

September 25, 1998

MEMORANDUM L. Joseph Callan  
TO: Executive Director for Operations  
FROM: John C. Hoyle, Secretary /s/  
SUBJECT: STAFF REQUIREMENTS - SECY-98-171 - PROPOSED RULEMAKING ON 10 CFR PARTS 50, 52, AND 72 REQUIREMENTS CONCERNING CHANGES, TESTS AND EXPERIMENTS AND STAFF RECOMMENDATIONS ON CHANGES TO OTHER REGULATIONS AND ENFORCEMENT POLICY

The Commission has approved publication, for a 60 day public comment period, the proposed rulemaking that would revise 10 CFR 50.59 and related provisions in Parts 50, 52 and 72 concerning the processes controlling licensee changes, tests and experiments for production and utilization facilities and for facilities for independent storage of spent nuclear fuel and high-level radioactive waste. The Voting Record, which includes the Commissioner votes and this Staff Requirements Memorandum, should be published in the *Federal Register* notice to clearly inform stakeholders on preliminary positions taken by the Commission (Enclosed).<sup>(1)</sup>

The Commission also approves the staff's recommendations for handling violations of 10 CFR 50.59 and 72.48, including staff plans for exercise of enforcement discretion, while rulemaking is underway.

The Commission requested that the staff specifically solicit public comment in the *Federal Register* notice on:

1. A wide array of options for the margin of safety criterion (50.59(c)(2)(vii) in the proposed rule) and its definition including: a) deleting the criterion and definition, b) a new definition as described in Chairman Jackson's vote, and c) an option which would decouple the last criterion from technical specifications and focus instead on a new criterion relating to performance of fission product barriers (e.g., reactor coolant system pressure, containment pressure, etc), with minimal changes being allowed up to specified limits, perhaps utilizing a graduated approach similar to the approaches proposed for other criteria.
2. Options for defining "minimal" as it pertains to "probability of occurrence of an accident" or "probability of equipment malfunction."
3. The definitions of "facility," "procedures," and "tests or experiments," including elimination of the definitions.
4. A clear definition of "accident."

(EDO) (SECY Suspend: 10/9/98)

The Commission requests the staff to complete the revised 50.59 rule on an expedited schedule.

(EDO) (SECY Suspend: 2/19/99)

Enclosure: Commission Voting Record

cc: Chairman Jackson  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
CIO  
CFO  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR  
DCS

---

September 25, 1998

COMMISSION VOTING RECORD

DECISION SECY-98-171  
ITEM:

TITLE: PROPOSED RULEMAKING ON 10 CFR PARTS 50, 52 AND 72 REQUIREMENTS CONCERNING CHANGES, TESTS AND EXPERIMENTS AND STAFF RECOMMENDATIONS ON CHANGES TO OTHER REGULATIONS AND ENFORCEMENT POLICY

The Commission (with all Commissioners agreeing) approved publication of the proposed subject rule for a 60 day public comment period and requested the staff to specifically solicit public comment on particular areas of the rulemaking as recorded in the Staff Requirements Memorandum (SRM) of September 25, 1998.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of September 25, 1998.

---

John C. Hoyle  
Secretary of the Commission

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

cc: Chairman Jackson  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
EDO  
PDR  
DCS

---

VOTING SUMMARY - SECY-98-171

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X	X			X	7/29/98
COMR. DIAZ	X	X			X	9/02/98
COMR. McGAFFIGAN	X	X			X	9/18/98

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendations to approve publication of the proposed rule for public comment, and use of the enforcement discretion guidance in its assessment of severity levels for violations while the rulemaking is underway, and provided some additional comments. In particular, all Commissioners disapproved the staff's proposed margin of safety criterion (50.59(c)(2)(vii) in the proposed rule) and its definition and each Commissioner provided an option for evaluation during the comment period. The Commissioners also specifically requested comments on a number of other issues. Because of the need to finalize this rule as expeditiously as possible and because [SECY-98-171](#) has already been publicly available since July 29, 1998, the Commission agreed to a 60 day comment period, and that the staff complete the revised 50.59 rule by February 19, 1999. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on September 25, 1998.

---

1. The Voting Record should be reformatted into columns for publication in the *Federal Register* (e.g., Chairman Jackson approved and disapproved in part with the following comments ...).