

September 17, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-200

TITLE: FEDERAL REGISTER NOTICE RESPONDING TO PUBLIC COMMENTS RECEIVED ON AN EMERGENCY FINAL RULE FOR FISSILE MATERIAL SHIPMENTS

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of September 17, 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 September 17, 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-99-200

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X				X	8/30/99
COMR. DIAZ	X				X	8/26/99
COMR. McGAFFIGAN	X				X	9/1/99
COMR. MERRIFIELD	X				X	8/18/99

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 September 17, 1999.

Commissioner Comments on SECY-99-200

Chairman Dicus

I approve the proposed FRN subject to the following modifications.

In considering the merits of the staff's proposed plan, including the folding of corrective amendments to the emergency rule into the larger revision of Part 71 to conform it to the IAEA ST-1 standards, I took note of both the need for supporting data for the corrective amendment and staff's difficulty in obtaining this information from the industry. Absent any demonstrated health and safety need for the amendment, folding the amendment into the larger revision would be the most efficient use of staff's limited resources. Staff should proceed with its plan but the FRN should be modified to note the need by NRC for data documenting the regulatory cost of the emergency rule to the extent that it is not necessary and to solicit such information. This approach would place the industry on notice that the data is needed.

Also on p. 16 of the FRN, a commenter stated that the wording of the rule is not clear with respect to application of a limit to deuterium. The staff response clarifies the intent of the rule but does not state whether staff intends to amend the existing rule language to remove the ambiguity. The response should be modified to indicate that this will be done at the time the corrective amendment is proposed.

Additional editorial comments are attached.

Commissioner Diaz

The Federal Register notice should be clarified to indicate that the fissile material shipment and exemption issues to be resolved by a rule change will be included in the rulemaking to make Part 71 compatible with the IAEA transportation standards. This combined rulemaking plan should be provided to the Commission in the Spring of 2000.

Commissioner McGaffigan

I approve publication of the Federal Register Notice (FRN) responding to public comments received on the emergency final rule for fissile material shipments, with the understanding that the fissile material shipment issues addressed in the comments will be resolved in a rulemaking to adopt certain International Atomic Energy Agency (IAEA) transportation standards into Part 71, or in a separate expedited rulemaking, as discussed below.

I share Commissioner Merrifield's concerns about the potential for a significant economic impact on the transportation of fissile materials without special moderators, created by the emergency final rule. I am also concerned about the potential for a significant safety impact, from increased probability of worker injuries and transportation accidents, if the staff determines that the emergency rule actually doubled or tripled the number of shipments of fissile materials.

I concur with the Chairman's comment that the staff should modify the FRN to note the need by NRC for data documenting the regulatory cost of the emergency rule and to solicit such information. Once the staff receives the requested cost information, the staff should consider whether the regulatory burden justifies more rapid rulemaking to address the fissile material shipment issues, decoupled from the broader revision to Part 71. If the staff concludes that the emergency rule imposes a significant regulatory burden, then I support more rapid rulemaking on the fissile material shipment issues. If the staff concludes that it cannot support the commenters' burden claim, then the staff's plan and schedule to resolve the fissile material shipment issues through the broader Part 71 rulemaking are appropriate.

Commissioner Merrifield

In preparing the emergency final changes to [10 CFR Part 71](#), the staff appears to have done a good job addressing the concern regarding the previously unrecognized potential problem with the shipment of fissile materials with special moderators. However, the commenters express, and the staff acknowledges, that the rule change may have imposed overly restrictive changes on the shipment (using the fissile material exemption requirements in 71.53) of fissile materials which did not have special moderators.

Notwithstanding the staff's expressed difficulty in quantifying the economic impact of those changes on the actual shipment of fissile materials without special moderators, I am concerned about the *potential* for a *significant* economic impact on the transportation and shipment of such material created by the changes issued in the emergency final rule. Indeed the comments suggest, and staff doesn't dispute, that the revised rule may potentially double or triple the number of shipments required to transport an amount of such material compared to what was considered safe and acceptable under the previous regulations. With this potential impact outstanding, it is important to define a clear course of action to evaluate and resolve this concern.

I understand that the staff plans to address this issue as part of a rulemaking that adopts certain 1996 IAEA standards into Part 71, although a specific schedule for this rulemaking is not identified in the Rulemaking Activity Plan. Given the complexity of the overall scope of changes being considered for Part 71, the staff should submit the overall Part 71 rulemaking plan, including actions planned to address the impacts on shipment of fissile material without special moderators imposed by the emergency rule, to the Commission by March 2000.

If, however, the plan for the overall revision to Part 71 is delayed, the staff should submit a separate rulemaking plan to address this issue (i.e., the unintended economic impacts on the shipment of fissile material without special moderators which were imposed by the emergency rule). Such a separate plan should also be submitted to the Commission by March 2000. If, in developing the rulemaking plan for this issue, the staff determines the economic impact described in the comments in SECY 99-200 are far less than are characterized in SECY 99-200, the staff should inform the Commission, with some description of the supporting basis, in lieu of submitting a rulemaking plan in this regard.

While mindful that the potential for significant adverse economic impact on shippers of fissile material exists under the regulations as they currently exist, the lack of specific economic impact data does not justify a more aggressive schedule.