

December 2, 2004

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

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

SUBJECT: STAFF REQUIREMENTS - SECY-04-0194 - DENIAL OF  
PETITION FOR RULEMAKING (PRM-40-28) - DONALD A.  
BARBOUR, PHILOTECHNICS

The Commission has approved the staff's recommendation to deny the petition for rulemaking (PRM-40-28) subject to the changes and comments noted below.

To assure that all aspects of the petition are addressed, the staff should specifically caution stakeholders in this draft RIS about inappropriate methods for separating the counterweights from planes, as well as other installed locations.

The 2001 RIS lists four acceptable ways for a possessor of counterweights to transfer them, one of which is to transfer them to an unlicensed disposal facility that accepts exempt radioactive material. The exemption from regulatory licensing for counterweights, however, does not cover the life cycle of the product and is thus unlike most other exempt materials. The exemption covers "uranium contained in counterweights installed in aircraft ... or stored or handled in connection with installation or removal of such counterweights ...." The petition denial and the draft RIS further state that the exemption does not include long term storage unless it can be shown that such storage is related to an intent to reuse the counterweight. Therefore, it appears inconsistent for the exemption not to apply to long term storage while it is acceptable for a possessor to transfer the exempt material to an unlicensed disposal facility. The staff should re-examine transfer option #4 in the 2001 RIS in light of the guidance developed in the draft RIS and in the petition denial. Should option #4 not prove to be acceptable, the staff should address this matter in the draft RIS.

Changes to the Federal Register notice

1. On page 9, revise line two from the top to read ' ... they will **be** altered or ....'
2. On page 13, 1<sup>st</sup> full paragraph, revise the last line to read ' ... counterweights, **and** (2) restoration and repair of the counterweights, **and** (3) **removal of the counterweights.**'

SECY NOTE: TO BE MADE AVAILABLE TO THE PUBLIC 5 WORKING DAYS AFTER  
DISPATCH OF THE LETTER TO THE PETITIONER.

Changes to the draft Regulatory Issues Summary

3. On page 2, 3<sup>rd</sup> paragraph under 'LONG TERM STORAGE', insert a new sentence at the beginning of the paragraph that reads: Removal of the counterweights must be accomplished in a manner that does not disturb the integrity of the counterweights.

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
DOC  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

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