NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: SECY-10-0095 – PROPOSED RULE: ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORT OF CERTAIN TYPES OF NUCLEAR WASTE (RIN 3150-AG41)

Approved __X__ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached _X_ None ___

_____
SIGNATURE

9/7/10
_____
DATE

Entered on "STARS" Yes _x_ No ___

Chairman Jaczko's Comments on SECY-10-0095,
"Proposed Rule: Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste"

I approve of the staff's recommendation to publish the proposed amendments to 10 CFR 71 and 73 in the *Federal Register*. These amendments would require licensees to provide advance notice to Federally recognized Tribal governments with respect to shipments of irradiated nuclear fuel and certain nuclear wastes for any shipment that passes through Tribal reservations.

I agree with Commissioner Ostendorff, however, that the staff has not clearly presented the staff's justification for the provision of the proposed rule that would relieve Tribes from fingerprinting and background investigations for access to SGI. Before publication, staff should revise the supplementary information for this rule to provide that justification. If appropriate justification cannot be found, the staff should notify the Commission. I also agree with Commissioner Ostendorff that there does not appear to be a basis for limiting the relief provided to only SGI related to these types of shipments. This should be more clearly discussed in the proposed rule.

Also, the proposed rule currently specifies that licensees should provide "advance notification to the Tribal official of participating Tribes referenced in paragraph (c)(3)(iii) of this section, or the official's designee, of the shipment of licensed material..." and "Tribal official" is defined as an "elected or duly appointed official of Indian tribal governments." The wording mirrors that already used in the rule with respect to States, which says that each licensee shall provide advance notification to "the governor of a State, or the governor's designee, of the shipment..." The wording regarding the Tribal official should specify that the rule is referring to the *head* Tribal official or that official's designee, and not other officials that may be elected to various positions within the Tribal organization.

Lastly, the staff should ensure that in addition to providing a list of Tribal contacts on the website, they should also provide a map delineating the locations of the Tribal reservations so that licensees can properly identify when shipments may be crossing into those areas.

9/7/10

Gregory B. Jaczko Date