



OFFICE OF THE  
SECRETARY

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

June 30, 1993

RELEASED TO THE PDR

7/15/93  
date

initials

MEMORANDUM TO: James M. Taylor  
Executive Director for Operations

William C. Parler  
General Counsel

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-93-086 - BACKFIT CONSIDERATIONS

Overall, the Commission is pleased with the Backfit Rule and its implementation. For the most part, the process has worked well, even though, as the staff has pointed out, there are some valid concerns regarding difficulties encountered in trying to satisfy the Backfit Rule's requirement for a "substantial increase in overall protection to public health and safety".

Being reasonably satisfied with the Rule, the Commission has, therefore, agreed that the staff should continue to carry out a disciplined regulatory analysis for rulemaking initiatives, and to determine, as part of that analysis, whether proposed rules meet the safety enhancement criterion of the Backfit Rule.

However, although the Commission is interested in preserving the discipline of the Backfit Rule, the Commission is also interested in assuring that the safety enhancement criterion is administered with the degree of flexibility the Commission originally intended. When the "substantial increase" criterion was promulgated in its present form in 1985, the Commission said:

"substantial" means "important or significant in a large amount, extent, or degree." Under such a standard the Commission would not ordinarily expect that safety improvements would be required as backfits that result in an insignificant or small benefit to public health and safety ... regardless of costs. On the other hand, the standard is not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security

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improvements having costs that are justified in view of the increased protection that would be provided.

A majority of the Commission (with the Chairman and Commissioners Rogers, Remick and de Planque agreeing) continues to believe that these words embody a sound approach to the "substantial increase" criterion and that this approach is flexible enough to allow for qualitative arguments that a given proposed rule would substantially increase safety. The approach is also flexible enough to allow for arguments that consistency with national and international standards, or the incorporation of widespread industry practices, contributes either directly or indirectly to a substantial increase in safety. Such arguments concerning consistency with other standards, or incorporation of industry practices, would have to rest on the particulars of a given proposed rule. The Commission also believes that this approach to "substantial increase" is consistent with the agency's policy of encouraging voluntary industry initiatives.

The Commission asks the staff to consider whether existing documents such as the CRGR Charter or office letters should be revised to reflect better the Commission's understanding of the "substantial increase" standard. The Commission would entertain a staff recommendation that separate guidance should be drafted, or other appropriate mechanisms for implementation prepared. Any revisions, drafts, or mechanisms which the staff believes advisable should be brought to the Commission for approval.

Despite the flexibility which the Commission believes inheres in the "substantial increase" standard, there may be proposed rules which, in the staff's opinion, do not meet that standard and should be promulgated mainly for nonsafety reasons. As in the past, the Commission remains willing to consider, on a case-by-case basis, whether such rules should be promulgated as exceptions to the Backfit Rule. However, it is the judgement of the General Counsel that using 10 CFR 50.12 to promulgate such exceptions is not a sound regulatory approach. The Commission therefore concludes that such exceptions should be promulgated only if the proposal not to apply the Backfit Rule to the proposed rulemaking is made the subject of notice and comment.

For the reasons set forth in his vote, Commissioner Curtiss believes that the preferred course of action would be to modify the backfit rule to directly address situations where a seemingly worthwhile change to the regulations cannot be adopted because of difficulties in demonstrating that the change represents a "substantial increase in the overall protection of the public health and safety or the common defense and security." In Commissioner Curtiss' view, the Commission has encountered a sufficient number of such cases, where the current backfit rule does not permit a reasonable, well-justified change to be made, to warrant modifying the backfit rule to address such situations.

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque  
OGC  
OIG  
Office Directors, Regions, ACRS, ACNW (via E-Mail)  
ASLBP (via FAX)