

April 22, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98- 264

TITLE: PROPOSED AMENDMENTS TO 10 CFR 50.47; GRANTING PETITIONS FOR RULEMAKING (PRM 50-63 AND 50-63A) RELATING TO A REEVALUATION OF POLICY ON THE USE OF POTASSIUM IODIDE (KI) AFTER A SEVERE ACCIDENT AT A NUCLEAR POWER PLANT

The Commission (with Chairman Jackson and Commissioners Dicus and Merrifield agreeing in part and disagreeing in part and Commissioners Diaz and McGaffigan agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 22, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of April 22, 1999.

Annette Vietti-Cook
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- 264

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X	X			X	12/29/98
COMR. DICUS	X	X			X	12/17/98
COMR. DIAZ	X				X	12/2/98
COMR. McGAFFIGAN	X				X	2/22/99
COMR. MERRIFIELD	X	X			X	12/21/98

COMMENT RESOLUTION

In their vote sheets, Chairman Jackson and Commissioners Dicus and Merrifield approved the staff's recommendation in part and disapproved in part. Commissioners Diaz and McGaffigan approved the staff's recommendation. All the Commissioners provided some additional comments. Subsequently, through the SRM review process, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 22, 1999.

Chairman Jackson's Comments on SECY 98-264

The proposed rule in the Federal Register Notice (FRN) is consistent with the guidance that the Commission provided to the staff relative to the dispositioning of the Petition for Rulemaking (PRM 50-63A). Regarding the recommendations by Commissioners Dicus and Merrifield to change the proposed rule to prevent a backfit issue, the proposed rule only requires that the States and the licensees consider the use of KI. This rule only represents a requirement for the parties to consider the use of KI as part of their emergency plans, a consideration that the parties have already performed in the past, and does not require the parties to stockpile KI. Therefore, I do not agree that a backfit analysis is necessary. As such, the suggested revision to the proposed rule in Commissioner Dicus' vote is unnecessary. There are several issues contained in the draft FRN that need to be resolved before publication. Contingent upon resolution of the issues listed below, I approve the publication of the FRN:

- As presented the proposed Federal Register Notice contains several minor typographical errors that need to be corrected.
- The FRN currently states incorrectly that the Commission granted two petitions (PRM 50-63 and 50-63A). In fact, the Commission did not grant PRM 50-63 and only granted PRM 50-63A in part. Therefore, the FRN should be revised to clarify this fact.
- The portion of the FRN which presents the petitioner's discussion of the basis for his petition contains some statements that draw conclusions and makes statements about the NRC's actions that in certain areas appear to be speculative assumptions about past NRC and FEMA internal decisions and actions. To clarify the NRC's actions on this issue and balance the information provided, the staff should provide a brief historical perspective of the Commission's actions with respect to this issue.
- The section entitled "Analysis of Issues raised by Public Comments" represents technical responses to questions and statements and does not represent policy decisions by the Commission. Therefore, the statements that are currently attributed to the Commission in this section should be changed to indicate that the responses are those of the NRC staff.

With respect to KI purchases for the States, the NRC should not be the requesting agency. As discussed in the Statement of Consideration in the FRN on Emergency Planning (45 FR 55402), under the section on Funding, the Commission stated that "**any direct funding of State or local governments solely for emergency preparedness purposes by the Federal government would come through FEMA.**" Because the Federal Emergency Management Agency (FEMA) is the lead Federal Agency for offsite planning and preparedness, and is also the progenitor of the concept of funding such stockpiles in its draft FEMA FRN, FEMA is the appropriate agency to seek such an appropriation. Therefore, I do not approve the proposed staff recommendation for the Commission to commit funds for these individual State stockpiles. However, I believe that the NRC should assist FEMA in its development of any formal funding request for such a program of federally funded grants for State KI stockpiles.

Notwithstanding my position on the NRC providing funding for the purchase of KI for State stockpiles, I agree with the recommendation in Commissioner Merrifield's vote, and as reiterated in COMJM 98-002, that the NRC should provide funding for KI stockpiles at appropriately located regional centers under the control of FEMA to the extent allowed under budgetary constraints.

Commissioner Dicus - Comments for SECY PAPER 98-264

I find it necessary to respond at some length to the staff recommendations in SECY-98-264.

This is clearly a difficult and close issue in terms of reaching consensus on an appropriate position for NRC to present to the public as a final agency decision. Those who represent that this is a clear "right versus wrong" decision are deluding themselves. Quite frankly, there are elements of merit in each of the positions extolled by various Commissioners over the years on the issue of whether distribution of Potassium Iodide (KI) should be mandated, encouraged, or recommended. I believe we should support State and local governments by providing that the Federal government will maintain sufficient stockpiles of KI to be used in the event of an emergency if requested by State and local officials. Where consideration of all the available information leads State and local officials to conclude that they want to utilize predisposition or they want to maintain local stockpiles of KI, there is nothing to prevent implementation of that decision, but funding for the KI will have to come from sources available to those State and local governments.

I have come to the conclusion that the realities of implementation of the proposed rule may require that the Commission reconsider the position on which we agreed in the SRM on SECY-98-264. Much has changed in the year and a half since we directed the staff to commence development of the rule presented in SECY-98-264. One aspect is that it has become clear the NRC must operate on a continually decreasing budget that offers little margin for the Commission to divert resources to new initiatives. The second aspect is that in the interim the potential cost of maintenance of KI stockpiles has increased significantly, with estimates for maintaining the stockpile as high as \$3.25 million. There is no assurance that additional funding will be provided to the NRC for such stockpiles and I am not ready to consider additional FTE cuts that can potentially cause a reduction in the Commission's ability to protect the public health and safety to a degree exceeding the benefit of KI distribution. I do not believe we should be issuing a regulation that has a major assumption concerning Federal funding where no such Federal funding has clearly been established.

Indeed, I find the characterization of whether or not we are granting the petitioner's request, and whether or not we are imposing a new requirement, to

be inconsistent and confusing. The revised petition asked for two actions. First, it requested that NRC issue a statement "recommending" stockpiling of KI as a "reasonable and prudent" measure. The proposed rule does not contain such a recommendation. In fact, in a position with which I agree, the discussion of Issue 11 in the proposed Statement of Consideration notes that use of KI "may" be appropriate as a protective supplement in certain cases depending on local conditions. Accordingly, at a minimum, the FRN should note that we are only granting the petitioner's request in part.

The second request of the petitioner in the amended petition was for the NRC to establish by rule a requirement "that consideration of potassium iodide be given in the formulation of emergency plans." Although the staff clearly states in the backfit analysis that there is no requirement being imposed on licensees by the proposed rule, they characterize the proposed action as granting the petitioner's request. In fact, it is obvious that the proposed rule does impose new requirements on licensees within the meaning of the backfit rule, 10 CFR Part 50.109. Licensees' are required, under the proposed rule, to assure that KI has been considered as part of the emergency planning process. This implicitly means that licensees, in coordination with State or local governments, may need to develop analyses related to KI use, including potential distribution of KI and must have some method (perhaps documentation) to demonstrate compliance with the new requirement.

I find myself in agreement with the CRGR that the proposed rule is a backfit. Even if licensees are already required by the regulations to consider a range of emergency planning actions, the "requirement" that KI distribution be included in the process of developing emergency plans amounts to a modification or reinterpretation of the existing requirement. Whether a modification or a reinterpretation, previous OGC analysis has made it clear that such a change amounts to a backfit which must meet the backfit requirements of 10 CFR 50.109. (Footnote: See Memorandum from Wm. C. Parler to the Commission, April 20, 1992, "Criteria or Method for Reinterpretation of Existing NRC Regulations.") Further, in SECY-93-086, it was reported that one area where the backfit rule applied was to:

Requirements related to security, emergency response, or personnel (e.g., Fitness-for-Duty) which are not amendable to quantification and must be expressed in qualitative terms.

Indeed, the purpose of that SECY paper was to allow Commission consideration of modifications to the Backfit Rule to alleviate the difficulty in applying the rule to certain categories of actions, including emergency planning. With full knowledge of the difficulties presented by applying the Backfit rule to these areas, the Commission declined to adopt the options in SECY-98-086 that would have relaxed the application of the backfit rule to these rulemaking activities.

Given this history, it would be facetious to argue that there is not a change in requirements being proposed or to argue that there will not be an expenditure of licensee resources to comply with this new requirement. The backfit rule was specifically designed to assure that new requirements or new interpretations that required action by licensees were justified. Even if earmarked as a "clarification" of existing regulations, unless it can be shown that all licensees already included the consideration of KI distribution in their emergency plans and/or consent to the requirement, such a clarification would constitute a "change in staff interpretation" of the regulations that would constitute a backfit. (Footnote: While OGC did recognize in a Memorandum to the Commission that it was theoretically possible to avoid the backfit rule if "all" licensees consented to the new requirement, that is not the case here. See Memorandum from Wm. Parler to Commissioner Remick, June 14, 1993, "Backfit Rule Applicability to Requirements Considered Worthwhile by NRC and Affected Licensees") In essence, absent a showing that the proposed rule meets the backfit analysis requirements, it is an impermissible backfit as written. However, in an effort to bring this issue to a final close, I will propose at the end of this discussion a relatively minor change to the proposed final rule which has the potential to alleviate this problem.

Notwithstanding the above, I recognize that a majority of the Commission may choose to proceed with this rulemaking despite its costs and questionable compliance with 10 CFR 50.109. As I stated at the outset, contrary to what some may aver, this matter is not clear cut. A reading of the votes of past and present Commissioners shows careful, deliberate consideration of the issues by the Commission. But their individual votes and conclusions on this matter have differed, sometimes sharply. It is, therefore, not surprising that attaining Commission consensus has been difficult resulting in the prolonged consideration of this matter at the Federal level. The Commission history is itself the greatest testament to the closeness of this issue. It is important that we agree, notwithstanding our individual views, that this matter has been and remains a complex one for the Commission to resolve. The FRN should clearly acknowledge this fact. Such a plain statement of fact is necessary to promote public understanding of why this matter has continued as the subject of Commission deliberation for so long.

In this regard, the Commission's response should recognize that the Commission historically has not reached a consensus on the relevance of the Chernobyl experience to U.S. emergency response planning, a key part of the Petitioner's argument. Differences exist between U.S. and Russian nuclear power plant designs that effect the probability of exposure and extent of radionuclide emissions, especially radioiodines. The emphasis in U.S. emergency response planning on evacuation differs from the Chernobyl experience and affects the probability of exposure to the radioactive plume. Differences between the U.S. and Eastern Europe with respect to the nature of and the regulation of agricultural and dairy foodstuffs influences the importance of the ingestion pathway. These differences are real. The relative importance given to them and to other related issues by individual Commissioners, as reflected in their votes, represent honest differences in view by individuals all of whom, including the present Commission, are dedicated, by profession and by oath of office, to protecting the public health. This perspective is essential to the FRN regardless of the decision reached by the Commission because it provides the historical background that explains why the road to the decision has been a long one.

That being the case, I have a number of suggestions that will help clarify and strengthen the proposed Federal Register notice. In particular, it would be misleading if the FRN failed to include reference to the fact that the staff is developing a final version of the NUREG related to KI and the associated development of an information document for State and local decision makers. I will separately provide a line-in line-out version of the FRN that contains some additional recommended changes consistent with my views. As to my previous reference to a change that may alleviate the backfit problem inherent in this rulemaking, I do believe that the proposed regulation should be changed to a truly voluntary version that would "encourage" State and local governments to consider all the available information, including information under development by the NRC staff, in reaching a determination on whether KI distribution is appropriate for the particular emergency planning situation facing the local governments. This can be accomplished by changing the proposed language in 10 CFR 50.47(b)10 to read:

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. In developing a range of actions, the Commission encourages the licensee, the State and local governments, to consider evacuation, sheltering, and, as a supplement to these, the prophylactic use of potassium iodide (KI), as appropriate. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

I also believe we have an obligation to make it clear that any NRC funding of the KI stockpiles and replenishing of those stockpiles, is contingent on receipt of additional funding from the Congress that will not diminish public health and safety by diversion of resources from other crucial NRC regulatory activities. I say this reluctantly, but must do so given our increasingly tight resources and vastly reduced quantity of carry-over funds. Recognizing these fiscal constraints, I cannot in good conscience accept the diversion of existing resources to fund a KI stockpile without a clear demonstration that the benefit derived exceeds the value of those activities from which funds would be diverted. If we are to do more than pay lip service to our efforts to make our regulatory regime more risk informed, we must at a minimum assure our diversion of resources to some new endeavor does not result in a net increase in risk.

Commissioner Diaz' comments on SECY-98-264:

I approve the publication of the proposed rule in the Federal Register for a 90-day comment period. I am pleased to see that the staff has moved unequivocally to follow the Commission's policy direction on the proposed rulemaking. The staff should also be commended for its recent presentation on KI to the Federal Radiological Preparedness Coordination Committee. In light of the interest shown in this subject by States, Congress, and the public, I believe we should expeditiously publish the proposed rulemaking to solicit comments. Regarding the funding issue, I believe the estimated increase in cost -- by a factor of 2.5 -- falls to consider the "invisible hand" of economic market forces.

Commissioner McGaffigan's Comments on SECY 98-246

Subject to the attached edits, I approve the draft Federal Register Notice. Note that these include some of Commissioner Dicus' edits.

Two Commissioners argue that the proposed rule is a backfit. I disagree. Consideration of KI has, like consideration of evacuation and sheltering, always been a part of NUREG-0654's guidance on 50.47(b)(10), the rule we are revising (see items e. and f. on page 63 of NUREG-0654, Rev. 1 (attached)). The proposed version of (b)(10) would do nothing more than make explicit in (b)(10) itself something more of its long-existing interpretation, thereby providing greater assurance that interpretation will be adhered to. Moreover, even if requiring someone to consider the use of KI is a new interpretation of (b)(10), requiring someone to *consider* something is not a backfit. Generic letters and other requests for information under 10 CFR 50.54(f) often ask that licensees consider whether they should make some change in hardware or procedure, but the agency has long argued that such requests are not themselves backfits because they do not impose changes in hardware or procedure. It is true that licensees will be put to some trouble if state or local emergency planners opt for KI, but such conditional costs have not heretofore been considered backfits.

I support Commissioner Merrifield's proposal to an extent. I believe that we should work with FEMA to assure that FEMA's NBC anti-terrorism stockpiles could make substantial amounts of KI available on an *ad hoc* basis to states that did not have stockpiles for radiological emergencies at a nuclear utility, but who elected at the last minute to use KI in an emergency. It was clearly the Commission's understanding in June 1997 that substantial FEMA NBC stockpiles would be available in such an emergency. At our November 1997 briefing, FEMA did nothing to disabuse us of that understanding. Now we are told, however, that almost no KI is going into FEMA's NBC stockpiles to deal with nuclear terrorism. We should try to persuade FEMA to go back to its 1997 policy in response to Presidential Decision Directive 39.

However, I also continue to support federal funding of state stockpiles. It is well established that KI is most useful if taken early in a radiological emergency. Reliance on federal stockpiles would probably cost precious time. In June 1997 we made a unanimous decision to commit to funding of state stockpiles, and only this last summer we unanimously reaffirmed that decision, when we well knew that our budget was under great pressure. We evidently thought then that we could find the money for KI, and I see no reason to think differently now. We do not face a choice between jobs for NRC people and KI for citizens. Not all the states are going to decide in favor of KI, and certainly not all at once, and, as Commissioner Diaz points out, the price of KI is likely to drop under the pressure of competition, as it has in Europe. An argument against federal funding of state stockpiles can be made, but our commitment to funding has existed long enough now that at least one State, Ohio, has relied on it (see *Inside NRC*, January 4, 1999, p. 11), and others have undertaken public processes of the sort this rulemaking would encourage, presumably partly based on our consistent statements over the past two years. At this point, the virtue of consistency, which is among our Principles of Good Regulation, outweighs the argument against funding.

[Replacement for "Commission Decision" on page 33 of FRN:]

KI is a reasonable, prudent, and inexpensive supplement to evacuation and sheltering. Therefore, the Commission's guidance on emergency planning has long taken KI into consideration (NUREG-0654/FEMA-REP-1, Rev. 1, p. 63, items e. and f.). However, since the last revision of that guidance, we have had experience with the mass distribution of KI during a radiological emergency, and though the record on that distribution is not complete, the indications thus far are that mass distribution is effective in preventing thyroid cancer and causes remarkably few threatening side effects. Moreover, many nations in Europe and elsewhere, nations as different in their circumstances, politics, and regulatory structures as France, Canada, and Japan, have stockpiled KI and planned for its use. So have some U.S. States. The World Health Organization and the International Atomic Energy Agency recommend its use. Therefore, in order to achieve greater assurance that KI will receive due attention by planners, it seems reasonable to take a small further step and, continuing to recognize the authority of the States in matters of emergency planning, explicitly require that planners consider the use of KI.

The proposed rule change should not be taken to imply that the NRC believes that the present generation of nuclear power plants is any less safe than previously thought. On the contrary, present indications are that nuclear power plant safety has improved since the current emergency planning requirements were put in place after the Three Mile Island accident.

The use of potassium iodide is intended to complement, not to replace, other protective measures. This rule change thus represents no alteration in the NRC's view that the primary and most desirable protective action in a radiological emergency is evacuation of the population before any exposure to radiation occurs, whenever that is feasible. (Evacuation protects the whole body, whereas potassium iodide protects only a single gland, the thyroid.) Depending on the circumstances, KI may offer additional protection if used in conjunction with evacuation and/or sheltering.

The NRC recognizes that the decision to stockpile KI presents issues of how best to position and distribute the medicine, to ensure, *e.g.*, that optimal distribution takes place in an emergency, with first priority given to protecting children; that persons with known allergies to iodine not take it; that members of the public understand that KI is not a substitute for measures that protect the whole body; etc. To date, these issues have been addressed in different ways in the numerous countries that currently stockpile KI. The NRC is working with States and localities to develop guidance on these and other points relating to the use of KI. The NRC believes that these implementation issues can be solved, given the level of expertise in the relevant Federal and State agencies, and the experience of numerous nations that have built KI into their emergency plans.

It is expected that States will inform FEMA and the NRC of the results of their consideration of whether to opt for stockpiling. This will enable the Federal government to provide KI as expeditiously as possible to States that desire it, to provide any further assistance that may be called for, and to allow the Federal government to engage in better contingency planning for States that decide against stockpiling KI.

INSERTS for the FRN

Page 2:

a petition for rulemaking (PRM 50-63A) submitted by Mr. Peter Crane on November 11, 1997. That petition is a revision of a petition (PRM 50-63) that he submitted on September 9, 1995.

Page 3:

The Commission will work with FEMA to ensure that national stockpiles of KI for terrorist activities, stockpiles created pursuant to Presidential Decision Directive 39, contain substantial amounts of KI.

Page 15:

However, FEMA recently reported that the federal stockpiles of KI are few and stocked only for first responders to terrorist action. As things stand now, needs of members of the public for KI on an *ad hoc* basis would have to be supplied from other sources. As stated above, the Commission intends to work to persuade FEMA to assure that these stockpiles contain adequate supplies of KI.

Page 17, first insert:

On November 5, 1997, the Commission held a public meeting with its staff, FEMA representatives, and the author of the 1995 rulemaking petition to consider the petition and proposed changes to the Federal policy on the use of KI. In part as a result of the meeting, the petitioner amended his petition to ask for a rule that would require that consideration would be given in the formulation of emergency plans to the use of KI as a supplement to evacuation or sheltering, and on June 26, 1998, the Commission granted the amended petition, and directed the NRC staff to initiate the requested rulemaking. The Commissioners also decided that the FRPCC Federal Register notice on Federal KI policy should include a statement to the effect that the State and local decision makers, provided with proper information, may find that the use of KI as a protective supplement is reasonable and prudent for specific local conditions. On September 30, 1998, the Commission approved a draft Federal Register notice and directed that it be sent to the FRPCC.

Page 17, 2nd insert (part of Commissioner Dicus' Insert 4):

The Commission has considered the KI policy question on numerous occasions since 1984. The voting history of the Commission shows that reaching consensus on this policy question has been an elusive goal. An important reason for this historical lack of consensus is that this policy question is not a clear cut one. Individual Commissioners, past and present, have differed in their views with respect to the relative importance to be given to factors bearing on the KI issue. These honest differences have led to divided Commission views on how to resolve the policy question. With that background, following are the Commission's views on specific issues raised by the petition.

Page 23 footnote:

A "medically significant" reaction was one for which the person suffering the reaction consulted a physician more than once. Nauman and Wolff, "Iodide Prophylaxis in Poland After the Chernobyl Reactor Accident: Benefits and Risks," *The American Journal of Medicine*, Vol. 94, May 1993, p.530. About .02% of the population that received KI had "medically significant" adverse reactions to KI. Id. However, "[i]t should be pointed out that control values for these side effects in a population not receiving KI are not available." Id.

Page 28:

That is one reason why the Commission believes that planners should consider stockpiling KI, and why the Commission has expressed its willingness to provide a stockpile to any State that decides to use KI. In part for the same reason, the Commission believes that the NBC stockpiles established under Presidential Directive 39 should have adequate stockpiles of KI, so that States that have chosen not to stockpile KI could have access, albeit *ad hoc* and delayed, to an adequate supply in a radiological emergency at a nuclear power plant. As noted elsewhere in this notice, the Commission will work to persuade FEMA to assure that these stockpiles contain adequate supplies of KI.

[Item E. should read as follows (new material is redlined):]

~~The Commission agrees with the NRC staff estimate, and other nations' experience,~~ that the purchase of KI tablets is inexpensive. KI-related costs increase when the cost of maintenance, distribution, and public education are considered. However, the overall cost should not be a deterrent to stockpiling KI for use by the general public should State and local decision makers determine that the prophylactic use of KI as a supplement to evacuation and sheltering is appropriate.

[Item F. should read as follows (new material is underlined, old is struck out):]

The Commission ~~believes will work to assure~~ that NBC medicinal stockpiles ~~should will~~ provide ~~assurance to States and local governments that a limited Federal stockpile of KI is available, if needed,~~ enough KI to enable use by States that have not established local stockpiles and wish to make use of KI in the event of a severe nuclear power plant accident.

COMMENTS OF COMMISSIONER MERRIFIELD ON SECY-98-264

I approve publication of the proposed rule in the Federal Register for a 90-day comment period as edited by Commissioner Dicus. In doing so, I am not endorsing the related draft policy issued earlier by the Commission on the use of Potassium Iodide (KI). Had I been appointed at the time of its issuance, I would have objected to portions of it.

Specifically, I would not have agreed to the federal government funding a supply of potassium iodide (KI) for "any State, or in some cases, local government, that selects the use of KI as a supplemental protection measure for the general public." I believe that the country needs useful, robust, pre-positioned stockpiles of KI. But, I question whether the present policy, including the plan for funding, achieves this result. It contemplates funding a stockpile for any state that desires to have one and does not provide funding for federal regional stockpiles for use by the general public. Consequently, under the present plan there is no contingency in place to make KI available to states which do not have a stockpile, but who elect at the last minute to use KI in the event of a radiological emergency, or for use in other unforeseen circumstances. Alternatively, it does not put a cap on the amount of KI that the country will accumulate as whole, albeit stored at the state level. The policy does not, for example, provide an incentive for a state to minimize stockpiling and expenses by sharing its KI reserves with neighboring states. To me this is not the most efficient or effective use of our limited resources.

Faced with the difficult decision of how to achieve an effective national KI policy without jeopardizing our ability to meet our other regulatory goals, I believe that the NRC as a federal agency should concentrate our efforts on pre-positioning KI at several appropriately located regional centers under the control of the Federal Emergency Management Agency (FEMA). The goal of the regional centers would be to ensure that KI is accessible in the event that state stockpiles are inadequate or if some other unforeseen contingency requires its use. Ultimately, I am convinced that the decision regarding whether a state should stockpile KI, including the details of how to fund it, should be left to the states.

I recognize that the Commission is now in a very difficult and I believe unfortunate position with respect to funding because of its previous commitment to pay for state stockpiles. Nevertheless, because I believe that the decision to fund the state stockpiles will not produce the most effective or robust national KI policy, I believe we should revise it. I plan to issue a memorandum to my fellow Commissioners to initiate a change to the draft policy consistent with these comments.

I agree with Commissioner Dicus that a change to the proposed rule is necessary to prevent a backfit issue. Because the proposed rule requires licensees, states and local governments to consider KI as part of the emergency planning process, at a minimum, licensees will have to implement measures to document their compliance. Additionally, licensees may be required, in coordination with State or local governments, to develop analyses related to KI use to adequately consider the matter. I believe that Commissioner Dicus' suggested edit to the proposed final rule, which encourages consideration rather than requires it, potentially alleviates this problem.