

September 10, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-207

TITLE: FINAL RULE: RESPIRATORY PROTECTION AND CONTROLS TO RESTRICT INTERNAL EXPOSURES, 10 CFR PART 20

The Commission (with all Commissioners agreeing) approved the subject paper as noted in the Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of September 10, 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 September 10, 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-99-207

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
COMR. DICUS	X				X	8/20/99
COMR. DIAZ	X				X	8/21/99
COMR. MCGAFFIGAN	X				X	9/2/99
COMR. MERRIFIELD	X					8/18/99

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 incorporated in the final rule as reflected in the Affirmation Session SRM issued on September 10, 1999.

Commissioner Comments on SECY-99-207

Chairman Dicus

1. Federal Register Notice, Page 7, second paragraph. This paragraph incorrectly assumes that all regulatory guidance use by licensees is unenforceable. For most materials (non-reactor) licensees, incorporation of regulatory guides into their licenses as amendments is routine,

therefore this paragraph needs to be expanded and revised to reflect that in those cases, licensee commitments to use specific regulatory guidance are enforceable when incorporated in the license.

2. Although the revisions to [Regulatory Guide 8.15](#), "Acceptable Programs for Respiratory Protection," were not forwarded to the Commission for consideration with this final rule package, staff should issue the revised Regulatory Guide in final concurrent with the issuance of the final rule on respiratory protection.

SPECIFIC EDITORIAL COMMENTS ON SECY-99-207

1. FRN, page 1, *Summary*. Spell out OSHA (Occupational Safety and Health Administration) in the first paragraph.
2. FRN, page 13, last paragraph. Spell out IDLH (Immediately Dangerous to Life or Health).

Commissioner Diaz

The staff should enhance the discuss on page 7 of the FRN that addresses why NRC is retaining the Table in Appendix A in the rule rather than in guidance, including providing additional justification for the decision.

The last sentence of the second paragraph on page 8 of the FRN should be modified to read "Other program elements such as minimal training on limitations of the devices and correct methods of use are required."

Commissioner McGaffigan

I approve publication of the final rule amending the [10 CFR Part 20](#) respiratory protection requirements, subject to the following comments and edits.

The staff's statements throughout SECY-99-207 and its attachments that NRC is adopting the American National Standards Institute's ANSI Standard Z88.2-1992, "American National Standard Practice for Respiratory Protection," are inexact. In fact, many of the provisions of ANSI Z88.2-1992 are being incorporated in the regulations or regulatory guide, but not all. The staff should revise the Federal Register Notice (FRN) and all attachments to avoid the implication that NRC is adopting the voluntary consensus standard in full.

In future rulemaking packages where the staff recommends partially adopting a voluntary consensus standard, the staff should explicitly identify to the Commission all portions of the consensus standard that are not being adopted, and provide a justification why those portions of the technical standard are inconsistent with applicable law or otherwise impractical.

The staff should strengthen the justification on pages 19-20 of the FRN that addresses why a physician, as opposed to a licensed health care professional, must determine whether the user is medically fit to use respiratory protection equipment. The Occupational Safety and Health Administration allows a licensed health care professional to make the determination, as the paper indicates, but ANSI Z88.2-1992 specifies that a physician shall make the determination. Our final rule should follow the voluntary consensus standard. However, on the next revision to the ANSI standard, the staff should encourage the ANSI Subcommittee to consider whether licensed health care professionals, such as occupational health nurses, are qualified to make medical fitness determinations.

The final rule now contains assigned protection factors (APFs) that are identical to ANSI's APFs, except for filtering facepiece disposables (e.g., dust masks) and suits. Thus, the staff should delete the text on page 22 of the FRN regarding differences between NRC's and ANSI's APFs (the third through fifth sentences in the top paragraph of page 22).

Additional edits to the FRN and all attachments are shown on the attached pages. I concur with Chairman Dicus' comments and suggested edits to the FRN. I also concur with Commissioner Diaz' comments.