

May 27, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-063

TITLE: THE USE BY INDUSTRY OF VOLUNTARY INITIATIVES IN THE REGULATORY PROCESS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 27, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of May 27, 1999.

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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

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VOTING SUMMARY - SECY-99-063

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	4/18/99
COMR. DICUS	X				X	4/19/99
COMR. DIAZ	X				X	4/6/99
COMR. McGAFFIGAN	X				X	5/7/99
COMR. MERRIFIELD	X				X	4/9/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 27, 1999.

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Commissioner Comments on SECY-99-063

**Chairman Jackson**

I approve the staff's plan of action for developing more formal guidelines on the process for identifying and implementing voluntary industry initiatives. As the staff has indicated, voluntary industry initiatives will not be used in lieu of regulatory action where a question of adequate protection of public health and safety exists.

The staff should ensure that the guidance developed with respect to inspection and enforcement of voluntary industry initiative is coordinated and consistent with the new reactor oversight and enforcement process being developed. I concur with Commissioner Merrifield in his comments regarding managing NRC commitments and assessing the appropriate enforcement actions when commitments are not met. The enforcement attributes discussed within [SECY-99-063](#), [SECY-99-007A](#), and [SECY-98-224](#) do not appear to be developed in a coordinated manner. Significant evolution and developments have occurred recently in the new Reactor Oversight Process (inspection and enforcement) which do not appear to have been factored into [SECY-99-063](#). In particular, the staff's discussion on enforcement indicates that failures to meet commitments may be addressed under the provisions of [Appendix B to Part 50, 10 CFR 50.9](#) (Completeness and Accuracy of Information), and Section 182 of the Atomic Energy Act. However, [SECY-98-224](#), "Staff and Industry Activities Pertaining to the Management of Commitments Made by Power Reactor Licensees to the NRC," discusses issuance of Notices of Deviation as the proper tool for enforcing regulatory commitments. [SECY-99-007A](#), "Recommendations for Reactor Oversight Process Improvements (Follow-up to [SECY-99-007](#))," does not address Notices of Deviations or enforcement of commitments. In addition, the role of inspection of voluntary industry initiatives and commitments should be evaluated within the context of the new inspection program being developed.

In addition to the nine key elements identified by the staff, guidance should be developed on (1) how outlier plants (i.e., those that do not fully commit to a particular voluntary industry initiative and are, therefore, not subject to enforcement) will be handled, and (2) the decision process in pursuing and endorsing a particular voluntary initiative (e.g., whether this is a staff action or Commission decision).

#### **Commissioner Dicus**

The staff should move forward with the development of the process to use industry voluntary initiatives in the regulatory process as outlined.

I agree that voluntary industry initiatives should not be used in lieu of a regulatory action where a question of adequate protection of public health and safety exists. I agree industry initiatives may be used an appropriate substitute for NRC regulatory action where the regulatory action to be taken is needed to meet existing requirements, for cases where a substantial increase in overall protection can be achieved with costs of implementation justifying the increased protection, and to address industry concerns, with or without regulatory concern. I agree that the process should not preclude the use of risk-informed, performance-based approaches.

I have the following specific comments. For industry initiatives initiated to address an industry concern, the staff should receive a commitment if the issue is also of regulatory concern. The staff should determine to what extent the process will apply to non-power reactors, decommissioning reactors, and materials and other licensees. The process should ensure that clear lines of responsibility, deliverables and schedules are identified for each industry initiative, and include the detailed issues as outlined in [SECY-97-303](#). The staff should ensure a process exists for tracking and enforcement of commitments to industry initiatives that are implemented in lieu of regulatory requirements.

#### **Commissioner Diaz**

I agree with staff's conclusion regarding what types of voluntary industry initiatives are appropriate for consideration as substitute for NRC regulatory action. I approve the staff's recommendation to start working with stakeholders to develop and formalize a process for implementing voluntary industry initiatives. In developing this process, the staff should recognize and benefit from the parallel effort by NEI to revise NEI 98-05, "Guideline for Managing NRC Commitments", and by NRR to develop staff guidance on managing industry commitment. To the extent possible, the staff should also utilize the existing regulatory processes for implementing industry initiatives. Furthermore, the process should be risk-informed so that the extent of staff involvement is commensurate with the risk significance of the industry's voluntary initiative.

#### **Commissioner McGaffigan**

I approve the staff's plans to develop formal guidelines for identifying and implementing voluntary industry initiatives in lieu of, or as a complement to, regulatory actions. I agree with the staff's analysis regarding the types of industry voluntary initiatives that are appropriate for consideration. I fully support the staff's conclusion that it is inappropriate to rely on voluntary industry initiatives in lieu of NRC actions to ensure adequate protection of public health and safety.



I also share the concerns expressed by Chairman Jackson and Commissioner Merrifield regarding the apparent disconnect between [SECY-98-224](#), [SECY-99-007A](#), and [SECY-99-063](#) with respect to the new reactor inspection and enforcement processes, and agree that the guidelines should be subject to Commission review prior to their implementation.

#### **Commissioner Merrifield**

I agree with the staff's conclusions regarding what types of voluntary industry initiatives are appropriate for consideration as substitutes for NRC regulatory action. I also agree that clear guidelines addressing the process for initiating and implementing voluntary industry initiatives are essential to ensure that such initiatives are effectively and uniformly integrated into the regulatory process. Clearly, these guidelines should promote a consistent and predictable process that makes for efficient use of resources and enhances public confidence.

As the staff develops guidelines, it should not underestimate the importance of public confidence. The process must provide for public participation and access to information associated with the voluntary industry initiatives. More importantly, it must be clear to the public that substituting voluntary industry initiatives for NRC regulatory action can provide effective and efficient resolution of issues, will in no way compromise plant safety, and does not represent a reduction in NRC's commitment to safety and sound regulation.

I believe that responsibility for the long-term success of using voluntary industry initiatives as substitutes for NRC regulatory action lies with both the NRC and our licensees. This process can only be successful if licensees effectively manage and implement their commitments associated with these voluntary initiatives and the NRC provides a credible and predictable regulatory response when licensees fail to satisfy these commitments. Failure of either the NRC or licensees to effectively carry out its responsibilities would undermine the regulatory process and serve to erode stakeholder confidence

in the merits of using voluntary industry initiatives in this manner. This only reinforces the importance of the ongoing efforts associated with managing NRC commitments and assessing the appropriate enforcement action when commitments are not met. Having reviewed [SECY-98-224](#), [SECY-99-007A](#) , and [SECY-99-063](#), it is not clear to me how the staff plans to address enforcement in response to a licensee's failure to meet commitments associated with a voluntary initiative. In [SECY-98-224](#), the staff discusses a licensee's failure to satisfy a commitment in the context of issuing Notices of Deviation. In [SECY-99-063](#), the staff discusses a licensee's failure to satisfy a commitment in the context of [10 CFR Part 50 Appendix B](#), [10 CFR 50.59](#), and process controls such as Section 182 of the Atomic Energy Act. [SECY-99-007A](#)  does not address Notices of Deviation in the context of the new oversight process. The staff has indicated that it will assess the enforceability of commitments in the development of the voluntary industry initiative process. As the staff proceeds with this initiative, it should ensure the guidelines that are developed regarding enforcement are consistent with the proposed reactor oversight process improvements and clearly communicated to our stakeholders.

Finally, while I agree with the staff's conclusions, it is clear from the conceptual nature of [SECY-99-063](#) that much work has to be done over the next year before this process is formalized. As with most processes, the devil is in the details. Thus, I believe that the Commission should be afforded the opportunity to weigh in on the guidelines before they are implemented.