

March 21, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0225

TITLE: PROPOSED CRITERIA FOR THE TREATMENT
 OF INDIVIDUAL REQUIREMENTS IN A
 REGULATORY ANALYSIS

The Commission (with Chairman Meserve and Commissioners Dicus, McGaffigan, and Merrifield agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 21, 2003. Commissioner Diaz approved in part and disapproved in part.

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-02-0225

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	2/3/03
COMR. DICUS	X				X	2/21/03
COMR. DIAZ	X	X			X	3/3/03
COMR. McGAFFIGAN	X				X	3/11/03
COMR. MERRIFIELD	X				X	2/13/03

COMMENT RESOLUTION

In their vote sheets, Chairman Meserve and Commissioners Dicus, McGaffigan, and Merrifield approved the subject paper. Commissioner Diaz approved in part and disapproved in part. Commissioner Diaz disapproved the staff's recommendation that the Commission approve the staff's issuance of the final criteria "if there are no significant changes due to public comments." In light of the broad application and general significance of the proposed criteria, Commissioner Diaz would have preferred that the staff should resubmit the criteria, and provide examples of significant comments, to the Commission for its review. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on March 21, 2003.

Commissioner Comments on SECY-02-0225

Chairman Meserve

Subject to the attached edits to the proposed Federal Register notice.

Commissioner Dicus

I approve the staff's request to publish the proposed criteria for the treatment of individual requirements in a regulatory analysis in the Federal Register subject to Chairman Meserve's edits.

I wish to commend the staff for their open and transparent efforts to develop these criteria. I also wish to thank the stakeholders who participated in our public meeting to discuss the proposed criteria. In reviewing SECY-02-0225, I note that the public comments received on the proposed criteria were of high quality and were thought provoking. I believe the staff has done a commendable job in addressing these comments and I support the staff's positions regarding these comments. However, I believe that to continue this open and transparent process, the staff should provide the final criteria to the Commission for review not only if there are significant changes to the criteria (as proposed by the staff) but also if there are significant adverse comments regarding the criteria.

Commissioner Diaz

I approve the staff's request to publish, for comment, proposed criteria for the treatment of individual requirements in a regulatory analysis. This is an important effort, which I advocated in my vote on SECY-00-0198 and have supported subsequently, for ensuring that rulemaking initiatives are scrutinized in a meaningful and disciplined manner. Such criteria can enhance the efficiency and transparency of regulatory initiatives, including risk-informed initiatives, and avoid the masking of individual requirements that are not cost-justified.

The criteria should also serve to strengthen the stability and predictability of our regulatory activities. In this regard, I note that the proposed revisions "are not intended to change the application of the Backfit Rule, 10 CFR 50.109." Draft Federal Register Notice at 8. Thus, for example, if some aspects of the NRC's endorsement of a voluntary standard are backfits, "these must be addressed and justified individually." Id.

I disapprove the staff's recommendation that the Commission approve the staff's issuance of the final criteria "if there are no significant changes due to public comments." In light of the broad application and general significance of the proposed criteria, I believe that the staff should resubmit the criteria, and provide examples of significant comments, to the Commission for its review.

Commissioner McGaffigan

I approve the publication in the *Federal Register* for public comment of the staff's recommended criteria for the treatment of individual requirements in a regulatory analysis, subject to the edits by Chairman Meserve.

I join with Commissioner Merrifield in applauding the staff's work in producing criteria that appear to implement the Commission's guidance to develop a disciplined, scrutable methodology. However, consistent with my vote on SECY-00-0159, I do not support the additional edit proposed by Commissioner Merrifield.

I agree with Commissioner Diaz that the staff should submit the proposed final criteria to the Commission, including the disposition of the public comments received.

Commissioner Merrifield

I approve that staff's request to publish in the Federal Register the proposed criteria for the treatment of individual requirements in a regulatory analysis, allowing 75 days for public comment, subject to Chairman Meserve's edits and one additional modification. In addition, I approve the staff's request to issue the final criteria if there are no significant changes due to the public comments.

I am pleased to see that the staff has finally developed a set of criteria which appears to satisfy the Commission's desire to have a disciplined, meaningful and understandable methodology for evaluating the value-impact of any new requirements. I believe that the staff's recommendation, as outlined in the proposed criteria for a regulatory analysis with one modification, better aligns with the Commission's instructions on backfit analyses as outlined in the SRM dated October 3, 2001.

I continue to be concerned with the staff's approach for evaluating the cost-benefit of new "necessary" requirements that are aggregated. As I have previously stated in my vote on SECY-00-0159, "It is important that the merits of each component, irrespective of whether it is ultimately aggregated for purposes of the backfit analysis, are carefully explained and its cost is separately itemized." Otherwise when the overall cost associated with the aggregated requirements is challenged, the Agency has no basis to defend itself, as was the case during the course of the Part 26 rule changes. Therefore, the staff should incorporate the attached edit to the proposed criteria so it is clear that the cost of each component of the proposed rule is separately itemized in the regulatory analysis and equates to the aggregated cost estimates.