



OFFICE OF THE  
COMMISSIONER

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

PDR

October 22, 1985

MEMORANDUM FOR: Chairman Palladino  
Commissioner Roberts  
Commissioner Bernthal  
Commissioner Zech

FROM: James K. Asselstine *[Signature]*

SUBJECT: PROPOSED REVISION OF 10 CFR PART 20, "STANDARDS FOR  
PROTECTION AGAINST RADIATION" (SECY-85-147)

In a memorandum to the EDO dated August 8, 1985, I asked if the staff could certify that the above referenced rulemaking complied with the backfit rule. On October 18, 1985, the staff responded that the backfit rule does not apply to this rulemaking. Many diverse outside organizations will be watching how the Commission implements its backfit rule. One or more outside entities may from time to time challenge a rulemaking on the basis of the backfit rule.

We would require licensees to demonstrate to us how they comply with regulations that are applicable to them. I believe we have the same obligation with respect to rules that are applicable to the Commission. Such a demonstration by the Commission should be completed and incorporated into all rulemakings that affect Part 50 licensees lest we find ourselves in court without the required backfitting demonstration contained in the rulemaking record. Furthermore, a demonstration of compliance with the backfit rule in each rulemaking, even if that be an explanation of why the backfit rule does not apply in a certain case, would be a useful and relevant matter for public comment on a proposed rule so that we have a better understanding of the litigative risks associated with the rulemaking. By this, I am not suggesting that Supplementary Information section of a rulemaking contain the entire cost-benefit analysis, but it should at least identify where the entire analysis can be found or obtained.

I propose the following:

1. The Commission should direct OGC and OPE, with whatever assistance from staff that is required, to prepare for incorporation into each rulemaking affecting Part 50 licensees an explanation of how that rulemaking complies with the Backfit Rule, including clear citations of the necessary supporting documentation.

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2. Given that there is no urgency to publish a revision to Part 20, the explanation described in paragraph 1 should be prepared, and approved by the Commission prior to publishing the proposed rule. In this regard, I believe the explanation of compliance with the backfit rule should also address the following excerpt from the backfit rule: "(T)here is no intent on the part of the Commission to include within the scope of the exceptions (to the backfit rule requirements) new or modified interpretations of what constitutes no undue risk to the public health and safety. In such a case, the rule applies." It seems to me to a change in allowable releases from nuclear powerplants is a change in what constitutes no undue risk.

SECY, please track responses.

cc: SECY  
OGC  
OPE  
EDO