



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 17, 1997

MEMORANDUM TO: Stuart Treby  
Assistant General Counsel for Rulemaking  
and Fuel Cycle  
Office of General Counsel

FROM: Larry W. Camper, Chief *[Signature]*  
Medical, Academic, and Commercial  
Use Safety Branch  
Division of Industrial and  
Medical Nuclear Safety  
Office of Nuclear Material  
Safety and Safeguards

SUBJECT: QUESTIONS CONCERNING DEVELOPMENT OF  
AN ACTION PLAN IN RESPONSE TO STAFF  
REQUIREMENTS MEMORANDUM - SECY-96-221

The Office of Nuclear Material Safety and Safeguards (NMSS) is in the process of formulating a response to the December 31, 1996, Staff Requirements Memorandum - SECY-96-221 (SRM). The subject of the SRM is plans for NRC to improve its control over, and licensees' accountability for, general- and specific- licensed devices and the Commission briefing on the subject held on November 13, 1996. The response is due to the Commission at the end of March.

In preparing its response, NMSS has developed some questions concerning the actions it can implement under the current regulatory structure, including enforcement of current regulatory requirements. The responses to these questions will affect the actions NMSS will take prior to rulemaking and the structure of the rulemaking.

NMSS requests Office of General Counsel assistance in resolving the following issues:

1. Can NRC require current general (under 10 CFR 31.5) and specific licensees (under 10 CFR Parts 30, 40, and 70) to verify accountability of the byproduct material they possess through mail contact, or via telephone, without amending the regulations? This would include having licensees verify and report their current inventory of byproduct material to NRC, such as having the devices subject to a registration system. If so, NMSS would need to know the mechanism (e.g., 10 CFR 30.52, bullitens, surveys) for such contact and the action that NRC can take for persons not responding.
2. Can NRC modify or revoke a general license, such as the one provided in 10 CFR 31.5, by order or rulemaking, as it applies to a specific individual or company?

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3. Will NRC need to obtain OMB clearance for the mail or telephone contact specified in item 1?
4. What is the status of the general license, and the responsibility of general licensees, when damage occurs to a device, including leakage of radioactive material and contamination of the facility? Do decommissioning regulations apply?
5. What is the status of persons possessing devices as a results of an unauthorized transfer from a 10 CFR 31.5 general licensee? Is the person considered as possessing material without a license?
6. How can NRC ensure that Agreement State licensees that transfer material to NRC licensed users report transfers of the products? How can NRC enforce the reporting requirements?
7. Can NRC, through rulemaking, covert a type of license for possession and use of material to a different type of license? This would include the possibility of converting a general licensee to a specific licensee, converting a specific licensee to a general licensee, converting a general licensee to a different type of general licensee, or converting a specific licensee to a different type of specific licensee.
8. Are there any legal limitations on reducing the requirements of 10 CFR 30.32 for NRC to issue a license document, either as part of pre-approval or after issuance of the license?

The above issues and several derivations were discussed at a meeting between members of my staff and Maria Schwartz and Henry McGurren of the Office of General Counsel.

Since the above information will be used to formulate an action plan in response to the SRM, we request a response clarying the above issues by the early part of February. If additional information is needed or you or your staff would like to discuss the issues, please contact John Lubinski of my staff at 415-7868.

Attachment:

Staff Requirements Memorandum - SECY-96-221

Distribution:

SSSS Staff

SSSS r/f

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OFFICE OF THE  
SECRETARY

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

December 31, 1996

*Kerry*  
Action: Papariello, NMSS

Cys: Taylor  
Milhoan  
Thompson  
Blaha  
Morrison, RES  
Bangart, SP  
Scroggins, OC  
Lubinski, NMSS

MEMORANDUM TO:

James M. Taylor  
Executive Director for Operations

FROM:

*John C. Hoyle*  
John C. Hoyle, Secretary

SUBJECT:

STAFF REQUIREMENTS - SECY-96-221 - IMPROVING  
NRC'S CONTROL OVER, AND LICENSEES'  
ACCOUNTABILITY FOR, GENERALLY AND  
SPECIFICALLY LICENSED DEVICES  
and

BRIEFING ON CONTROL AND ACCOUNTABILITY OF  
LICENSED DEVICES, 2:00 P.M., WEDNESDAY,  
NOVEMBER 13, 1996, COMMISSIONERS' CONFERENCE  
ROOM, ONE WHITE FLINT NORTH, ROCKVILLE,  
MARYLAND (OPEN TO PUBLIC ATTENDANCE)

The Commission has approved the staff proposal contained in alternative number 3 to develop an action plan to address the issue of device accountability and control. The Commission disapproved the staff's recommendation to conduct a pilot program in FY 1998 at this time and will reconsider any proposed pilot programs when a detailed action plan is provided to the Commission. The staff should also advise the Commission on options to pay for an enhanced NRC regulatory program including the availability of external funds, or whether consideration needs to be given to exploring with Congress the possibility of removing specific program costs from the NRC's user fee base (e.g., orphan source recovery fund).

~~(EDG)~~ (NMSS)

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The action plan should provide sufficient details to manage and track all actions associated with this issue and should address:

- 1) The staff's position (accepting, rejecting, or accepting in part) on each of the working group's recommendations, and the basis for that position.

SECY NOTE:

THIS SRM AND THE COMMISSION VOTING RECORD CONTAINING THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM. SECY-96-221 WAS PREVIOUSLY RELEASED TO THE PUBLIC ON NOVEMBER 13, 1996.

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- 2) The proposal by Ms. Aldrich to require specific licenses for the more hazardous devices now available under a general license, and address whether this proposal would lead to greater harmonization of U.S. regulations with those of other countries.
- 3) Any additional recommendations from the staff that were not addressed in the working group report (such as proceeding with or dropping the air gap rule), including the above information on resources and reprioritization for each staff recommendation.
- 4) The NRC and Agreement State resources needed to implement each working group recommendation (including those that the staff has accepted in part or rejected).
- 5) Whether NRC resources are currently budgeted. If resources are not currently budgeted, then the staff should describe the activities that would have to be reprioritized to carry out the actions. Resource estimates for each year and for maintenance of the developed system after the plan has been completely implemented should be included. The staff should strive to develop the most cost-effective plan possible.
- 6) The staff's position on the Agreement State compatibility issue raised by the working group, and make a recommendation on the appropriate level of compatibility for each requirement that the staff recommends adopting.
- 7) The action to quantify the risks associated with unaccounted-for devices. Specifically the staff should plan to proceed with establishing the probabilities associated with devices being lost, devices causing exposure to members of the public, devices entering the metals manufacturing stream, devices being smelted, and other incidents the staff recommends analyzing.
- 8) A mechanism for identification, control, storage, and proper disposal of orphan sources, including a funding plan for such contingencies.
- 9) A rulemaking plan. The action plan should include a specific action to develop a rulemaking plan to address these device accountability and control issues, along with a schedule for the rulemaking process.
- 10) When each accepted action would be started and completed.



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The actions in the staff action plan should be tied to the primacy of risk, with higher-risk issues receiving higher priorities, faster schedules, and more immediate resources than lower-risk issues. The staff should consider the need for initiating this effort in advance of the completion of the rulemaking. Because it is unlikely that the staff will be able to quantify these risks at the time the action plan is provided to the Commission, the staff should base the action plan recommendations on the staff's own general experience with the associated risks.

In developing an action plan, the staff may propose pilot programs. If the staff suggests a pilot program for any of the issues, the staff should describe the pilot program and how the pilot program will be limited. The staff should be specific about what the pilot program is expected to accomplish, when it will be started and completed, and what resources will be required. If a pilot program is suggested, it should be of the minimal length of time necessary to demonstrate that there are no significant unforeseen difficulties in the prompt implementation of the staff's proposal.

cc: Chairman Jackson  
Commissioner Rogers  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
OCA  
OIG  
Office Directors, Regions, ACRE, ACNW, ASLBP (via E-Mail)