



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 28, 2003

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-03-0090

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

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of August 28, 2003.

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

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
 Commissioner McGaffigan
 Commissioner Merrifield
 OGC
 EDO
 PDR

VOTING SUMMARY - SECY-03-0090

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	8/14/03
COMR. McGAFFIGAN	X					8/19/03
COMR. MERRIFIELD	X					8/15/03

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule as noted in an Affirmation Session and reflected in the SRM issued on August 28, 2003.

*law
8-14-03
ASF*

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: SECY-03-0090 - FINAL RULE: 10 CFR PARTS 30, 40,
AND 70: FINANCIAL ASSURANCE FOR MATERIALS
LICENSEES

subject to comments.

Approved Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:

Nils J Diaz

SIGNATURE

Aug 14, 2003

DATE

Entered on "STARS" Yes No _____

**COMMENTS OF CHAIRMAN DIAZ ON SECY-03-0090, FINAL RULE:
10 CFR PARTS 30, 40, AND 70: FINANCIAL ASSURANCE FOR MATERIALS LICENSEES**

I approve publication of the final rule, subject to the following comments on the Federal Register Notice (FRN). In my vote on the proposed rule, I noted that "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." The same statement applies to the final rule. Other than noting the increase in decommissioning costs due to inflation, waste disposal, etc. there is little justification provided to the public on why the rulemaking was conducted.

We should continually strive to improve our communications with the public, especially on agency actions and programs that are directed toward protection of the public health and safety. In that regard, I approve the FRN for the final rule subject to staff:

1. Addressing the issue I previously raised about the lack of support regarding the statement on the potential impact of inadequate decommissioning funding on public health and safety.
2. Including the text from page 1 of the Regulatory Analysis that briefly explains the steps in financial assurance and which steps the current rulemaking addresses.
3. Including the text from pages 4-5 of the Regulatory Analysis that addresses the impact of not conducting the rulemaking and the benefits of finalizing the rulemaking.

(Signature)

REGULATORY ANALYSIS

FINANCIAL ASSURANCE FOR MATERIALS LICENSEES

I. Regulatory Problems to be Addressed by This Rule

The NRC regulations requiring financial assurance for decommissioning are designed to assure that adequate funding will be available for timely decommissioning by licensees. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the environment during decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) appropriate identification of licensees for which financial assurance should be required; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required.

The NRC is amending its financial assurance requirements for certain materials licensees to bring required financial assurance amounts more in line with actual current decommissioning costs. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current regulations, materials licensees using substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). Approximately 490, or about 10 percent, of the NRC's materials licensees require financial assurance. The financial assurance requirements were promulgated in 1986 as part of the decommissioning rulemaking (53 FR 24018, June 27, 1988). Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that time, and experience

(A) No Action

Under this alternative, no rulemaking would be done. The amount of financial assurance required would not be adequate to fully fund decommissioning activities for a large number of licensees. This gap in funding would increase the likelihood that decommissioning of some facilities would not be carried out in a timely manner. This could result in adverse impacts on public health and safety, and also could have adverse environmental effects. It would also increase the likelihood that State or local governments and/or the general public would have to bear the costs of decommissioning.

No costs to licensees or NRC would be involved for this alternative. Licensees would not be subject to any cost increases, and NRC would not incur costs associated with developing and implementing the rulemaking.

(B) Rulemaking to Revise the Financial Assurance Requirements for Materials Licensees

Under this alternative, large irradiator and waste broker licensees would have to base financial assurance on a site-specific decommissioning cost estimate. All waste brokers would have to provide financial assurance. The certification amounts would be raised by 50 percent, providing approximately \$80 million in additional financial assurance.² Decommissioning cost estimates would have to be updated at least every 3 years. A rulemaking to revise the financial assurance requirements for materials licensees would increase the assurance of adequate funding for decommissioning activities. This increased assurance would make timely decommissioning more likely, contributing to maintaining public health and safety and protection of the environment. This action would also decrease the likelihood that State and local governments and/or the general public would have to bear the costs of decommissioning, should a licensee be unable to do so.

² Estimate based on current numbers of licensees using each certification amount.

The benefit of the rulemaking is enhanced assurance of adequate funding for timely decommissioning. As stated above, there are gaps in the current financial assurance regulations, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these gaps to remain could increase the likelihood of inadequate funding for timely decommissioning.

The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned due to insufficient funds there is an increased likelihood of contamination and/or exposure of members of the public. The changes to the regulations are concentrated in areas where the likelihood of inadequate funding relative to decommissioning costs appears to be relatively high. First, the financial assurance requirements are imposed only on those licensees having the highest possession limits, and thus the potential for highest doses. Only about 10 percent of materials licensees must provide financial assurance. Second, the changes in this plan address situations where risk of inadequate funding of decommissioning obligations is greatest — where required amounts of financial assurance appear to be substantially less than decommissioning costs.

Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential public costs involved in cleanup of contaminated facilities where financial assurance is inadequate must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by the licensee.

Large Irradiators

Large irradiator licensees are licensees that are engaged in the irradiation of food products and medical equipment. These large irradiators operate facilities that have a large number of sealed sources, with possession limits ranging up to several million curies. The NRC has approximately 10 large irradiator licensees (licensees authorized for 1 million curies or more). Estimated decommissioning costs for an irradiator facility with 1 million curies of source activity are at least \$128K; for a facility with 2 million curies, estimated costs are at least \$231K.

AFFIRMATION ITEM

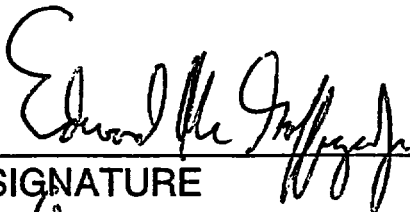
RESPONSE SHEET

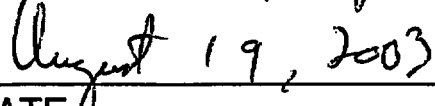
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-03-0090 - FINAL RULE: 10 CFR PARTS 30, 40,
AND 70: FINANCIAL ASSURANCE FOR MATERIALS
LICENSEES**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:



SIGNATURE


DATE

Entered on "STARS" Yes No _____

AFFIRMATION ITEM

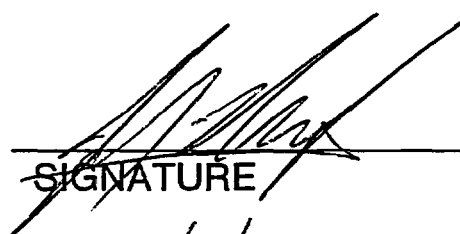
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-03-0090 - FINAL RULE: 10 CFR PARTS 30, 40, AND 70: FINANCIAL ASSURANCE FOR MATERIALS LICENSEES**

Approved Disapproved Abstain

Not Participating

COMMENTS:
No additional comments.



SIGNATURE
8/15/03

DATE

Entered on "STARS" Yes No