

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-99-256 - RULEMAKING PLAN FOR RISK-INFORMING
SPECIAL TREATMENT REQUIREMENTS**

Approved Disapproved Abstain

Not Participating

COMMENTS: *See attached comments.*



SIGNATURE

12/8/99

DATE

Entered on "AS" Yes No

Commissioner Merrifield's Comments on SECY-99-256

I approve the rulemaking plan and the issuance of the Advance Notice of Proposed Rulemaking (ANPR) for risk-informing special treatment requirements.

I commend the staff for their obvious hard work since the Commission provided direction in its SRM for SECY-98-300. I believe the staff is correct in its assessment of the benefits associated with an ANPR. Clearly, an initiative of this magnitude and importance warrants a high degree of participation from the public, the nuclear industry, and other external stakeholders. An ANPR is an excellent vehicle to solicit this level of stakeholder input. I also want to commend the staff for clearly laying out their vision, strategies, and objectives for this rulemaking effort. This ANPR represents just the beginning of what is certain to be a difficult endeavor; however, I believe it represents a sound foundation upon which to build.

To state the obvious, clear communication will be an essential component of this rulemaking effort. The staff must be consistent in its message that this alternative regulatory framework should enhance safety and reduce unnecessary regulatory burden because it will allow the NRC staff and our licensees to better focus resources on regulatory issues of greater safety significance. The staff must also take the time necessary to ensure interested stakeholders understand the new terminology and how it relates to our current terminology. Without this effort, many of our stakeholders may find the risk-informed categorization process confusing or may misunderstand the basis for our actions. I hope the following example illustrates my point. The staff states that some of the SSCs in Box 1 (RISC-1) of the new process may have additional requirements concerning reliability and availability, if attributes which cause an SSC to be safety significant are not sufficiently controlled by current special treatment requirements. The staff goes on to state that Box 2 (RISC-2) depicts the SSCs that are nonsafety-related, but that the risk-informed categorization concludes make a significant contribution to plant safety. Without understanding the context in which these statements are made, a stakeholder could infer that plants which do not volunteer for the new risk-informed approach will have SSCs which will not receive the level of special treatment the NRC believes is warranted. The logical question is "why is that acceptable to the NRC?" I simply cannot overstate my belief that the staff's success in this rulemaking effort could be determined, in large part, by its ability to effectively communicate with NRC stakeholders.

While it is premature to discuss the resolution of specific policy and implementation issues, I would like to comment on a few of them. First, I believe the staff's intent to provide a regulatory framework which supports implementation of risk-informed alternative requirements without prior NRC review and approval is a sound one. The staff is correct in noting that a regulatory approach which either requires prior NRC review and approval of the re-categorization methodology or which contains an inspection component that is ambiguous regarding what the requirements are for the new categorization process, may be viewed by our licensees as having too much uncertainty regarding what will be acceptable, and as being too unpredictable regarding the potential costs to implement the regulatory alternative. The staff must also carefully consider the significant NRC resource implications of its decision on this matter. I also agree with the staff that in order to support a "no prior approval" approach, Appendix T will need to be constructed such that expert panels will reach sound and consistent judgements. Second, the staff should be deliberate in its review of potential implications of implementing risk-informed alternatives in Part 50 on other regulations, especially Part 54. Solicitation of input from our internal (including OGC) and external stakeholders on this matter is essential. Third, I believe there is merit in considering and seeking stakeholder input on the ACRS' recommendation to explore whether more than two levels of safety significance is a better approach. Finally, I strongly endorse the staff's proposal to conduct a categorization pilot program to demonstrate the acceptability of the contemplated new Appendix T and the NEI guideline. As the development of the new reactor oversight process has taught us, significant lessons can be learned from actually trying to implement changes of this magnitude as part of a pilot program.

The resource estimates for this effort (47 FTE and \$3.0 million in technical assistance) are significant. A project of this size warrants close management oversight and close coordination between offices. "Surprises" or delays due to poor coordination could serve to undermine stakeholder confidence and should not be tolerated by agency management. Furthermore, given the magnitude of this initiative, the staff should periodically step back and assess the progress and direction of NRC efforts, the extent of licensee interest, the adequacy of communication with stakeholders, potential future obstacles to progress, the adequacy of inter-office coordination, and the accuracy of resource and schedule projections. The results of this assessment should be provided to the Commission every 6 months.

I also note that the resource estimates are focused on NRR and RES. While this may be appropriate given the stage the staff is at in the process, I am confident that regional resources will eventually be called upon to support this effort. I encourage the staff to assess the level of regional support that will be necessary and utilize the PBPM process so that appropriate planning and budgeting takes place. With the burden of the new reactor oversight process, regions should not be subjected to unplanned and unbudgeted challenges of this magnitude.

My staff will provide minor editorial changes to the NRR staff.

A handwritten signature in black ink, appearing to read "Jeff M. Thompson". The signature is written in a cursive, somewhat stylized font.

12/8/99



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20545-0001

January 31, 2000

SECRETARY

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: *(Signature)* Annette Vietti-Cook, Secretary

SUBJECT: STAFF REQUIREMENTS - SECY-99-256 - RULEMAKING
PLAN FOR RISK-INFORMING SPECIAL TREATMENT
REQUIREMENTS

The Commission has approved publication of the Advanced Notice of Proposed Rulemaking for risk-informing special treatment requirements and approved the rulemaking plan subject to the comments provided below.

(EDO)

(SECY Suspense:

2/25/00)

The staff, with assistance from OGC, should revise the ANPR to specifically request public comment on the follow issues:

1. How to ensure that proposed section 50.69 is clear with respect to:
 - a. identifying the SSC scope relevant to specific special treatment requirements (not just the regulation containing the special treatment requirement), and
 - b. any additional requirements to be placed on those SSCs in RISC I or II and any functionality requirements to be placed on SSCs in RISC III.
2. The effect the new rule would have on terminology used by the staff, specifically with respect to the term "operability" as currently used in technical specifications' limiting conditions for operations (LCOs) and the concept of "functionality" as proposed for SSCs in RISC III.
3. Whether the design control and procurement requirements in Appendices A and B of Part 50 should apply to RISC II SSCs.
4. Whether Part 21 reporting requirements should be imposed upon vendors who supplied safety-related components to licensees who subsequently select the new regulatory approach. The staff should also seek public comment on the effect of the proposed rule change on the interpretation of the definition of basic component in section 223.b of the Atomic Energy Act.
5. The need to develop different Part 19 notices for those licensees implementing the new regulatory approach.

6. Whether any exemptions from Part 50, Appendix A (General Design Criteria) would be required by those licensees implementing the new regulatory approach and suggestions for means to build these exemptions into the rulemaking
7. Whether more than two levels of safety significance is a better approach. Specifically, the benefit of the four-level safety significance ranking as used by the South Texas Project.

Commission briefings should be provided after the ANPR comment period, prior to granting the the STP exemption, after the proposed and final rules have been submitted to the Commission, and whenever staff identifies issues requiring Commission attention.

The Commission commends the staff for its thorough evaluation of the issues posed by this rulemaking activity.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
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CFO
OCA
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