

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

* * * * *

AFFIRMATION SESSION

* * *

PUBLIC MEETING

* * *

Nuclear Regulatory Commission
Commission Hearing Room
11555 Rockville Pike
Rockville, Maryland
May 25, 2006

The Commission met in open session, pursuant to notice, at 9:50 am, Nils J. Diaz, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ, Chairman of the Commission

EDWARD MCGAFFIGAN, JR., Member of the Commission

JEFFREY S. MERRIFIELD, Member of the Commission

GREGORY B. JACZKO, Member of the Commission

PETER B. LYONS, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

KAREN D. CYR, General Counsel

ANNETTE VIETTI-COOK, Secretary of the Commission

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission on May 25, 2006 in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general information purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

[9:50 am]

P R O C E E D I N G S

CHAIRMAN DIAZ: Good morning, Madam Secretary. I believe you a couple of items for affirmation for us?

MS. VIETTI-COOK: The Commission is being asked to act on a final rule amending Parts 20 and 32 of Title 10 of the *Code of Federal Regulations* to establish the regulatory foundation for the National Source Tracking System. The Commission has also approved the change of the rule's basis to public health and safety. The Commission has voted to approve the publication and implementation of this final rule. Would you please affirm your votes?

CHAIRMAN DIAZ: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

COMMISSIONER MCGAFFIGAN: Mr. Chairman, I might just make a statement at this point. I obviously opposed the change in basis. I don't regard this as the final Commission action on this rule because I believe that in the public comment period, which I would have liked to have been longer, we will get adverse comment on the change in the basis from common defense and security to public health and safety from entities like the two authors of the legislation, the State of New York and the State of California, and I think as a legal matter if we get adverse comment this cannot be the Commission's final action on this matter. So, I think that as I said in my vote, and I hope the voting record can be on the web page by the end of the day to give people as much notice as possible, that this microscopic comment period will be opened, a twenty day comment period. I just think we're entirely flaunting with the intent of Congress. But, that all said, I am affirming the vote that I cast, which was a vote against what we just did.

CHAIRMAN DIAZ: Thank you, Commissioner McGaffigan. We recognize your right to express your informed opinion. I think the rest of the Commission have done so. Do any of my fellow Commissioners want to make a comment at this time?

COMMISSIONER JACKZO: I did just want to make one comment. One of the, and I certainly agree with Commissioner McGaffigan on the issue of the change in the rule from public health and safety to common defense and security. One other issue that I had raised in my vote on this dealt with the inclusion of Category 3 sources and while the Commission has not, as a matter of this action, decided to take a look in more depth at Category 3 sources, the Commission does have before it another paper to do that and I do hope that we can resolve that and move on with that issue quickly and move that forward and parallel with this initiative as well.

CHAIRMAN DIAZ: Well, it seems like we have many issues to move forward rapidly in the coming weeks.

COMMISSIONER MERRIFIELD: Mr. Chairman, I don't normally make a practice of raising issues during Affirmations; however, I want to make one clarification from my own view, and that relates to the decision we made on health and safety. I appreciate and respect Commissioner McGaffigan's opinion on this matter. I understand his view that he would like to have the Commission revisit this issue yet again in the future. I would prefer that we not have to keep going over plowed ground but, obviously, it's his right as a Commissioner to raise that again. The clarification I would like to make is that I read very carefully what the intent of the Congress as a whole was on this issue and to assert that somehow in supporting the health and safety provision that we were flaunting Congress I think is not fair. But I appreciate that's his opinion which he has his right to, I respectfully disagree.

CHAIRMAN DIAZ: All right, thank you very much. Commissioner Lyons, no? If not, let's proceed.

MS. VIETTI-COOK: This is the second item for affirmation. The Commission is being asked to act on a final rule to promulgate a new 10 CFR § 73.57a to relieve certain categories of individuals who have been approved by the Commission for access to Safeguards Information from the fingerprinting, identification, and criminal history check requirements of section 149 of the Atomic Energy Act of 1954, as amended by section 652 of the Energy Policy Act of 2005. The Commission has voted to approve the publication and implementation of this final rule. Would you please affirm your votes: .

CHAIRMAN DIAZ: Aye

COMMISSIONER MCGAFFIGAN: Aye.

COMMISSIONER MERRIFIELD: Aye.

COMMISSIONER JACZKO: Aye.

COMMISSIONER LYONS: Aye.

MS. VIETTI-COOK: That's all I have.

CHAIRMAN DIAZ: All right. And with that, we are adjourned.

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: Affirmation Session

(PUBLIC MEETING)

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: May 25, 2006

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company.

Transcriber: DARLENE K. WRIGHT

Reporter: (TAPE RECORDING)