

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-11 - 0170- FINAL RULE: PHYSICAL PROTECTION OF BYPRODUCT MATERIAL (3150-AI12)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

2/27/12

DATE

Entered on "STARS" Yes X No

**Chairman Jaczko's Comments on SECY-11-0170,
"Final Rule: Physical Protection of Byproduct Material"**

I approve the staff's request to publish a final rule that will add a new Part 37 to Title 10 of the Code of Federal Regulations and to make conforming changes to Parts 20, 30, 32, 33, 34, 35, 36, 39, 51, 71, and 73. This rule will amend the regulations to establish security requirements for the use of Category 1 and Category 2 quantities of radioactive material and for the transportation of small quantities of irradiated fuel. I also approve the staff's recommendations to rescind the security orders on the effective date of the final rule in accordance with the implementation plan, and the staff's recommendation to conduct a rulemaking to remove the SGI-M requirement for certain licensees.

I agree with the approach that the staff has used to include suspicious activities in this rule. I think this will help to identify behaviors or activities that may be a precursor to other, larger plans. Also, I remain concerned about aggregation of sources and I think this rule is a good step in preventing that. I do think, however, that more attention should be paid to Category 2 sources and that this rule should contain requirements for real-time tracking of these sources.

The proposed rule contained requirements for a credit check, and I believe those requirements should remain. Although it should not be the only factor, a credit check helps shed light on the issue of whether someone is trustworthy and reliable. With respect to the issue of transshipments, the staff should continue their work with other Federal agencies on the security requirements for transshipments.

I have stated previously, and I continue to believe, that Part 37 marks an important milestone in the progress that the agency has made in the security area. The staff has done an excellent job shepherding these requirements through the rulemaking process and I am confident they will continue their focus on safety and security while rescinding the security orders that Part 37 replaces. Through its many security initiatives such as this rule, the National Source Tracking System, and the Radiation Source Protection and Security Task Force, the agency has made significant contributions to the national security of radioactive materials.

In addition, the staff should make the following specific changes to the draft Federal Register Notice:

- Revise page 72 to state that: "A licensee can always ask for relief from a particular measure and if the NRC agrees that adequate basis exists and that it is protective of public health and safety, it can grant the request."
- Revise page 96 to state that: "The LLEA needs to be notified only if the licensee has determined that an attempted or actual theft, diversion, or sabotage act has occurred or is taking place, or if the licensee has identified suspicious activities."

- Revise page 264 to state that: "The NRC does not object to the use of Federal Express, as long as they continue to meet these requirements."



Gregory B. Jaczko

2/27/12

Date