

May 25, 2000

COMMISSION VOTING RECORD

DECISION SECY-00-0080

ITEM:

TITLE: FINAL RULE: "ELIMINATION OF THE REQUIREMENT FOR NONCOMBUSTIBLE FIRE BARRIER PENETRATION SEAL MATERIALS AND OTHER MINOR CHANGES" (10 CFR PART 50)

The Commission (with all Commissioners agreeing, but Commissioner Merrifield disapproving issuance of the Federal Register Notice until certain revisions are made) approved the subject paper as recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of May 25, 2000.

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

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets

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

VOTING SUMMARY - SECY-00-0080

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	5/15/00
COMR. DICUS	X					5/6/00
COMR. DIAZ	X				X	5/10/00
COMR. MCGAFFIGAN	X				X	4/27/00
COMR. MERRIFIELD	X	X			X	5/1/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation, but Commissioner Merrifield disapproved issuance of the Federal Register Notice until certain revisions are made. Most Commissioners provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the Affirmation Session SRM issued on May 25, 2000.

Commissioner Comments on SECY-00-0080

Chairman Meserve

1. I approve the staff's recommendation to publish the final rule in the Federal Register. However, I concur in Commissioner McGaffigan's comment regarding the revision of the language in the notice, letters, and press release to reflect the safety significance of the action appropriately. I attach a variety of other minor edits of the notice.
2. I approve certification as required by the Regulatory Flexibility Act.

Commissioner Diaz

I approve the staff recommendation to publish the final rule in the *Federal Register* that eliminates the noncombustibility requirement for the penetration seal materials and makes other minor changes.

The rule should be reflected in the Standard Review Plan Section 9.5.1, "Fire Protection Program," and in the draft Regulatory Guide DG-1094, "Fire Protection for Operating Nuclear Power Plants." This should be done in a timely manner.

The staff should make the following changes to the rulemaking package before final publication:

- On page 20 of the *Federal Register* notice, the section describing the changes to Appendix R should be modified to read: "3. In Appendix R, Section I, footnote 1 is removed..."
- The draft Press Release should be modified to include more than the "Silicone-based" material as described in the second paragraph since the current rule change applies to barrier penetration seal materials which included silicone-based and other materials.

Commissioner McGaffigan

Prior to and throughout the course of the development of this rule, the NRC has maintained that there is no safety benefit associated with the word "noncombustible" in 10 CFR 50, Appendix R, with respect to fire seal materials. Indeed, it has been considered an artifact of language rather than of technical significance, and the staff has granted exemptions on that basis.

I support the final rule and recognize the staff's effort to reduce unnecessary burden while maintaining safety and approve the staff's recommendation to amend the NRC fire protection regulations to remove the requirement that fire barrier penetration seal materials be "noncombustible," and to make the other proposed minor changes. However, in order to communicate to the public the fact that safety was the primary consideration in the decision, the language used in the Federal Register Notice should be revised. The language should recognize that elimination of the requirement for fire barrier penetration seal materials to be noncombustible removes a requirement that has a negligible contribution to safety, rather than "does not make a significant contribution to safety." Conforming clarifications should also be made in the letters to Congress and the press release.

Commissioner Merrifield

I **approve** the staff's recommendation to amend the NRC fire protection regulations to remove the requirement that fire barrier penetration seal materials be noncombustible, and to make other minor changes. Eliminating the noncombustibility requirement for penetration seal material will clearly reduce unnecessary burden without reducing safety.

I **disapprove** issuance of the Federal Register Notice included in SECY-00-0080 until the following revisions are made.

1. The staff should rewrite the NRC responses to comments 2, 3, and 5 in the Federal Register Notice. The comments pertain broadly to the use of combustible fire seal material. Yet, the responses are narrowly written to address silicone-based fire barrier penetration seals. In SECY-96-146, Technical Assessment of Fire Barrier Penetration Seals in Nuclear Power Plants, the staff revealed that while silicone-based materials are the predominant penetration seal materials, there are seals that are not silicone-based. Therefore, the staff's responses should be more broadly written to address, in a more complete manner, the full scope of the comments.
2. I agree with Commissioner McGaffigan's comments regarding the "safety significance" of eliminating the noncombustibility requirement. In SECY-96-146, the staff indicated that there was no technical basis for the noncombustibility requirement. In SECY-00-0080, there are instances in which the staff concludes that eliminating the noncombustibility requirement will not reduce safety. Thus, I agree with Commissioner McGaffigan that the language used in the Federal Register Notice should be revised so that the safety significance of the change is properly and consistently characterized.
3. In Section III (Summary of Changes) of the Federal Register Notice, the staff indicates that in NUREG-1552 and NUREG-1552, Supplement 1, the NRC concluded that "the benefits of the silicone-based penetration seal materials outweigh any potential concerns regarding material combustibility." Yet, the staff does not indicate what those benefits are. I believe the Federal Register Notice should be revised to include a more complete discussion of the benefits so that they are more readily understood by our stakeholders.