

August 27, 2002

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0116

TITLE: PROPOSED RULE: 10 CFR PARTS 30, 40, AND
70: FINANCIAL ASSURANCE AMENDMENTS
FOR MATERIALS LICENSEES

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 27, 2002.

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

Annette L. 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-02-0116

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. MESERVE	X				X	8/14/02
COMR. DICUS	X				X	8/20/02
COMR. DIAZ	X				X	8/13/02
COMR. McGAFFIGAN	X				X	7/26/02
COMR. MERRIFIELD	X				X	8/12/02

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 August 27, 2002.

Commissioner Comments on SECY-02-0116

Commissioner Diaz

I approve staff's recommendation to publish for comment the proposed financial assurance amendments for materials licensees. However, neither the paper nor the referenced studies provide support for the statement in the Federal Register that "the effect of inadequate funding of decommissioning may have adverse impacts on public health and safety." At a time when many of the materials licensees have decreasing resources, the agency must ensure that these limited resources are directed to actions and programs that best protect the public health and safety. By publishing this proposed rulemaking, the Commission will have the benefit of additional stakeholder comments to better assess the costs and benefits associated with this rulemaking. Thus, I recommend that the Federal Register Notice (FRN) solicit more expressly stakeholders' comments on the analysis of the estimated benefits and costs for each class of affected licensee.

Before publication of the proposed rule, the Implementation section of the FRN should be expanded to provide more detail on the agency's proposed plan for implementing the amended requirements. In order to receive useful comments from our stakeholders on the impact of this rulemaking, the FRN should clarify what is being proposed as "a reasonable period of time" to submit new decommissioning cost estimates and "different effective dates" for the revised financial assurance requirements. Even if specific details are not known at this time, the staff should provide stakeholders some idea of what the proposed implementation schedule might be.

Commissioner McGaffigan

I approve the staff's recommendation to publish in the Federal Register the proposed amendments to the financial assurance requirements in Parts 30, 40, and 70. I believe these amendments are necessary to ensure that adequate funding is available for the remediation of these facilities when they terminate operations. I also agree with the staff that these requirements should be reviewed every three years so that the amount of financial assurance required keeps pace with inflation and the rising costs of disposal of radioactive material.

I do have one change to the proposed rule language contained in the Federal Register notice. On page 26, Section 30.35(c)(2) states

"Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan....in an amount at least equal to \$1,125,000."

This section originally specified an funding amount of \$750,000. The only proposed change to this section is to increase the funding requirement to \$1,125,000. However, as worded every licensee subject to this section would immediately be in violation once it became effective. No licensee could increase their financial assurance to \$1,125,000 on or before July 27, 1990. This section should be edited as follows:

"Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, ~~on or before July 27, 1990,~~ a decommissioning funding plan as described in paragraph (e) of this section..."

I recognize the staff may wish to require licensees to submit revised decommissioning plans by a specific date and may choose to insert a new date into this paragraph. This is acceptable as long as the date is some point in the future after the rule becomes effective and gives the licensees adequate time to comply. Similar changes should be made to the proposed rule language in Sections 40.36(c)(2) and 70.25(c)(2).

Commissioner Merrifield

I approve the staff recommendations in SECY-02-0116 concerning financial assurance amendments for materials licensees as revised by Commissioner McGaffigan's vote on this SECY paper. Maintaining adequate levels of financial assurance for our materials licensees is an important issue that needs to be addressed. Commissioner McGaffigan's vote raises a valid issue concerning the implementation and it is now appropriate to issue this proposed rule for public comments.