

July 29, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-158

TITLE: FINAL RULE: "CERTIFICATION RENEWAL AND AMENDMENT PROCESSES," 10 CFR PART 76

The Commission (with Chairman Dicus and Commissioners McGaffigan and Merrifield agreeing) approved the subject paper. Commissioner Diaz approved in part and disapproved in part. The Commission approved the final rule as noted in the Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of July 29, 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 July 29, 1999.

Annette Vietti-Cook
Secretary of the Commission

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

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

VOTING SUMMARY - SECY-99-158

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DICUS	X				X	7/17/99
COMR. DIAZ	X	X			X	7/12/99
COMR. McGAFFIGAN	X				X	7/1/99
COMR. MERRIFIELD	X				X	7/2/99

COMMENT RESOLUTION

In their vote sheets, Chairman Dicus and Commissioners McGaffigan and Merrifield approved the final rule. Commissioner Diaz approved in part and disapproved in part. All Commissioners provided some 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 SRM issued on July 29, 1999.

[Commissioner Comments on SECY-99-158](#)

Chairman Dicus

I approve the proposed revisions to 10 CFR Part 76 and the publication of the "Notice of Final Rulemaking" in the Federal Register. Regarding the issue of discretionary notification of amendments and renewals in the Federal Register, I do not fully agree with the statement in the Federal Register notice (page 6) that the public's opportunity to follow these actions "remains the same because certification documents are placed in the Commission's Public Document Room". I agree with Commissioners Merrifield and Diaz that the public's opportunity to follow amendments and renewals will be adversely impacted if they are not noticed in some way. I do believe, however, that the combination of placing the documents in the PDR and posting them on NRC's website at the earliest possible time, would provide equivalent opportunity for the public to follow these actions. Therefore, I recommend that the staff be directed to 1) develop procedures for placing Part 76 amendment and renewal documents on NRC's website at the earliest possible opportunity, and 2) revise the Federal Register notice in Attachment 2 of SECY-99-158, to include a statement that NRC plans to place these documents on the NRC website, per the attached mark-up.

Furthermore, I support staff's position that if the application does not address any new safety issues and there have not been any major changes to the facility or its operating procedures that would substantially increase the risk associated with the facility, a Federal Register notice is not necessary. This approach is consistent with the agency's move toward risk-informed regulation and is consistent with similar actions for regulating 10 CFR Part 30, 40, and 70 facilities.

(See attached mark-up.)

Commissioner Diaz

I approve the proposed revisions to 10 CFR Part 76, subject to the following:

76.37 "Federal Register notice," shall require publication of Federal Register notices for all filings of applications for certification renewal or amendment. This will provide an opportunity for the public to be aware of all filings of applications and will provide an opportunity for the public to file a petition for review of an amendment or renewal request.

Commissioner McGaffigan

Commissioner Merrifield

I approve the proposed revisions to 10 CFR Part 76 with the following comments.

In discussing the changes to 76.45(b), the staff states that "the public's opportunity to follow each amendment remains the same because the certification documents are placed in the Commission's Public Document Room and the public will have an opportunity to file a petition for review of an amendment as described in revised 76.45(d)." This statement does not appear entirely consistent with the changes to 76.45 and 76.37 which make Federal Register noticing of the proposed action discretionary. Without noticing in the Federal Register, the public's ability to realize relevant documents are available in the PDR would be adversely impacted. To address this concern, the staff must implement a standard for Federal Register notification (for both amendments and renewals) which is consistent with the staff's assertions about the public's ability to follow amendments.

Insofar as proposed changes to Part 76 must be evaluated to determine if they constitute backfits, the staff should delete the phrase "the backfit rule does not apply because" from the Backfit Analysis discussion. The remaining analysis should state:

The NRC has determined that these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 76.76. Therefore, a backfit analysis is not required for this final rule."