

December 8, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-240

TITLE: FINAL AMENDMENTS TO 10 CFR PARTS 21, 50, AND 54 AND AVAILABILITY FOR PUBLIC COMMENT OF DRAFT REGULATORY GUIDE DG-1081 AND DRAFT STANDARD REVIEW PLAN SECTION 15.0.1 REGARDING USE OF ALTERNATIVE SOURCE TERMS AT OPERATING REACTORS

The Commission (with all Commissioners agreeing) approved the subject paper as noted in the Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of December 8, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the Affirmation Session SRM of December 8, 1999.

Annette Vietti-Cook
Secretary of the Commission

- Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

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

VOTING SUMMARY - SECY-99-240

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	11/18/99
COMR. DICUS	X				X	11/8/99
COMR. DIAZ	X				X	11/1/99
COMR. McGAFFIGAN	X				X	11/24/99
COMR. MERRIFIELD	X				X	11/10/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the Commission affirmed the final rule in Affirmation Session and their comments were incorporated into the guidance to staff as reflected in the Affirmation Session SRM issued on December 8, 1999.

Chairman Meserve

Subject to the following comments, I approve the publication of the final rule and of the notice of the availability for public comment of the related draft regulatory guide and the revised section to the standard review plan:

1. I concur in the comments submitted by Commissioners Dicus and Merrifield.
2. I suggest clarification of the proposed definition of "source term" in the final rule.

In response to comments, the staff has modified its proposed definition so that the draft final rule now provides that "source term" refers "to the fractions of the fission product inventory of the radionuclides released from the reactor fuel, their physical and chemical form, and the timing of their release." This definition is confusing because it does not specify the numerator or denominator of the fractions to which the definition refers. This problem might be solved by refining the definition along the following lines:

"*Source term* refers to the magnitude and mix of the radionuclides released from the fuel, expressed as fractions of the fission product inventory in the fuel, as well as their physical and chemical form, and the time of their release."

Staff should ensure that conforming changes to the Federal Register notice are made.

3. The draft Federal Register notice associated with the final rule states on page 19

that the NRC "agrees with the proposed revision" to the definition of "source term" that was offered by NEI. In fact, however, the staff has not accepted the definition that NEI proposed (although the staff has sought to address the issue that motivated the NEI proposal). Some revision of the Federal Register notice is necessary.

Commissioner Dicus

I approve the notice of final rulemaking for publication, subject to incorporation of the following comments.

1. The proposed *Federal Register* Notice (FRN) in the section titled "Appendix A to Part 50 - General Design Criteria for Nuclear Power Plants" (Page 50 of the FRN attached to the SECY), states that applicants for combined licenses "**shall** meet the requirements of this criterion" (the revised GDC 19). However, if a combined license applicant references a certified design that already used the TID-14844 source term (e.g., the ABWR-See Appendix A to Part 52), then this paragraph requires a backfit to the certified design, which is specifically prohibited by 10 CFR Part 52.63. The staff should revise the FRN with language similar to the following, and ensure that the corresponding text in the Statements of Consideration (SOCs), environmental assessment, regulatory analysis, and other attachments to the SECY are updated accordingly:

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design certifications under Part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses under Part 52 of this chapter who do not reference a standard design certification, or holders of operating licenses using an alternative source term under 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in 50.2 for the duration of the accident.

2. The staff should ensure that the language of the rule, the SOC's, and other attachments to the SECY is reviewed for accuracy. The following are specific items that should be corrected.

1. The SECY states that the rule language was modified to "correct the unintentional exclusion of holders of renewal licenses." While the rule language was in fact modified, corresponding changes were not made to the draft regulatory guide and draft standard review plan.
2. In the proposed section titled 50.67(a) "Applicability" (see page 47 of the FRN), it states that this is applicable to "all holders of operating licenses prior to January 10, 1997, and holders of renewed licenses under Part 54" whereas the Background section of the FRN (Page 8) states that the AST is applicable to "only to those facilities for which a construction permit was issued before January 10, 1997." The Background section of the SOC's should be revised to match the rule language.
3. The SECY and the SOC's refer to a "combined operating license," whereas Part 52 only refers to a "combined license." The staff should ensure that the final rule language, SOC's, and other SECY attachments are consistent with Part 52

3. The staff should provide the final regulatory guide, Standard Review Plan, and a summary of comments received on the draft versions, to the Commission by May 31, 2000.

Commissioner Diaz

I approve the staff recommendation to publish the notice of final rulemaking and the Notice of Availability of the draft regulatory guide and the draft standard review plan section.

I encourage the staff to work with commenters to complete the final regulatory guide and the standard review plan section. These guidance documents should be submitted to the Commission for approval no later than June 1, 2000.

Commissioner McGaffigan

I concur in the comments of Chairman Meserve, and Commissioners Dicus and Merrifield. I note that the staff continues to make it clear in the various attachments that this regulation is not intended to provide licensees with relief from NRC's emergency planning requirements, which go well beyond

source term considerations. I would have liked this clarification in the rule itself, as I voted during consideration of the proposed rule (SECY-98-289). But I will not press this issue further since no member of the public requested this clarification in the public comment period.

I suggest one edit to the last paragraph of the second page of the press release (Attachment 7), revising that paragraph to the following:

But what occurred in the Three Mile Island accident, in addition to extensive research which followed it, suggested that a release into the containment would be phased, rather than immediate, and that the radioactive iodine would be predominantly in the form of cesium iodide, an aerosol that is more amenable to mitigation mechanisms. Revised source terms published by NRC in 1995 reflected those findings. (Edit underlined)

Commissioner Merrifield

I approve the staff recommendation to publish the Notice of Final Rulemaking and the Notice of Availability of the draft regulatory guide and the draft standard review plan (SRP) section, subject to the change discussed below.

Subsequent to submitting SECY-99-240 to the Commission on October 5, 1999, the staff was made aware of a potential backfit concern associated with language in the proposed Federal Register Notice of Final Rulemaking, Section entitled "Appendix A to Part 50 - General Design Criteria for Nuclear Power Plants". In response, the staff proposed the following language to replace the last paragraph in that section:

Applicants for and holders of construction permits and operating licenses under this part who apply on or after January 10, 1997, applicants for design certifications under Part 52 of this chapter who apply on or after January 10, 1997, applicants for and holders of combined licenses under Part 52 of this chapter who do not reference a standard design certification, or holders of operating licenses using an alternate source term under 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in 50.2 for the duration of the accident.

I encourage the staff to carefully review the attachments in SECY-99-240 to ensure the appropriate conforming changes are made.

I also encourage the staff to actively solicit stakeholder comment on the draft regulatory guide and draft SRP section and to thoroughly and expeditiously resolve issues raised. Given the importance of this matter, I believe the staff should continue to allocate the resources necessary to complete the final regulatory guide and SRP section in the timeframe outlined in SECY-99-240.

As I discussed in my vote on SECY-98-289 and as addressed in Section 1.1.4 of the draft regulatory guide, the alternative source term (AST) is not representative of the wide spectrum of possible events that make up the planning basis for emergency planning. Therefore, I agree with the staff that the AST is insufficient by itself as a basis for requesting relief from the emergency preparedness requirements of 10 CFR 50.47 and Appendix E to 10 CFR Part 50.