire plan were welcome and would be carefully considered. The plan was sent to Agreement and non-Agreement States on September 11, 2000. Eight comment letters have been received by the Commission and staff -- three from Agreement States, two from non-Agreement States, one from the Conference of Radiation Control Program Directors, and two from industry (see attachment 1).

CONTACT: Mark Haisfield, NMSS/IMNS
(301) 415-6196

Myron Fliegel, NMSS/FCSS
(301) 415-6629

In the time since this action was initiated, the uranium industry has changed sufficiently to warrant revisiting the previous alternatives proposed for regulating the industry. The price of uranium has dropped by about half over the last 3 years and is not expected to increase in the near future. Presently, there are only 12 U.S. Nuclear Regulatory Commission (NRC)-licensed uranium recovery facilities paying annual fees, and this number is expected to decrease. Of these 12 facilities only five produce uranium. There have not been any applications for a new license since 1998 and no new applications are anticipated for several years.

In the time since the SRM on SECY-99-011, the NRC has received comments on the draft rulemaking plan, which included information on the current depressed state of the uranium industry, and a recent proposal from the National Materials Program Working Group to pilot test rulemaking by this Working Group. Based on this additional information, the staff has developed three alternatives for Commission consideration. It is the staff's objective that each of the three alternatives would provide a similar level of protection of the public health and safety and the environment. The alternatives represent different approaches to updating the regulatory regime for uranium recovery, including the mix of rules and guidance and whether staff or an Agreement State group would provide most of the resources for the early stages of the process. As there should not be a difference in health, safety, or environmental consequences, the choice of alternatives should be based on an assessment using the other performance goals of the strategic plan. The different alternatives all achieve the other performance goals, but to varying degrees.

The first alternative is to accept a proposal by the National Materials Program Working Group to examine the need for regulations and/or guidance specific to uranium and thorium recovery facilities and to the disposal of 11e.(2) byproduct material. If such a need were determined by the Working Group, they would take the lead in the development of regulations (e.g., a new Part 41) and/or guidance documents. This proposal would serve as the pilot program to evaluate this approach to rulemaking and/or guidance development. The second alternative would be to develop a final rulemaking plan, which would continue with the recommendation in the draft rulemaking plan (as approved by the Commission in its SRM) for the staff to develop a new Part 41. The third alternative would be to discontinue development of a final rulemaking plan and new Part 41 at this time and update existing guidance to implement Commission direction. Pros and cons are identified for each alternative.

DISCUSSION:

Alternative 1 - Use the National Materials Program Working Group

Recently, the National Materials Program Working Group has proposed a process to develop a rulemaking in which Agreement State regulators would take the leading role. The Working Group would develop products based on consensus and refers to this as the "Alliance concept." To test the process, the Working Group has proposed that they use the development of regulations for the uranium recovery industry (NRC's proposed new Part 41) as a pilot project for this process (see attachment 2).

Under this process, the staff anticipates that the NRC and the Working Group would use a three-step procedure. As the first step, the Working Group would develop an outline similar to NRC's development of a rulemaking plan. Note, however, that the Working Group will explore the no rule option similar to Alternative 3. This outline would be provided to the Commission for approval. The second step would be the Working Group's implementation of the Commission

decision. The third step would be NRC's conversion of the Working Group's products into NRC final products.

The outline to be developed by the Working Group as the first step would include:

1. Recommendations;
2. Membership in the Working Group from the centers of expertise;
3. Key regulatory issues to be resolved;
4. What constitutes a "consensus" by the Working Group;
5. How resolution will meet NRC strategic goals;
6. The estimated cost and how these costs would be paid;
7. Requested administrative assistance from NRC for such expenses as travel and per-diem;
8. Estimated NRC staff resources required;
9. Products to be developed (e.g., regulations, guidance documents, regulatory analysis, environmental assessment, etc.); and
10. Schedule for draft and final products.

One to two NRC staff weeks of effort are estimated as being necessary to support the development of the outline. The Commission may also decide to hold a stakeholder meeting to discuss the Working Group's outline.

In the second step, assuming a rulemaking is the approved product, draft regulations would be developed by a center of expertise through consensus. Approximately four to five Agreement State and/or non-Agreement State staff would be part of the center of expertise. One or two NRC staff would participate, but would not have lead responsibility for the development of the rulemaking package.

The third step is conversion of the Working Group's products or recommendation into NRC final products. After development of any rulemaking package, the NRC staff, in accordance with the Administrative Procedure Act (APA), would publish, in the Federal Register, a corresponding proposed rule for public comment, following Commission approval. Based on public comments, the staff would proceed to develop a final rule, as appropriate, for Commission consideration.

Pros for using Alternative 1:

1. This rulemaking could provide a good candidate to evaluate this new process because of the significant divergent views on various issues among States, industry, environmental groups, and NRC.
2. This new process may not require as many NRC resources, compared to Alternative 2, while allowing NRC participation. If the Working Group recommends, and the Commission approves, the development of new regulations, the staff believes less NRC resources would be needed to develop final products based on the Working Group's product. As stated, the resource estimates would be developed as part of the Working Group's outline.
3. If the final product of the Working Group is a new regulation similar to what the NRC envisions for a new Part 41, the same benefits identified in the first pro for using Alternative 2 would apply to this alternative.

4. If the process fails for this product, NRC will have gained both valuable insight on stakeholders views for possible future action on these specific issues, and on the use of this process in general.

Cons:

1. Because of the significant divergent views among States, industry, environmental groups, and NRC, reaching consensus may present roadblocks for successful completion.
2. Because this process would be led by the States, (NRC would only be a participant) all NRC expectations may not be met.
3. Because this is a new process, a final NRC rulemaking could take longer than Alternative 2, and some future NRC resources would still need to be expended to go through the Administrative Procedure Act process to publish a proposed and final rule.

Strategic Goals:

This alternative, if successful in the development of rulemaking products, could achieve the strategic goals of increasing public confidence, reducing unnecessary regulatory burden on stakeholders, and increasing effectiveness, efficiency, and realism by not only involving stakeholders in the regulatory process, but also encouraging States to take a more active role in the development of regulations. This alternative would provide the greatest amount of State input and would be comparable to Alternative 2 for other stakeholders. A comprehensive rule for uranium and thorium recovery licensees would reduce their regulatory burden by providing a more effective and consistent regulatory program which should be comparable to Alternative 2. Additionally, the expenditure of NRC resources is expected to be less than Alternative 2. This alternative, if successful, could provide the most effective use of NRC resources in the development of comprehensive regulations and guidance.

Alternative 2 - Continue to Develop a Final Rulemaking Plan

Under this alternative, the staff would continue the development of a final rulemaking plan as directed by the SRM on SECY-99-011. The final rulemaking plan would: (1) respond to comments on the draft; (2) be similar to the draft approved by the Commission for State review and comment; and (3) recommend the development of a new Part 41 for domestic licensing of uranium and thorium recovery facilities.

Pros for using Alternative 2:

1. Would develop a Commission-approved regulation, contained within a new Part 41, for the uranium industry, that would simplify the licensing process and reduce unnecessary regulatory burden by making broad changes in the uranium regulatory framework. This would provide a more effective and consistent regulatory program by:
 - a. Consolidating uranium (and thorium) recovery regulations;
 - b. Providing specific regulations for in-situ leach facilities;
 - c. Establishing a clearer, risk informed, and performance based regulatory basis for current staff practice;

- d. Providing for more performance-based licensing, where appropriate; and
- e. Incorporating Commission direction from the SRMs on SECYs-99-012, 99-013, and 99-277.

Cons:

1. A significant amount of staff resources would be expended to complete this rulemaking and associated guidance. This alternative may not be the most effective and efficient way to expend Agency resources in regulating uranium and thorium recovery facilities.

Strategic Goals:

As with Alternative 1, this alternative would also achieve the strategic goals of increasing public confidence, reducing unnecessary regulatory burden on stakeholders, and increasing effectiveness, efficiency, and realism by the establishment of comprehensive regulations for the uranium and thorium facilities. State stakeholders would be involved, but not to the extent as Alternative 1. Non-State stakeholders would be involved through the rulemaking process. A comprehensive rule for uranium and thorium recovery licensees would reduce their regulatory burden by providing a more effective and consistent regulatory program which should be comparable to Alternative 1. This alternative, given the current state of the industry, could be the least effective use of NRC resources.

Alternative 3 - Discontinue the Current Rulemaking

Under this alternative, NRC would stop the development of this rulemaking. The staff would focus its resources on updating guidance documents to implement Commission direction, and explore other approaches to achieve effectiveness and efficiency of uranium recovery regulations that could be less resource-intensive.

Pros for using Alternative 3:

1. This would require fewer NRC resources over the next several years than Alternative 2.
2. Commission guidance directed by the SRMs on SECYs-99-012, 99-013, and 99-277 can be implemented by updating existing guidance documents.
3. Does not preclude development of a rule at a later date if deemed necessary.

Cons:

1. This would continue the current practice (i.e., licensing based on guidance and staff practice), which may subject NRC to additional hearing requests, any one of which could involve a substantial fraction of the resources to develop a rule.

Strategic Goals:

This alternative would also achieve the strategic goals of increasing public confidence, reducing unnecessary regulatory burden on stakeholders, and increasing effectiveness, efficiency, and realism by the updating of guidance documents consistent with Commission direction. Although stakeholders would be involved in commenting on the guidance documents, their extent of involvement would be less than under the rulemaking process, and therefore public confidence would not be increased as much as under Alternatives 1 and 2. Revised guidance would improve the licensing process resulting in reduction of unnecessary regulatory burden, however, the licensing process would not be as efficient as it would be with the development of comprehensive regulations for both mills and in-situ facilities. However, as noted, this alternative would require fewer resources over the next several years than Alternative 2, and thus may be a more efficient use of Agency resources.

COORDINATION:

The Office of the General Counsel has no legal objection to the use of any of the alternatives presented in this paper. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

RESOURCES:

Since the use of Alternative 1 would be a test case for a new process, NRC resource estimates are uncertain, but would be refined as the Working Group develops their outline. An initial estimate (assuming that the Working Group believes a rule should be developed) would be 0.25 FTE in technical support and \$20,000 in administrative aid to support the Working Group and 0.5 FTE and \$50,000 in contractual support for NRC to finalize the rule meeting APA requirements and to update existing guidance documents. Resource estimates by the Working Group, and a refinement of the above, would be presented in the outline.

Alternative 2 is estimated to require 3 FTE and \$300,000 in contractual support to develop a final rule and update existing guidance documents over approximately 3 years.

Alternative 3 is estimated to require 0.5 FTE and \$100,000 in contractual support to update existing guidance documents.

Regardless of the alternative adopted, costs for NRC's efforts would be recovered through annual fees assessed to NRC licensees. Members of the National Materials Program Working Group have indicated that the incremental cost to their licensees for Alternative 1 would be minimal because staff time used to develop products would be paid from general State resources and would not be billed to their licensees.

SCHEDULE:

A schedule will be developed based on Commission guidance.

RECOMMENDATION:

The staff is not recommending an alternative, but is requesting Commission guidance.

/RA/

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Executive Director
for Operations

Attachments:

1. Comments on the Draft Rulemaking Plan
2. "Proposal for a Pilot Program to Test Rulemaking Activities Under an Alliance Concept"

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