

July 8, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-147

TITLE: PROPOSED RULEMAKING - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of July 8, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of July 8, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-99-147

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X				X	6/21/99
COMR. DIAZ	X				X	6/22/99
COMR. McGAFFIGAN	X				X	6/15/99
COMR. MERRIFIELD	X				X	6/23/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 8, 1999.

Commissioner Comments on SECY-99-147

Chairman Dicus

Commissioner Dicus approves the staff's request to publish a proposed revision to part 70 subject to the following:

1. I support delaying a backfit rule until experience under the revised rule is obtained. The FRN should solicit comment on what would constitute a

reasonable period of time for this purpose including supporting rationale.

2. I support the staff's proposal for content of the ISA. After acquiring experience with the proposed requirement, staff can propose modifying it if experience justifies it.
3. I agree with the concern over the need to assure that the SRP tracks the proposed revision. I support posting the draft SRP on the web for comment together with the draft ISA Guidance Document.
4. Lastly, I commend the staff for a job well done. Part 70 is a rule badly in need of revision and the development of a proposed revision that can meet both NRC's needs and the concerns of the regulated industry is a remarkable achievement.

Commissioner Diaz

I approve publication of the proposed rule. However, I recommend that the staff perform an evaluation of comments received concerning backfit and consider the inclusion of an immediately effective backfit provision in the final rule. The rulemaking package for the final rule should include the staff's assessment, justification, and conclusions concerning backfit.

I approve the staff's proposal to continue to refine the Standard Review Plan (SRP) for the proposed rule. During this process, the staff should continue to ensure that the SRP does not include prescriptive requirements and clearly acknowledges that licensees and applicants may provide alternative approaches to those presented in the SRP.

Commissioner McGaffigan

General Comments:

I approve publication of the proposed amendments to Part 70 and draft Standard Review Plan (SRP) for public comment. I consider the proposed rule to be an enormous improvement over the previous version provided to the Commission in SECY-98-185, and I commend the staff for a job well done under a tight time frame. In response to Commission direction in December 1998, the staff worked diligently with industry and other agencies' representatives in a public process to identify areas of difference or misunderstanding and to then resolve those differences or misunderstandings in whole or in part. I believe that the proposed rule reflects this concerted effort, is responsive to Commission direction and stakeholder concerns, and is ready for formal public comment. On the other hand, if I were voting on a final rule today, I would be strongly skeptical of certain provisions that may result in little value added from a health and safety perspective and be unnecessarily burdensome for licensees --for example, the 90-day (versus annual) reporting requirement for the Integrated Safety Analysis (ISA) summary changes in 70.72(d); the ISA summary contents in 70.65(b); the items relied on for safety log in 70.62(a)(3); the use of the word "ensure" (versus "provide reasonable assurance" or "provide high assurance") in 70.61(e) and 70.62(d); and the language and footnote on "new types of accident sequences" in 70.72(c)(1)(i). I look forward to the comment process to further understand the need for the current wording of these provisions.

I consider the development of the draft final rule and related guidance to be an iterative process that has clearly benefitted from the enhanced public process utilized by the staff over the last six months. Therefore, during the public comment period and while finalizing the rule, I strongly urge the staff to conduct meetings and workshops open to the public for the purposes of converging on the residual issues identified by the staff and stakeholders both on rule language and more importantly on the SRP. The staff should also make use of NRC's Internet website for dissemination of information and solicitation of input. Finally, I look forward to continued Commission involvement in this important rulemaking effort.

Specific Edits:

1. The language in 70.62(c)(3)(i) and (ii) should be modified to read "*effective date of the rule*" rather than "publication date of the rule" to be consistent with the discussion on pages 23-24 of the Federal Register notice and because the publication date of the rule is not necessarily the effective date of the rule.
2. The following text should be added as paragraph 4 to the press release and at the end of the first paragraph of the Congressional letters: "The proposed rule represents an extraordinary effort by NRC and industry and other stakeholders over several years that has included two proposed rules, several public meetings and Commission briefings by NRC staff and industry representatives. Since August 1998, NRC has utilized an enhanced public process to identify areas of mutual concern and those where agreement could be reached in whole or in part. To facilitate this process, the Commission held two public briefings, and the staff held four public workshops and made extensive use of the NRC's Internet website to disseminate information and solicit input from stakeholders. These efforts have significantly narrowed the differences between the staff and stakeholders on proposed amendments to Part 70. In addition, during the public comment period on the proposed rule and while finalizing the rule, the staff intends to conduct additional public meetings and utilize the NRC website for information exchange."
3. The following text should be added after sentence 1 of paragraph 2 of the Congressional letters: "These facilities generally have operated safely for many years. However, it is NRC's belief that Part 70 can be improved in light of the integrated safety analysis methodology developed in recent years and the fact that NRC and licensees have agreed to the need for a formal safety analysis. As part of license renewal, some licensees have committed to performing such an analysis and submitting a summary of the results to NRC for review. Amending Part 70 also allows NRC to codify the safety basis used for licensing these facilities while providing a framework for licensees to make changes to their safety program."
4. Specific more minor edits to the draft press release and Congressional letters are indicated on the attached pages.

Commissioner Merrifield

I approve the staff's request to publish for public comment the proposed revision to 10 CFR Part 70. I commend the staff for their extraordinary effort to both address stakeholder concerns and protect the public health and safety. Although the facilities regulated by Part 70 have generally operated in a safe manner, these regulations require updating to address the current NRC regulatory philosophy of risk informed performance based regulations. I have the following comments concerning the proposed regulations:

1. I support delaying a backfit rule until experience under a revised rule is obtained. I support soliciting comments in the Federal Register Notice on what would constitute a reasonable period of time (including supporting rationale) before the Commission should implement a backfit provision in the Part 70 regulations. The alternative suggested by the Chairman may have merit.
2. I support the staff's recommended alternative on the proposed facility change process.
3. I support the staff position on the items that must be included in the Integrated Safety Analysis (ISA) summary. I believe that the ISA summary should be more than a summary of "processes". The ISA summary should contain the minimum information needed by the NRC, but it should indeed be a summary document and not a restatement of the entire ISA. During the public comment period, the staff should continue to work with the stakeholders to define and refine the content of the ISA summary. However, during the public comment period, the reporting frequency for the ISA summary updates should be reconsidered to determine if it should be consistent with comparable requirements placed upon power reactor licensees.
4. I agree with the concern over the need to assure that the Standard Review Plan (SRP) tracks the proposed revision. I support posting the draft SRP on the web for comment together with the draft ISA Guidance Document.