

NOTATION VOTE

RESPONSE SHEET

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **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**

Approved ☒ *in part* Disapproved ☒ *in part* Abstain       

Not Participating       

COMMENTS:

See attached comments.

*Edward M. McGaffigan Jr.*  
SIGNATURE  
*September 18, 1998*  
DATE

Entered on "AS" Yes ☒ No       

9809300279 980925  
PDR COMMS NRCC  
CORRESPONDENCE PDR

Commissioner McGaffigan's Comments on SECY-98-171

I approve publishing this rulemaking package for a ninety-day public comment period. However, like my colleagues, I do not agree with the staff proposal regarding "reduction in the margin of safety associated with any technical specification."

As the Chairman points out, the definition of "reduction in margin of safety ..." would extend the requirements for prior agency approval to underlying aspects (e.g., input assumptions) of parameters that affected the selection of technical specifications, and result in the newly controlled parameters being treated essentially the same way as values in the technical specifications. This is the wrong way to go.

It is clear from my colleagues' and my vote that the margin of safety criterion (50.59(c)(2)(vii) in the proposed rule) and the definition will need to be fixed in the final rule. My concern at this point is that the staff discuss a wide enough array of options in the Federal Register notice to ensure that the proposed rule will not have to be renoticed before being finalized. Commissioner Diaz has proposed to simply delete the criterion and definition as not needed. The Chairman has proposed essentially a new definition. Another option would decouple the last criterion from technical specifications and focus instead on a new criterion relating to performance of fission product barriers (e.g., RCS 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. Comment should be solicited on this option as well.

I believe that the staff has done a good job in proposing options for defining "minimal" for consequences of an accident or malfunction. On probability, however, the staff has essentially only said that NEI 96-07 satisfies the proposed NRC standard for a "minimal" increase. That is a good step forward, and will bring regulatory stability. I believe that in choosing the word "minimal" the Commission intended to grant greater flexibility than the NEI 96-07 "so small" or negligible standard. The staff should continue to try to give better definition to "minimal" as it pertains to "probability of occurrence of an accident" or "probability of equipment malfunction" and solicit comment on this.

Finally, I endorse the use of enforcement discretion under Section VII of the Enforcement Policy as the rulemaking proceeds for those 50.59 violations of little or no safety/risk significance. The staff should treat (vice

"consider treating" as proposed by staff) as minor violations cases where the violation of existing rule requirements would not constitute a violation under the rule were it revised as proposed. I do not object to documenting such minor violations in inspection reports because the rule is still in a proposed revision stage.

E. M. G.





UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001  
September 25, 1998

MEMORANDUM TO: L. Joseph Callan  
Executive Director for Operations

FROM: *John C. Hoyle*  
John C. Hoyle, Secretary

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.

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<sup>1</sup>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 ...).

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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 Suspense:

10/9/98)

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

(EDO)

(SECY Suspense: 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