



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001


10/20

COMSECY-06-0050

SECRETARY

October 5, 2006

Approved.


Dale E. Klein 10/11/06

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Annette Vietti-Cook, Secretary 

SUBJECT: RESPONSE TO OIG AUDIT OF NRC'S PROCESS
FOR RELEASING COMMISSION DECISION DOCUMENTS
(OIG-06-A-22)

The OIG performed an Audit of NRC's Process for Releasing Commission Decision Documents dated September 8, 2006. A draft response to that report is before the Commission as Correspondence 06-133. If the Commission agrees with the proposed response, I propose the following revision to the Internal Commission Procedures, Chapter III, Record of Votes, Staff Requirements Memorandum (new number 7 on page III-10):

After the Commission issues a Staff Requirements Memorandum that has not been designated for public disclosure, SECY will review the Staff Requirements Memorandum, as well as the underlying SECY Paper or Commission Action Memorandum (COM), to determine whether the document must be released, in whole, or in part, in accordance with the disclosure provisions of 5 U.S.C. 552 (a)(1) or (a)(2). The Office of the General Counsel, and NRC staff as appropriate, will participate in this review when requested by SECY. These shall include all instances where SECY believes the documents could fall within the purview of one of those subsections.

Please provide your concurrence/comments by October 20, 2006 and I will make the revision to the Procedures. This document is marked Official Use Only-Sensitive Internal Information because it contains predecisional information that is part of the deliberative process. Once the changes are made, the Internal Commission Procedures will be made public.

cc: OGC
EDO

06-10-06 AM 9:49
ADMINISTRATIVE RECORD



REQUEST REPLY BY: 10/20
UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

COMSECY-06-0050

SECRETARY

October 5, 2006

*Approved. Concur in
Commissioner Lyons'
Comments.*

*Edith Hoffmann
10/13/06*

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Annette Vietti-Cook, Secretary

Annette Vietti-Cook

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REQUEST REPLY

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SECRETARY

October 5, 2006

Approved

A handwritten signature in black ink, followed by the date "10/19/06".

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Annette Vietti-Cook, Secretary

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REQUEST REPLY

10/20

COMSECY-06-0050

SECRETARY

October 5, 2006

Approved in part and disapproved in part, subject to the attached comments.

MEMORANDUM TO:

Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

Gregory B. Jaczko

10/17/06
Date

FROM:

Annette Vietti-Cook, Secretary

SUBJECT:

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EDO


**Commissioner Jaczko's Comments on COMSECY-06-0050
Response to OIG Audit of NRC's Process
for Releasing Commission Decision Documents**

I approve in part, and disapprove in part, the staff's proposed response to the Office of the Inspector General's (OIG) audit of NRC's process for releasing Commission decision documents and the accompanying changes to the Internal Commission Procedures. While I support the establishment of a review process to ensure that SECY papers and Staff Requirements Memoranda (SRMs) that should be released under the automatic disclosure provisions of the Freedom of Information Act (FOIA) are released, I believe the agency should automatically release more of these Commission decision documents.

I do not believe it serves the agency well to take such a narrow approach in interpreting these automatic disclosure provisions. It appears inconsistent for an agency that repeatedly advertises its goal of openness and its success in achieving it, to now argue such a narrow and constrictive approach to the law. Moreover, despite the agency's great strides toward openness, I continue to see Commission level documents inappropriately marked and thus, unavailable for public inspection and review. Given my practical experience with these issues, I am not as confident as the staff that documents that should be publicly available are always appropriately disclosed.

Therefore, I believe the process being established in response to the first IG recommendation, that of reviewing SECY papers and SRMs to ensure documents that fall under the automatic disclosure provisions are appropriately disclosed, should also serve a dual function. For a brief period of time - perhaps a year - SECY should track the number of SECY papers and SRMs marked non-public and, as required by Internal Commission Procedures, the reason identified for this non-public status. At the end of the year, SECY should provide this information to the Commission where it would be useful in informing the Commission of how the SUNSI process is being applied to Commission level documents and the precise number of documents that are not being publicly released.

Finally, I believe this COMSECY and the voting record should be made publicly available.



Gregory B. Jaczko

12/17/06

Date



UNITED STATES NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

EARLIEST REPLY BY: 10/20

COMSECY-06-0050

SECRETARY

October 5, 2006

*Approved w/ comments
J. Taylor
10/11/06*

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: Annette Vietti-Cook, Secretary *Annette Vietti-Cook*

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Commissioner Lyons' Comments on COMSECY-06-0050


I approve the revision to the Internal Commission Procedures as proposed by SECY that would have SECY review SRMs, their underlying SECY papers and underlying COMs to determine whether the documents must be released in accordance with the automatic disclosure requirements of FOIA.

SECY's request stems from the OIG's recent audit of NRC's Process for Releasing Commission Decision Documents. In that audit OIG found that NRC lacks internal controls to determine whether SECY papers and SRM meet FOIA release requirements, and, that, as a result, NRC has exempted an entire class of documents [SRMs and SECY papers] without an adequate review process. OIG recommended that NRC develop a program for NRC compliance with FOIA's automatic disclosure requirements and that NRC go back and review previously unpublished SECY papers and SRMs.

The EDO has prepared a response to OIG's audit, CORR-06-0133, which I am approving separately. I agree with the EDO that NRC is in full compliance with the automatic disclosure requirements of FOIA and that it would be exceptionally rare for a SRM or SECY paper to fall under the automatic disclosure requirements of FOIA (subsections (a)(1) and (a)(2) of 5 U.S.C. § 552). This is because, as the EDO states, SRMs and SECY papers are not intended to pronounce agency policy decisions that the industry and the public are to rely on. In any event, NRC discloses COMS and SECY papers as a matter of course unless they are not appropriate for public release. They are placed on the NRC website in a manner that is easily accessed by members of the public.

I agree that we can always do better. It would be a useful endeavor to review SRMs and SECY papers to make sure that none are overlooked that must be disclosed to fulfill our obligations under FOIA. Therefore, I support OIG's first recommendation, which EDO also agrees to implement.

Like the EDO, I do not support the second OIG recommendation that would have us to go back to the beginning of the NRC and review all SRMs and SECYs that were not released to see if they should have been. OIG has not shown that NRC has a history or likelihood of noncompliance in this area. I am convinced that the amount of effort to review thousands of documents created since 1975 is not merited in this case.


10/11/06