May 27, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-115

TITLE: FINAL RULE: AMENDMENTS TO 10 CFR PART 72 - MISCELLANEOUS CHANGES TO LICENSING
               REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL
               RADIOACTIVE WASTE

The Commission (with all Commissioners agreeing) approved the subject paper as noted in the Affirmation Session 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 Affirmation Session 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

VOTING SUMMARY - SECY-99-115

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X				X	5/6/99
COMR. DICUS	X				X	5/19/99
COMR. DIAZ	X					5/12/99
COMR. McGAFFIGAN	X				X	5/25/99
COMR. MERRIFIELD	X				X	4/28/99

COMMENT RESOLUTION

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

Commissioner Comments on SECY-99-115

Chairman Jackson

I approve publication of the notice of final rulemaking as proposed by the staff, but with the modification of the response to Comment 7 as proposed by Commissioner Merrifield. I agree with the staff position that the Backfit Rule is not applicable to record-keeping and reporting requirements, and agree with the OGC documented position that record-keeping and reporting requirements are better analyzed under the 10 CFR Part 50.54(f) standard. Commissioner Merrifield's expanded version of the comment response appropriately presents this position.

The staff has appropriately addressed other comments and incorporated them into the proposed changes of the rulemaking. A commenter correctly noted that this rule would, in part, make the requirements in Part 72 for written event report information consistent with the present requirements of Part 50, even though a separate advance notice of proposed rulemaking has proposed changes to some of the requirements in 10 CFR 50.73(b). Should the Part 50 rulemaking go forward, the staff would consider at that time whether conforming changes to Part 72 would be appropriate. I agree with this course of action to avoid delaying the other aspects of this rule.

Commissioner Dicus

I approve publishing the Notice of Final Rulemaking in the Federal Register as modified by Commissioner Merrifield's proposed change to the response to Comment 7.

Commissioner McGaffigan

Commissioner Merrifield

I approve the staff recommendations in SECY-99-115 to issue the final rulemaking on the miscellaneous changes to the licensing requirements found in 10 CFR Part 72. As far as the modifications to the actual licensing requirements, I have no concerns. However, the staff requested an explicit statement from the Commission approving the response to public comment number 7, which states that reporting and recording requirements are not considered backfits. I find the response, as written, not satisfactory in that it does not provide the whole picture. I approve a revised response to comment 7 which reads as follows:

"Response: Under   72.62, "backfitting" includes the modification, after the license has been issued, of procedures or organizations required to operate an ISFSI or MRS. This backfitting provision is very simiar to the Backfit Rule in   50.109. The Commission has determined that reporting and record keeping requirements are not considered backfits even though they may result in changes to procedures. If the reporting or record keeping requirements had to meet the standards for a backfit analysis, the Commission would have to find that the information would substantially increase public health or safety or common defense and security without knowing the results of the request. In addition, the existence or non-existence of a record or report usually has no independent safety significance as compared to actions taken by the licensee or NRC as a result of the information contained in the record or report. It is this resulting action that affects public health and safety or the common defense or security that should be measured under the backfit standard and not the method for obtaining or maintaining the information.

Nevertheless, the Commission also recognizes that imposing reports or record keeping requirements may have a significant impact on a licensee's resources. The standard for authorizing reporting or record keeping requirements for NRC licensees that is contained in the Code of Federal Regulations should be the same standard as the regulations requiring the providing of information under 10 CFR 50.54(f). Namely, before the staff either changes existing requirements or issues new requirements affecting reporting or record keeping, a written analysis should be prepared that contains (a) a statement that describes the need for the information in terms of the potential safety benefit and, if appropriate, a discussion of possible alternatives and (b) the licensee actions required and the cost to develop a response to the information request. In addition, the imposition of the new or modified reporting or record keeping requirement should be approved by the appropriate level of senior management (namely the Executive Director for Operations or his or her designee) or the Commission itself in the case of rulemaking. For rulemaking, the analysis justifying either modifications to existing or new reporting and record keeping requirements shall be contained in the regulatory analysis. The regulatory analysis section of this rulemaking package adequately addresses the Commission's standards for this specific record keeping requirement."