

**POLICY ISSUE**  
**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette L. Vietti-Cook, Secretary

**FROM:** Commissioner Baran

**SUBJECT:** SECY-19-0095: Discontinuation Rulemaking -  
Enhanced Security of Special Nuclear Material

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_ Not Participating \_\_\_\_\_

**COMMENTS:** Below \_\_\_\_\_ Attached  X  None \_\_\_\_\_

**Entered in "STARS"**

Yes  X

No \_\_\_\_\_

\_\_\_\_\_  
**SIGNATURE**

6/14/21

\_\_\_\_\_  
**DATE**

**Commissioner Baran's Comments on SECY-19-0095,  
"Discontinuation of Rulemaking – Enhanced Security of Special Nuclear Material"**

In the wake of the 9/11 terrorist attacks, NRC issued security orders to licensees that possessed Category I or Category III quantities of special nuclear material. In 2006, the Commission approved the initiation of a follow-on rulemaking to enhance security for special nuclear material. As part of this effort, the NRC staff was exploring whether security requirements should be tailored to a given material's attractiveness to bad actors.

In considering the Fiscal Year 2020 budget, "the Commission directed the staff to proceed with rulemaking with the exclusive scope of codifying the requirements of the post-9/11 security orders into the NRC's regulations."<sup>1</sup> Because the NRC staff determined that "a rulemaking to solely codify the post-9/11 security orders ... would not improve public health and safety or the common defense and security," the staff now recommends discontinuing the rulemaking altogether.<sup>2</sup>

The Commission traditionally has not used budget votes to re-litigate established policy decisions. Deciding policy matters through the normal process of voting on policy papers has at least two major advantages. First, policy papers provide a significant amount of information about the policy matter at issue, including options and the pros and cons of those options. A budget paper generally does not provide that type of information to allow for a fully informed policy decision. Second, policy papers (and the Commissioner votes on those papers) are typically public, which provides transparency into the Commission's decisionmaking process for interested stakeholders and the broader public. Budget votes, on the other hand, are not public.

Here, the Commission's 2018 direction to limit the scope of the rulemaking has created a false choice between not doing a rulemaking or doing a rulemaking that does nothing new. I understand why the staff would recommend against proceeding with a rule that would require exactly the same security measures as the post-9/11 orders that are already in place. There are, of course, other options.

Before deciding whether and how to proceed with this rulemaking, the Commission would benefit from a staff analysis of more options for the scope of the rule and the potential regulatory, resource, and timing impacts of those options. In fact, the staff had nearly completed a voting paper that would have included just such an analysis. Rather than choosing from an arbitrarily narrow set of options, I support directing the staff to provide a notation vote paper with a full range of options for this rule. This will allow the Commission to make a well-informed decision about how to proceed. I disapprove termination of the rulemaking at this time.

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<sup>1</sup> See SECY-19-0095 at 2.

<sup>2</sup> *Id.* at 4.