



REQUEST REPLY BY: 4/21/04

UNITED STATES

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

COMSECY-04-0014

Disapproved, subject to the attached comments.

Nils J. Diaz
Nils J. Diaz 5/19/04

SECRETARY

April 7, 2004

MEMORANDUM FOR:

Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM:

Annette Vietti-Cook, Secretary

Request for

SUBJECT:

COMSECY-04-0014 - STATUS OF 10 CFR PART 26
RULEMAKING ACTIVITIES FOR DRUG TESTING AND
FATIGUE

At the request of Commissioner McGaffigan, we have converted the attached memorandum to a COMSECY. Please reply to SECY by COB Wednesday, April 21, 2004.

Attachments:
As stated

cc: EDO
OGC
OPA
CFO
Regions

ORIGINAL

04 APR - 8 AM 9:06
CHAIRMAN REPLY

CHAIRMAN DIAZ'S COMMENTS ON COMSECY-04-0014

I disapprove the staff's proposed sequential completion of the FFD and fatigue rulemakings, subject to directing the staff to pursue an expedited and combined rulemaking. I join Commissioner McGaffigan in recommending that the staff be tasked to submit the combined proposed rule by December, 2005.

The sequential rulemaking approach would delay submission of even a proposed fatigue rule for a number of years; i.e., until some time after a final FFD rule is published. The combined rulemaking approach will permit an integrated consideration of overlapping provisions and thus avoid the long delay in awaiting completion of the FFD rulemaking before submission of a proposed fatigue rule. While the combined rulemaking will involve some delay in submission of the proposed FFD rule changes, I believe that the overall advantages of the combined approach outweigh the disadvantages.

I am frustrated, of course, by the substantial delays that have occurred in the FFD rulemaking and now in the fatigue rulemaking. The staff should ensure that it takes every practical step available to expedite the combined rulemaking so that it submits the combined proposed rule no later than the due date and, if possible, in advance of the due date.

A handwritten signature in black ink, appearing to be 'LD', is located to the right of the text.



REQUEST REPLY BY: 4/21/04

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

COMSECY-04-0014

*Disapproved.
See attached comments
S. McGaffigan
5/10/04*

SECRETARY

April 7, 2004

MEMORANDUM FOR: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Annette Vietti-Cook, Secretary *VP Hart for*

SUBJECT: COMSECY-04-0014 - STATUS OF 10 CFR PART 26
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Commissioner McGaffigan's Comments on COMSECY-04-0014

The staff proposes to separate the 10 CFR Part 26 rulemakings on drug testing and fatigue into two sequential rulemakings, the first on drug testing with a proposed rule to the Commission in June 2005, the second on fatigue to follow perhaps in this decade. (The staff promises a proposed rule three months after publication of the final drug testing rule in the Federal Register).

I disapprove the sequential rulemaking proposal. I believe that the staff should instead proceed with a combined rulemaking despite the delay needed to combine the proposed rules. The staff has indicated that a combined proposed rule could be ready in December 2005. I believe that the staff should be so tasked.

I also believe that the Commission needs to reemphasize the guidance in our October 3, 2001 Staff Requirements Memorandum on SECY-01-0134 that this rulemaking needs to be conducted openly with the active engagement of stakeholders not only on the rulemaking package, but on guidance development. The NRC staff has been working on an update to the fitness-for-duty rule for almost a decade and a half. I outlined the history in my vote on SECY-01-0134 and will not repeat it here. But if this complex rulemaking, with all of its backfit rule considerations, is to have any chance of being completed, the staff will need to be as open as possible throughout the process, especially during the development of the proposed rule. Long periods in which the staff huddles among themselves and does not interact with stakeholders will be a prescription for more failure here.





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COMSECY-04-0014

*Disapproved - See attached
Comments.*

SECRETARY

April 7, 2004

MEMORANDUM FOR: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Annette Vietti-Cook, Secretary

Robert Fox 5/15/04

SUBJECT: COMSECY-04-0014 - STATUS OF 10 CFR PART 26
RULEMAKING ACTIVITIES FOR DRUG TESTING AND
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Commissioner Merrifield's Comments on COMSECY-04-0014

I join Commissioner McGaffigan in disapproving the staff's proposal to separate the 10 CFR Part 26 rulemakings on drug testing and fatigue into two sequential rulemakings. I also believe that the staff should proceed with a combined rulemaking with a proposed rule to the Commission by December 2005. Finally, this process has been painfully long and drawn out. The staff should ensure that a disciplined schedule is developed to support the December 2005 date for a proposed rulemaking because any further delays would be unfortunate.



5/19/04