

November 24, 1998

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-257

TITLE: FINAL RULE, PART 2, SUBPART M -- "PUBLIC NOTIFICATION, AVAILABILITY OF DOCUMENTS AND RECORDS, HEARING REQUESTS AND PROCEDURES FOR HEARINGS ON LICENSE TRANSFER APPLICATIONS"

The Commission (with all Commissioners agreeing) approved the final rule as noted in the Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) on the Affirmation Session of November 24, 1998.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the Affirmation Session SRM of November 24, 1998.

John C. Hoyle
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-98-257

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	11/18/98
COMR. DICUS	X					11/17/98
COMR. DIAZ	X				X	11/13/98
COMR. McGAFFIGAN	X				X	11/17/98
COMR. MERRIFIELD	X					11/18/98

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule and some provided additional comments. Subsequently, the Commission affirmed the final rule in an Affirmation Session as reflected in the SRM issued on November 24, 1998.

Chairman Jackson's Comments on SECY-98-257

Commissioner Diaz Comments on SECY-98-257

I approve the issuance and publication of the final rules and the Federal Register notice of final rulemaking as submitted. I note that this final rulemaking package was submitted to the Commission less than two months after publication of the proposed rule. The Office of the General Counsel is to be commended for its timely submission of a well-written and well-reasoned final rulemaking package.

Commissioner McGaffigan Comments on SECY-98-257

I commend OGC for its good, quick, work on this rulemaking. The procedures established here hold the promise of efficiency, close Commission involvement (something that both industry and public interest groups seem to like, if for different reasons), and close questioning of the positions of the parties. As the FRN notes (page 33), the Subpart M process is similar to a legislative-style hearing, and I welcome this substantial step in what I have long argued is the right direction; but Subpart M differs from the typical legislative hearing in an important respect: It retains formal requirements for standing and admission of contentions. I see no pressing need in the context of license transfers to make such requirements less formal, but, as I said in my vote on the proposed 10 CFR Part 63, as a general matter our requirements on who may participate in a hearing should be more flexible. They should leave room for persons or organizations that could not meet judicial tests of standing but could contribute to the discussion of important issues. Everybody wins in such a situation.

I suggest only two changes (at bottom only one change) to the FRN. Two commenters (Florida Power and Light and Duke) say that informal, legislative-style hearings should be extended to other adjudicatory hearings. The FRN is too brief in reply. It says only that the comments go well beyond the scope of the proposed rule, and that the Commission declines to discuss the question. However, the context of this rulemaking suggests that we should make a somewhat longer response. For example, the FRN says that we're on record in court that section 189a does not require formal hearings, and the public September 4, 1998, SRM on the proposed Subpart M says that the staff should seek legislation that supports that reading, and that

[t]he staff should review and advise the Commission on the legislative and rulemaking options that would further enhance the Commission's ability to utilize informal procedures in any proceeding in which formalized trial-type procedures are currently used.

Therefore, this FRN is an appropriate place to say something like the following.

On page 14 of the FRN:

Although the suggestion goes well beyond the scope of the proposed rule, and the Commission does not reply to it here the Commission notes elsewhere in this notice that it has argued in court that section 189a of the Atomic Energy Act does not require formal hearings, and the Commission has directed the staff to seek legislation that supports this reading of the Act. The Commission has also asked the staff to advise the Commission on ways to enhance the Commission's ability to use informal procedures in any proceeding in which formal procedures are currently used.

On page 21 of the FRN:

Extension of the proposed procedures for license transfer applications to other types of NRC proceedings is beyond the scope of this rulemaking, and the Commission declines to discuss the question here but, as noted in more detail in response to an earlier comment, the Commission is taking steps to expand the use of similar procedures in other proceedings.