



OFFICE OF THE SECRETARY

UNITED STATES NUCLEAR REGULATORY COMMISSION WASHINGTON, D.C. 20535

ACTION: Minogue (Ref: EDO-1606) Cys: Stello Roe Rehm Snizek Denton GCunningham AA38-2

April 9, 1986

MEMORANDUM FOR: Herzel H.E. Plaine General Counsel Victor Stello, Jr. Executive Director for Operations FROM: Samuel J. Chilk, Secretary SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20 PROPOSED RULE

Commissioner Asselstine has requested a Commission meeting on SECY-86-48 and raised a number of questions on his March 24, 1986 vote sheet (attached). In order to aid in the Commission consideration of this issue will you please provide your comments and opinions on the issues raised by Commissioner Asselstine (and other Commissioner vote sheets previously provided to you).

(EDO/OGC)

(SECY SUSPENSE: 4/25/86)

- cc: Chairman Palladino Commissioner Roberts Commissioner Asselstine Commissioner Bernthal Commissioner Zech OPE

Rec'd Off. EDO Date 4/10/86 1:45 p

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NOTATION VOTE

AA38-2

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER ASSELSTINE

SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20  
PROPOSED RULE

APPROVED \_\_\_\_\_ DISAPPROVED \_\_\_\_\_ ABSTAIN \_\_\_\_\_  
NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION   /  

COMMENTS:

There are a number of questions concerning the staff's proposed backfit analysis and how that analysis compares with the two-part test in the backfit rule. Some of the relevant questions of concern to me are included with the Chairman's vote sheet. I believe that the Commission should discuss with the staff: the extent to which qualitative factors can be considered in doing cost-benefit analyses; whether the staff's analysis supports, with or without the qualitative factors, a determination that the proposed rule's benefits outweigh the costs and that the proposed rule will result in a substantial improvement in safety. If the answers to the foregoing questions is "no", then the Commission should discuss the basis on which it could proceed with this proposed rule. The papers now before the Commission do not provide all of the answers to these questions, and I believe that a meeting is needed if we are to resolve this matter.

Samuel J. Asselstine  
SIGNATURE  
3-24-86  
DATE

Entered on "AS"      YES      NO  
     

SECRETARIAT NOTE: PLEASE ALSO RESPOND TO AND/OR COMMENT ON OGC/OPE MEMORANDUM IF ONE HAS BEEN ISSUED ON THIS PAPER.

NOTATION VOTE

AA38-2

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION  
FROM: CHAIRMAN PALLADINO  
SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20  
PROPOSED RULE

with modifications/comments

APPROVED x DISAPPROVED \_\_\_\_\_ ABSTAIN \_\_\_\_\_  
NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

W. Palladino  
SIGNATURE

1 24 86  
DATE

YES NO

Entered on "AS"

SECRETARIAT NOTE: PLEASE ALSO RESPOND TO AND/OR COMMENT ON OGC/OPE MEMORANDUM IF ONE HAS BEEN ISSUED ON THIS PAPER.

AA38-2

CHAIRMAN PALLADINO'S COMMENTS ON 86-48

I APPROVE THE BACKFIT ANALYSIS FOR PUBLICATION IN ORDER TO OBTAIN PUBLIC COMMENT, SUBJECT TO THE COMMENTS THAT FOLLOW.

1. SINCE THE DRAFT FEDERAL REGISTER (F.R.) NOTICE RELIES ON THE REGULATORY ANALYSIS (E.G., PART II, P.5), THE NOTICE SHOULD MAKE CLEAR THAT THE BACKFIT ANALYSIS INCORPORATES THE REGULATORY ANALYSIS.
  
2. THE SECOND AND THIRD SENTENCE IN THE FIRST PARAGRAPH OF PART II SEEM TO IMPLY THAT PROCEDURAL CHANGES DO NOT NEED TO BE PRIORITIZED IF THEY DO NOT SIGNIFICANTLY AFFECT DESIGN. WHY? DO NOT SUCH PROCEDURAL CHANGES COMPETE WITH OTHER REGULATORY REQUIREMENTS FOR LICENSEE RESOURCES?
  
3. THE FIRST AND LAST SENTENCES OF PART III ARE VAGUE (I.E., "MAY BECOME," "WOULD APPARENTLY"). WHY? HOW DO SUCH VAGUE CONSIDERATIONS BEAR UPON THE DECISION TO ADOPT THESE RULES?  
<sup>1</sup>SEE ALSO ADDITIONAL FACTOR (1) ON P. 12.
  
4. SHOULD NOT THE F.R. NOTICE CONTAIN A FINDING OF "SUBSTANTIAL INCREASE IN OVERALL PROTECTION" (I.E., "IMPROVED PUBLIC HEALTH PROTECTION . . .," P. 11)? DOES THE BACKFIT ANALYSIS PROVIDE AN ADEQUATE BASIS FOR SUCH A FINDING?

5. ARE THE ADDITIONAL FACTORS (1) - (4) ON P. 12 "RELEVANT AND MATERIAL" TO THE IMPLEMENTATION OF §50.109 FOR THIS RULE OR "RELEVANT AND MATERIAL" FOR THE SUSPENSION OF §50.109(A)(3) FOR THIS RULEMAKING?
  
6. THE "NECESSITY" AND "NEED" OF ADDITIONAL FACTORS (3) AND (4) ON P. 12 DERIVE FROM WHAT PUBLIC HEALTH AND SAFETY OBJECTIVE? ARE THEY SIMPLY HOUSEKEEPING FACTORS?
  
7. REVISE REQUEST FOR COMMENT ISSUES (PAGE 12) AS FOLLOWS:  
(1) WHETHER THE COMMISSION HAS ADEQUATELY IMPLEMENTED §50.109 FOR PURPOSES OF THE PROPOSED PART 20 AMENDMENTS;  
  
• • • • •  
(3) WHETHER, BECAUSE OF OTHER FACTORS WHICH SUPPORT THE PROPOSED PART 20 REVISION, THE APPLICATION OF SECTION 50.109 (A)(3) SHOULD BE SUSPENDED FOR THIS RULEMAKING SO THAT THE PROPOSED AMENDMENTS CAN BE ADOPTED WITHOUT REGARD TO WHETHER OR NOT THE COMMISSION MAKES THE DETERMINATION CALLED FOR IN THAT SECTION.
  
8. SPECIFIC COMMENTS ARE ATTACHED.

NUCLEAR REGULATORY COMMISSION  
10 CFR PARTS 20 AND 50  
(AND ALSO 10 CFR PARTS 19, 30, 31, 32, 34, 40, 61, and 70)

STANDARDS FOR PROTECTION AGAINST RADIATION

AGENCY: Nuclear Regulatory Commission

ACTION: Proposed Rule; availability of supplemental information

SUMMARY: On January 9, 1986, the NRC published for public comment a proposed revision of its radiation protection standards, 10 CFR Part 20. If implemented, that rule would require changes in the radiation protection procedures at nuclear power reactors and other NRC-licensed activities. Section 50.109 of the Commission's regulations pertaining to production and utilization facilities (10 CFR Part 50) requires that an analysis be prepared for proposed NRC regulations ~~or orders~~ that require changes to existing production and utilization facilities licensed by the Commission under 10 CFR Part 50 or their operating procedures. This notice provides such an analysis for the proposed revision of 10 CFR Part 20 and solicits public comment thereon.

DATES: Comments must be submitted in writing on or before May 12, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Submit written comments or any other information concerning this matter to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of the proposed revision of 10 CFR Part 20 and the accompanying Regulatory Analysis that supports this Backfit Analysis

*all new  
or modified  
stuff  
that is unnecessary  
for this notice*

in response to this notice. In addition, numerous meetings were held between the cognizant NRC staff members preparing the revision and groups associated with States, unions, the nuclear industry, licensees, public interest groups, radiation protection organizations, and other Federal agencies. On December 20, 1985, the Commission published in the Federal Register [50 FR 51992] a proposed revision of Part 20. A corrected version was published in the Federal Register on January 9, 1986 [51 FR 1092]. There is an ongoing public comment period of 120 days, ending May 12, 1986.

Section XXXV of the Statement of Considerations that accompanies the proposed revision summarizes the Regulatory Analysis which describes the anticipated benefits and anticipated costs that would be associated with the implementation of the proposed revision, were it to be adopted. This Regulatory Analysis is the primary source of the estimates of the benefits and the impacts described in this Backfit Analysis.

B. THE BACKFIT RULE

*Comment is same as 2.1.*

On September 20, 1985, the Commission published a final rule [50 FR 38097], commonly called the "backfit rule" (10 CFR 50.109), which sets forth restrictions on imposing ~~by order or rule~~ <sup>amended</sup> new or ~~additional~~ requirements on production and utilization facilities after the issuance of a construction permit, after six months before the date of docketing of an application for an operating license, after the issuance of an operating license or after the issuance of a design approval under Appendix M, N or O of 10 CFR Part 50. This regulation sets forth the following requirements: *for such backfit:*

1. [§50.109(a)(2)] "The Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose."
2. [§50.109(a)(3)] "The Commission shall require the backfitting of a facility only when it determines, based upon the analysis

NOTATION VOTE

cc: VStello

JRoe

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JSnizek

AA38-2

FH  
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RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER BERNTHAL

SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20  
PROPOSED RULE

APPROVED \_\_\_\_\_ DISAPPROVED ✓ ABSTAIN \_\_\_\_\_

NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

Samuel J. Chilk  
SIGNATURE

YES      NO

    

Entered on "AS"

2/24/86  
DATE

SECRETARIAT NOTE: PLEASE ALSO RESPOND TO AND/OR COMMENT ON OGC/OPE MEMORANDUM IF ONE HAS BEEN ISSUED ON THIS PAPER.

Comments of Commissioner Bernthal on SECY 86-48:

I agree entirely with the comments of Commissioner Roberts. In my judgment his views represent the spirit in which the Backfit Rule was passed, and although I dissented from that part of the Rule that applied to the Commission's own rulemaking procedures, the Commission has little choice now but to abide by the Rule or risk explaining itself in court. It does not have the option of choosing, in effect, to ignore the central provision of the Backfit Rule because it is making life difficult -- granted that it is significantly complicating and delaying what would otherwise be straightforward rulemakings, and will make it impossible to meet the standard for rulemaking whenever the principal perceived benefits to the public are intangible. Rulemaking that does not lend itself to convincing cost-benefit treatment will from now on be a serious problem for the Commission. But if the Commission meant what it said in the Backfit Rule, then such regulations should not be imposed on our licensees and the public, whatever the subjective arguments in favor of the rule.

As for the substance of the proposed rule, I am concerned by the complexity. I would have hoped that increased knowledge would lead to an ability to simplify the "cookbook", rather than make it considerably more complex. I am concerned that further complexity in such a regulation may not, in the end, result in greater protection for workers and the public. For the best-managed licensees it may, but for the average and below-average licensee, I fear it may lead to frustration, greater potential for error, and conceivably even to greater worker exposure in the long run.

SECY note: If the Commission intends to publish the proposed rule as is, I will have additional views on the adequacy of our compliance with the Backfit Rule.

NOTATION VOTE

cc: VStello  
JRoe

Rifinoque  
JSniezek

FYI  
3/19

RESPONSE SHEET

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER ZECH

SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20  
PROPOSED RULE

APPROVED with comment      DISAPPROVED \_\_\_\_\_      ABSTAIN \_\_\_\_\_

NOT PARTICIPATING \_\_\_\_\_      REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

To me, the most persuasive rationale here is that based on the factors other than a backfit analysis which have a significant bearing on the proposed revisions to Part 20. (These are listed on p.12 of Enclosure A.) Therefore, as OGC has suggested, I believe that the proposed rule should indicate the Part 20 may be revised on the basis of these factors alone. The proposed rule should solicit public comment on this particular option.

Although I would emphasize the foregoing approach in the proposed rule, the results of the backfit analysis at this time could also be mentioned as a part of the analytical background which evaluates the need for the proposed rule. I would not wish to leave the impression, however, that any doubt based on a Section 50.109 backfit analysis will in itself be the sole determinant of the decision on the publication of a final rule. Factors such as those referred to above certainly will be considered in the exercise of Commission discretion on the need for the revision.

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*Leeds W. Zech Jr.*  
\_\_\_\_\_  
SIGNATURE

3-17-86

\_\_\_\_\_  
DATE

Entered on "AS"

YES       NO

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NOTATION VOTE

cc: VStello  
JRoe

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RESPONSE SHEET

RMinogue  
JSniezek

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R  
3/20

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: COMMISSIONER ROBERTS

SUBJECT: SECY-86-48 - BACKFIT ANALYSIS FOR 10 CFR PART 20  
PROPOSED RULE

APPROVED \_\_\_\_\_ DISAPPROVED X \_\_\_\_\_ ABSTAIN \_\_\_\_\_

NOT PARTICIPATING \_\_\_\_\_ REQUEST DISCUSSION \_\_\_\_\_

COMMENTS:

The backfit rule -- 50.109 -- requires any proposed rulemaking to meet the substantial increase of safety and cost justification standards. It seems to me that the proposed backfit analysis for Part 20 does not. If the Commission now wishes to preserve the option of issuing a rule that does not meet the backfit rule then it is the soundness of that option and the ensuing rationale for not following the backfit rule that should receive public comments. (See OGC's memorandum of February 20, 1986). Given the precedential nature of this action, I personally believe that the benefits accrued to issuing the Part 20 rule are not sufficient to override the requirements of the backfit rule. Since the level of protection is not being changed by Part 20 but only updated, I would wait until the EPA issues its guidance on radiation and then revisit the issue of NRC compliance.

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SIGNATURE

3/8/86

DATE

YES

NO

Entered on "AS"

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