

AFFIRMATION VOTE

RESPONSE SHEET

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TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: SECY-99-130 - FINAL RULE - REVISIONS TO
REQUIREMENTS OF 10 CFR PARTS 50 AND 72
CONCERNING CHANGES, TESTS, AND EXPERIMENTS

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.


SIGNATURE

6/4/99
DATE

Entered on "AS" Yes No

Commissioner Merrifield's Comments on SECY-99-130

I commend the staff for their hard work on this very difficult and important rulemaking effort. I especially want to recognize the staff for the excellent job they did facilitating stakeholder involvement and incorporating stakeholder insights into the revisions to 10 CFR 50.59 and related requirements in Parts 50 and 72. However, despite the difficulty of this rulemaking, there should be many lessons learned from the manner in which the final rule language was developed and debated so late in the process. I hope the staff utilizes these lessons to ensure that these last minute scrambles, especially on such important rulemaking efforts, are not repeated in the future. As Commissioner Diaz discussed at the Regulatory Information Conference, the staff and our stakeholders must do a better job in reaching closure on these important regulatory matters.

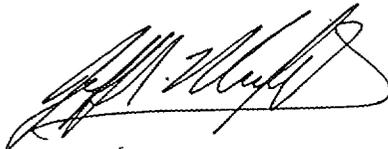
I approve in part, and disapprove in part, the publication of the final rule in the Federal Register as discussed below:

1. I approve the final rulemaking language.
2. I disapprove of the proposed enforcement criterion which would impose a Severity Level III violation for a licensee's failure to submit an amendment as required if a substantial review (based on the merits of the technical issues) is needed by the NRC before it could conclude that the licensee's actions were acceptable. I agree with the ACRS and the Chairman that the "substantial review" standard is unduly subjective, fails to address the safety significance of the violation in question, and fails to address the extent to which the violation impacted the ability of the NRC to oversee the activities of licensees. Even with an oversight panel, I believe the subjectivity of the "substantial review" standard would lead to inconsistency in our enforcement and be difficult to defend against challenge.
3. Consistent with my vote on SECY-99-133 (Maintenance Rule), approval of the final rule language is but a first step in the process. Clearly, the staff has a great deal of work remaining on the development of regulatory guidance. This should include careful consideration of stakeholder comments and a very thorough review of the operational implications of such guidance. Given the importance of this guidance to both our licensees and inspectors, I believe that the final rule should not become effective until the final regulatory guidance is in place. I also believe it is prudent for the Commission to review this final guidance prior to issuance by the staff.

As such, I disapprove of the 10 CFR 50.59 rulemaking becoming effective before regulatory guidance is developed and ultimately reviewed by the Commission. I agree with the Chairman that while the staff has done an excellent job in assembling concepts and examples of how specific criteria of the rule would be applied, the guidance provided in the paper is not complete or ready for implementation. Throughout the paper, the staff has highlighted areas where additional implementation guidance is absolutely necessary, such as for the phrase "minimal increase in frequency or likelihood", and for criterion (viii) to describe the specific elements of the evaluation methods or methodology that would require review and to clearly define specific types of input parameters. Furthermore, the staff still has to develop revised inspection guidance so that our inspectors have the guidance necessary to consistently evaluate licensee implementation of the new rule. Therefore, to ensure consistency in licensee

implementation of the new rule as well as consistency in inspector evaluation of licensees, I believe that voluntary early implementation by licensees should not be permitted and that the new rule should not become effective until after issuance of the final regulatory guidance.

4. Finally, I believe the staff should reassess the time it needs for developing and implementing new guidance. The staff has indicated that it will work with the industry and other stakeholders to revise the existing NEI 96-07 to satisfy the requirements of the final rule such that it could be endorsed. Given the importance of the revisions to 10 CFR 50.59, I believe it is critical for the staff, industry, and other stakeholders to move forward in a more prompt manner. I go back to my earlier comments about reaching closure on important regulatory matters. I believe the proposed 18 month schedule is excessive and warrants a second look to determine if efficiencies can be achieved such that implementation can be accomplished in a significantly shorter time frame. Accelerating the schedule associated with developing regulatory guidance should result in more timely implementation of the final rule.

 6/4/99