



OFFICE OF THE SECRETARY

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

July 18, 1986

ACTION - Ross Cys: Stello Roe Rehm Sniezek Denton GCunningham Goller Peterson Grimsley Philips Felton Shelton AA38-2 Central Files only

MEMORANDUM FOR: Victor Stello, Jr. Executive Director for Operations FROM: Samuel J. Chilk, Secretary SUBJECT: STAFF REQUIREMENTS - SECY-86-48/48A, "BACKFIT ANALYSIS FOR PROPOSED REVISION OF 10 CFR PART 20"

The Commission, by a vote of 3-1, (with Commissioner Roberts disagreeing) has approved publication of the backfit analysis supporting the proposed revision of 10 CFR Part 20 for public comment. The notice should state that the decision regarding the cost-benefit balancing and conformance of the proposed Part 20 to the "Backfit Rule" is tentative, pending receipt of public comments on these issues.

The Federal Register Notice should also solicit public comments on the following questions per the request of Commission Bernthal:

- 1. In regards to the Backfit Analysis, comment is solicited on whether criteria for Commission suspension of the "substantial increase" threshold should be developed and made subject to rulemaking. 2. Comment is also solicited on whether the Backfit Rule, given its evident defects and limitations in such cases, should continue to be applied at all to Commission rulemaking per se.

Commissioner Bernthal will also provide separate views on this matter to be included in the Federal Register Notice.

Commissioner Asselstine's additional comments, (attached) are also to be included in the Federal Register Notice.

The Federal Register Notice should state that Commissioner Roberts disapproved the proposed revision to Part 20 because the backfit analysis could not demonstrate that the changes would provide a "substantial" reduction in the radiation dose received by workers and members of the public.

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You should forward the backfit analysis package in support of the proposed revision of 10 CFR Part 20, incorporating individual Commissioner comments, to the Office of the Secretary for signature and publication in the Federal Register.

(EDO)

(SECY SUSPENSE: 8/15/86)

- cc: Chairman Zech
- Commissioner Roberts
- Commissioner Asselstine
- Commissioner Bernthal
- OGC

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Commissioner Asselstine's comments to be added to Federal Register Notice

Commissioner Asselstine adds the following:

I approve the publication of this Backfit Analysis for the purpose of obtaining public comment on the adequacy of the Commission's compliance with its Backfit Rule. The NRC staff has written that it "...does not believe that the Part 20 revision will provide a 'substantial' change in the radiation doses received by workers and members of the public." (See SECY-86-48A, page 2, "Backfit Analysis for Proposed Revision of 10 CFR Part 20 dated May 19, 1986.) The Commission's Backfit Rule (10 CFR 50.109) requires a two prong test to be met before the Commission can promulgate a new or revised regulation such as the Part 20 proposed revisions. One of the required tests contained in 10 CFR 50.109(a)(3) is that any revision to the Commission's regulations affecting Part 50 licensees must provide "...a substantial increase in the overall protection of the public health and safety..." Given the above conclusion of the staff that this threshold is not met in the proposed revision to Part 20, the Commission is here asking the public whether the application of the threshold standard in 10 CFR 50.109(a)(3) should be suspended for the Part 20 revisions. I would particularly appreciate receiving comments from those that believe the threshold standard should be suspended as to why the Part 20 rulemaking deserves special treatment under the Backfit Rule. In addition, I would appreciate comments on whether the Commission should develop criteria governing when the Commission will or will not apply the threshold

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standards of 10 CFR 50.109(a)(3) and whether such criteria should be subjected to rulemaking.

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Additional comments of Commissioner Bernthal to be published in the Federal Register notice seeking public comment on the Backfit Analysis to accompany revisions to Part 20:

The public should be aware of the fact that the Commission has for nearly a year attempted to adapt the Backfit Rule to all rulemaking, even rulemaking that has nothing to do with powerplant hardware and the original intent of the Backfit Rule. This rulemaking and the accompanying analysis illustrates the difficulty. When applied to human-factors and certain other rulemaking, the Backfit Rule continues to exact NRC resources wholly disproportionate to any conceivable benefit to the public.

The record already shows cases where the Commission has been forced to sidestep a strict reading of the cost-benefit requirements of the Backfit Rule, when it nevertheless finds broad agreement that a rulemaking is in the public interest (e.g. in the case of conversion of non-power reactors from HEU to LEU).

I therefore believe the public may wish to comment directly on the question of whether the Commission should continue its attempts to apply the Backfit Rule to all rulemaking, or whether the Rule should be revoked as it applies to rulemaking activity per se.

Alternatively, the public may wish to consider whether the Commission should amend the Backfit Rule to indicate explicitly that non-monetary benefits may be weighed by the Commission in the cost-benefit balance, when such considerations are found by the Commission to be in the public interest.

- Stello
- Rpe
- Rehm
- Smiezek
- Ross
- Goller
- EDO R/F