



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 30, 2010

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0128

TITLE: PROPOSED RULE: DOMESTIC LICENSING OF SOURCE
MATERIAL - AMENDMENTS/INTEGRATED SAFETY
ANALYSIS (RIN 3150-AI50)

The Commission (with Chairman Jaczko and Commissioners Svinicki, Magwood, and Ostendorff agreeing and Commissioner Apostolakis disagreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 30, 2010.

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 L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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VOTING SUMMARY - SECY-10-0128

SECRETARY

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	11/1/10
COMR. SVINICKI	X				X	11/17/10
COMR. APOSTOLAKIS		X			X	11/3/10
COMR. MAGWOOD	X				X	11/19/10
COMR. OSTENDORFF	X				X	11/12/10

COMMENT RESOLUTION

In their vote sheets, Chairman Jaczko and Commissioners Svinicki, Magwood, and Ostendorff approved and Commissioner Apostolakis disapproved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on November 30, 2010.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko


SUBJECT: SECY-10-0128 – PROPOSED RULE: DOMESTIC LICENSING OF SOURCE MATERIAL – AMENDMENTS/INTEGRATED SAFETY ANALYSIS (RIN 3150-AI50)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached None

This proposed rule is an important step in requiring that uranium conversion and deconversion facilities conduct integrated safety analyses similar to that required for other fuel cycle facilities. The staff properly evaluated stakeholder input and technical information from OSHA and EPA in reducing the proposed threshold of 10,000 kg of UF6 to 2,000 kg. If additional information becomes available that warrants establishing a UF4 threshold for requiring an ISA, the staff should communicate that to the Commission. I look forward to reviewing the public comments on this rule.



SIGNATURE

4/1/10

DATE

Entered on "STARS" Yes x No

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-10-0128 – PROPOSED RULE: DOMESTIC
LICENSING OF SOURCE MATERIAL –
AMENDMENTS/INTEGRATED SAFETY ANALYSIS
(RIN 3150-AI50)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

11/17/10

DATE

Entered on "STARS" Yes No _____

**Commissioner Svinicki's Comments on SECY-10-0128
Proposed Rule: Domestic Licensing of Source Material –
Amendments/Integrated Safety Analysis (RIN 3150-AI50)**

I approve, subject to the following comments and edits, the staff's recommendation to publish in the *Federal Register* a proposed rule (Enclosure 1 to SECY-10-0128) that would, among other provisions, amend Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40 to require source material licensees possessing significant amounts of uranium hexafluoride to perform integrated safety analyses (ISAs). In general, the staff has prepared a thoughtful rule package and I commend them for meeting the agency's high standards of quality and thoroughness. There are, however, a few specific items that should be modified prior to publication of the proposed rule.

Currently, the proposed rule does not contain a backfit provision. The staff should modify the proposed rule to include a backfit provision prior to publishing the proposed rule for public comment. This provision should be similar to 10 CFR § 70.76 and should apply to any materials licensee that possesses significant quantities of uranium hexafluoride once the NRC has approved that licensee's ISA. Including such a provision is consistent with the public comments received in response to the staff's workshop during development of the proposed rule. I agree with those who commented that the incorporation of a backfit provision into Part 40 will help to ensure regulatory consistency between these Part 40 licensees and other major NRC licensees, such as nuclear power reactors and Part 70 licensees.

I also believe that the staff should not publish this proposed rule until such time as it is prepared to release - concurrently - the draft regulatory guidance, standard review plan, and inspection procedures related to the proposed rule. Under the staff's rulemaking procedures (e.g., FSME Policy and Procedure 6-10, Rev. 1, May 2009), the issuance of draft licensing and inspection guidance concurrent with, and to inform public comment on, proposed rules is the NRC's objective. Similarly, under Management Directive 6.3, the agency's intention is to release the final version of these documents with publication of a final rule. In those instances in recent years where the NRC has experienced the most significant implementation issues with a new rule, at its root, I believe the problem can be traced to a loss of disciplined adherence to this practice. Conversely, returning to this practice can have the effect of strengthening the agency's rulemaking process and avoiding miscommunication of agency expectations and complications in implementation. This brings me to my last point.

I believe – given the complexity of ISAs – the amount of time provided in the proposed rule within which licensees must develop a plan (3 months from the date the rule becomes effective), produce an ISA (12 months from the date the rule becomes effective), and then correct all performance deficiencies arising from the analysis (18 months from the date the rule becomes effective), can immediately be recognized as inadequate. Prior to publication of the proposed rule, the staff should revise it to provide an amount of time that has some chance of being achieved, and receive public comment on this more realistic schedule. I propose that 3 months be revised to 6 months; that 12 months be revised to 18 months; and that 18 months be revised to 3 years. Lest that last proposal seem protracted, I would bring to your attention that the rule would already require that “[p]ending the correction of unacceptable performance deficiencies, the licensee would have to implement appropriate compensatory measures to ensure adequate protection.”

Finally, the following change should be made to the first full paragraph on page 45: The phrase "in order to fulfill its statutory mandate to protect the health and safety of the worker, the public, and the environment" should be revised to read, "in order to fulfill its statutory mandate to protect the health and safety of the worker and the public."



Kristine L. Svinicki

11/17/10

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-10-0128 – PROPOSED RULE: DOMESTIC LICENSING OF SOURCE MATERIAL – AMENDMENTS/INTEGRATED SAFETY ANALYSIS (RIN 3150-AI50)

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below X Attached ___ None ___

I continue to question if the Integrated Safety Analysis is the appropriate regulatory tool for fuel cycle facilities and the related NRC program. Publishing the proposed rule before the staff completes its comparison of Integrated Safety Analysis to Probabilistic Risk Assessments is premature. I therefore, disapprove staff publishing the rule at this time.



SIGNATURE

11/3/10

DATE

Entered on "STARS" Yes X No _____

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MAGWOOD
SUBJECT: SECY-10-0128 – PROPOSED RULE: DOMESTIC
LICENSING OF SOURCE MATERIAL –
AMENDMENTS/INTEGRATED SAFETY ANALYSIS
(RIN 3150-AI50)

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

19 November 2010

DATE

Entered on "STARS" Yes No _____

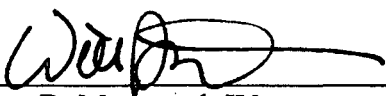
Commissioner Magwood's Comment on SECY-10-0128- Proposed Rule: Domestic Licensing of Source Material- Amendments/ Integrated Safety Analysis (ISA)

I approve the publication in the Federal Register of the proposed amendments to 10 CFR 40 to require source material licensees possessing significant amounts of Uranium Hexafluoride (UF6) to perform integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR Part 70 licensees and to set possession limits for UF6 to determine whether the NRC or Agreement States have licensing authority for a facility.

Although I am approving the publication of the draft proposed rule, I am not convinced that the ISA methodology is the appropriate tool for the regulation of 10 CFR Part 40 licensees. As reflected in Commissioner Apostolakis' vote on this proposal, it is essential that the Commission await the outcome of the ISA/PRA comparison paper before finalizing this rule. However, I view the issuance of this proposed rule as an opportunity to solicit public views on the potential impacts of the application of PRA techniques to the development of a regulatory framework for Part 40 facilities.

Therefore, I recommend that staff modify the proposed Federal Register notice to present the question regarding use of PRA methodology to Part 40 facilities and request comments with regard to the potential challenges and impacts. Also, in the interim, the staff should remain cognizant of the ongoing development of the ISA/PRA comparison paper and any direction that the Commission might provide as a result of its consideration of this subject. The final rule should reflect any changes that result from the Commission's review of the ISA/PRA comparison paper.

I also agree with Commissioner Ostendorff that staff needs to develop or modify existing guidance to clearly explain the staff's expectations for completion of an ISA for a 10 CFR Part 40 licensee. Staff should also evaluate if there is a need to modify the existing Memorandum of Understanding (MOU) between OSHA and NRC to further clarify or delineate which activities are under NRC regulation versus OSHA regulation. If staff determines that the existing MOU does not need to be revised, staff should ensure that the proposed rule and guidance provide a clear explanation as to how to evaluate NRC/OSHA MOU criterion #3: "the plant condition which affect the safety of radioactive materials and thus presents an increased radiation risk to workers" when completing the ISA.



William D. Magwood, IV

11/19/10

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-10-0128 – PROPOSED RULE: DOMESTIC LICENSING OF SOURCE MATERIAL – AMENDMENTS/INTEGRATED SAFETY ANALYSIS (RIN 3150-AI50)

Approved Disapproved Abstain

Not Participating

COMMENTS: Below Attached None



SIGNATURE

11/12/10

DATE

Entered on "STARS" Yes No

Commissioner Ostendorff's comments on SECY 10-0128

I approve of publishing in the Federal Register the proposed rule that would add requirements to 10 CFR Part 40 for source material licensees who possess significant quantities of UF₆. Specifically, I support amendments to 10 CFR Part 40 that would require licensees to conduct integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR 70 licensees and set UF₆ thresholds that would determine whether the NRC or Agreement states have licensing authority for the facility. Implementing these requirements will provide for risk informed, consistent, and predictable regulation.

It is important that the NRC clearly articulate for 10 CFR Part 40 licensees its expectations for completion of an ISA. The staff should enhance the existing guidance for completion of ISAs, which currently apply to Part 70 licensees, to account for differences in the processes or hazards for Part 40 facilities. The portions of the guidance that the staff proposes to revise should be published for comment with the proposed rule.

I understand that our stakeholders have raised the question of whether 10 CFR 40 should include a backfit provision similar to 10 CFR 70. This is a valid question given that the NRC has implemented a backfit rule for power reactors and other fuel cycle facilities. The staff should solicit comments as part of the proposed rule on whether institution of a backfit provision for 10 CFR Part 40 licensees is appropriate, and, if so, which sections of 10 CFR 40 should be subject to a backfit provision.