



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 14, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0139

TITLE: SECURE TRANSFER OF NUCLEAR MATERIAL (RIN:
3150-AH90)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 14, 2006.

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 Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0139

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	7/12/06
COMR. McGAFFIGAN	X				X	7/27/06
COMR. MERRIFIELD	X					6/30/06
COMR. JACZKO	X				X	7/11/06
COMR. LYONS	X				X	6/29/06

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on August 14, 2006.

NOTATION VOTE
RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: **SECY-06-0139 - SECURE TRANSFER OF NUCLEAR MATERIAL (RIN: 3150-AH90)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

I approve the staff's publication of the proposed amendment to 10 CFR Part 73 to implement Section 656 of the Energy Policy Act of 2005. This proposed rulemaking provides a risk-informed approach to implementing the requirements of the Energy Policy Act of 2005 and is consistent with NRC's strategic objectives and performance goals.



SIGNATURE

July 12, 2006
DATE

Entered on "STARS" Yes No

NOTATION VOTE
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0139 - SECURE TRANSFER OF NUCLEAR
MATERIAL (RIN: 3150-AH90)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.

 /RA/
SIGNATURE

 July 27, 2006
DATE

Entered on "STARS" Yes No

Commissioner McGaffigan's Comments on SECY-06-0139

I approve the staff's recommendation to publish, in the *Federal Register*, the proposed amendment to Part 73. This amendment implements requirements for the secure transfer of nuclear materials, as required by Section 656 of the Energy Policy Act of 2005 (EPAAct), by specifically excepting certain licensees from provisions of Section 170I of the Atomic Energy Act (AEA), as amended.

I believe that using the framework of the existing system of Orders to codify excepted radioactive materials and classes of individuals is both effective and efficient. The existing system of Orders will ensure the common defense and security while we undertake a rulemaking to implement the fingerprinting authorities granted by Section 652 of the EPAAct. In a parallel decision later this summer, we will consider staff's recommendation on which licensees will receive new Orders requiring that individuals who access risk-significant radioactive materials (in terms of radioactive sources, Category 2 and above quantities of radionuclides of concern delineated in the IAEA Code of Conduct) be fingerprinted. I would note that our interagency colleagues on the Radiation Source Task Force have urged us to proceed expeditiously to implement Section 652's broader background check authority.

These Orders will address fingerprinting requirements until such time as a new rule implementing our Section 652 authority is effective sometime after the Fall of 2008. As stated in this paper, the staff will recommend, consistent with the SRM for COMSECY-05-0058, that a minimum of three classes of byproduct materials licensees receive new Orders - manufacturers and distributors, panoramic irradiators, and those who make shipments of RAMQC.

However, I agree with Commissioner Jaczko that the staff should consider expanding this set to include Groups 1-4 licensees that possess Category 2 or greater quantities of IAEA Code of Conduct radionuclides of concern, and certain fuel facilities, some of which are parties to exports of source material and special nuclear material, and which are, therefore, also subject to Section 656 of the EPAAct. For example, we have issued Orders that require background checks, which are based partly on local agency checks not involving an appropriate Federal entity, for access to radioactive material at Category III fuel facilities and Honeywell. Adding FBI fingerprinting to the list of existing access controls at these facilities sooner, rather than later, would provide additional assurance of the trustworthiness and reliability of individuals who have access to these facilities. We also may want to extend the RAMQC Orders to Category 2 quantities of radionuclides of concern.

With regard to Groups 1-4 licensees in our 34 Agreement States, I believe that the staff should consider a 10 CFR 73.57-like process, whereby Agreement State licensees would submit fingerprints to NRC for further processing. Given the 1,300 to 1,400 Agreement State licensees that actually possess Category 1 and 2 quantities, I believe that this would be a manageable addition to the number of fingerprint cards processed by NRC.

Also, to be consistent with Commission direction in the SRM for SECY-06-0025, the rule text and Statement of Consideration should be clarified to note that background checks form the basis of trustworthiness and reliability and are comprised of several elements (e.g., criminal

history record check requiring fingerprints, verification of identity, a check into employment history, education and personal references). The following proposed change to the rule text would address this principle:

“Licensees are excepted from the security background check provisions in Section 170I of the AEA if they have not received Orders from the Nuclear Regulatory Commission containing requirements for background checks for trustworthiness and reliability that include fingerprinting and criminal history record checks ~~and for background checks for trustworthiness and reliability~~ as a prerequisite for unescorted access to radioactive materials.”

 /RA/ July 27, 2006
Edward McGaffigan, Jr. (Date)

NOTATION VOTE

RESPONSE SHEET

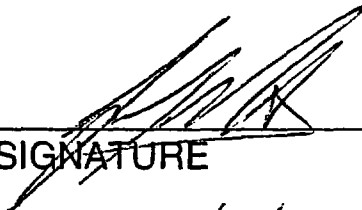
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0139 - SECURE TRANSFER OF NUCLEAR MATERIAL (RIN: 3150-AH90)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

No additional comments.



SIGNATURE

6/30/06

DATE

Entered on "STARS" Yes No

NOTATION VOTE

RESPONSE SHEET

REVISED VOTE


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: **SECY-06-0139 - SECURE TRANSFER OF NUCLEAR MATERIAL (RIN: 3150-AH90)**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

Please see attached comments.



SIGNATURE

7/11/06

DATE

Entered on "STARS" Yes No _____

**Commissioner Jaczko's Comments on SECY-06-0139
Secure Transfer of Nuclear Material**

I approve as modified the staff's recommendation to publish, in the *Federal Register*, the proposed rule to 10 CFR 73 that would except certain licensees or individuals from the security background check provisions of Section 656 of the Energy Policy Act (EPAAct) .

I appreciate the efforts of the staff to work through the complicated statutory provisions regarding federal security background checks in the EPAAct. As the staff has informed the Commission, there is tremendous overlap between the provisions of Section 656 and Section 652 of the EPAAct. This overlap and the different schedules in the two provisions complicate the agency's implementations of these provisions. I commend the staff for presenting an approach in a timely manner that attempts to address the similar elements of both provisions and allows the Commission to meet most of the statutory deadlines imposed by the EPAAct. I do, however, believe a slightly different approach outlined below will provide for improved compliance with Section 656 until the staff is able to complete a more comprehensive rulemaking for Section 652.

The Energy Policy Act (EPAAct) of 2005 in Section 656 amended the AEA to require the U.S. Nuclear Regulatory Commission (NRC) to establish a process to ensure that various nuclear materials transferred or received under an import or export license have an appropriate manifest and that individuals involved be subject to a security background check. Additionally, the EPAAct requires the Commission to issue regulations within one year to except certain radioactive materials or classes of individuals from the new requirements.

Prior to gaining this new authority, the NRC issued orders to various licensees with nuclear materials requiring them to restrict access to these materials to persons that are trustworthy and reliable. Accordingly, NRC materials and fuel facility licensees conduct background checks on individuals requiring unescorted access to nuclear materials consistent with the orders, but the background checks are not federal criminal history checks obtained through fingerprinting. The NRC only received the authority to conduct these criminal history checks in the Energy Policy Act under a different provision, Section 652.

As directed by Section 656 of the EPAAct, the staff proposes to amend the regulations in 10 CFR 73 to except certain licensees from the federal security background check requirements of Section 656. The staff proposes to except an individual who did not receive an order to require background checks and criminal history checks. The rule as currently proposed would exempt every NRC materials or fuel facility licensee, because the staff has not issued any orders for criminal history checks. The staff, however, proposes to send these orders to licensees with pool type irradiators, manufacturers and distributors, and licensees shipping radioactive material in quantities of concern. Eventually, therefore, these licensees would not be excepted from the requirements of Section 656. I believe the NRC should except fewer licensees from these requirements, however.

First, the current proposal by the staff for issuing additional orders seems to focus primarily on licensees with International Atomic Energy Agency Code of Conduct Category 1 thresholds of nuclear material. I believe that all licensees involved in imports and exports that possess Category 2 and above threshold quantities should not be excepted from Section 656. The licensees should receive new or revised orders imposing the fingerprinting and criminal history records check requirements for individuals needing access to these materials.

In addition, since the EAct covered a range of nuclear materials and the NRC issued orders to fuel facility licensees to restrict access to nuclear materials to individuals who are trustworthy and reliable, the NRC should not except Honeywell and the appropriate fuel cycle licensees. The NRC should issue amended or new orders to Honeywell and the appropriate fuel facility licensees to impose requirements necessary to comply with Section 656. By issuing orders to fuel facility and materials licensees alike the NRC can be sure that it has consistently applied the additional access control requirements for imports and exports of nuclear materials required by NRC's new authority.

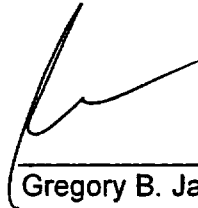
Finally, the EAct gives NRC the authority to apply the security background check requirements to individuals who accompany nuclear materials pursuant to an import or export license. This raises again the question of how do we ensure proper access controls to nuclear materials in the possession of carriers, whom we do not directly regulate but have the authority to do so for nuclear materials. I believe that this continues to be a challenge for the NRC; however, it is one that the NRC can and should meet. Because individuals employed by carriers "accompany" nuclear materials shipped pursuant to an import or export license, the NRC should issue orders directly to carriers to ensure the trustworthiness and reliability of its employees involved in these shipments. I do not believe that the NRC should continue to use contracting arrangements between shippers and carriers to ensure individuals with unescorted access to nuclear materials meet the security background check requirements. Issuing orders to the carriers helps the NRC ensure that carriers are taking appropriate actions to restrict access to nuclear materials to those individuals who have been determined to be trustworthy and reliable and have passed a federal criminal background check.

Hence, the staff proposal should be modified in four ways:

1. The staff should ensure that: (a) individuals involved in the transfer or receipt pursuant to an import or export license of nuclear materials greater than IAEA category 3 should be required to have a criminal history and trustworthiness and reliability background check to comply with Section 656 and (b) fuel cycle facilities possessing materials transferred or received pursuant to an import or export license that previously received security orders should be required to have a criminal history and trustworthiness and reliability background check to comply with Section 656.
2. The staff should ensure that shippers of at least IAEA category 1 nuclear materials transferring or receiving material pursuant to an import or export license should be required to have a criminal history and trustworthiness and reliability background check to comply with Section 656.
3. The staff should issue or modify any necessary orders to implement the requirements described above to have criminal history and trustworthiness and reliability background checks to comply with Section 656.
4. The staff should except all other individuals and classes of materials from the requirements of Section 656 through the proposed rulemaking on Part 73.

Although I recognize these requirements will involve many modifications to existing orders or the issuance of new orders, I believe it will provide a more consistent implementation of the new authority required under Section 656. Ultimately, much of the confusion created by Section 656 will be resolved when the Commission completes its comprehensive rulemaking effort on

Section 652. I am confident the staff will be as diligent in meeting as many of the statutory deadlines imposed in that section as the staff has been in working through Section 656.



Gregory B. Jaczko

7/11/06

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0139 - SECURE TRANSFER OF NUCLEAR MATERIAL (RIN: 3150-AH90)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.

Peter E. Lyons


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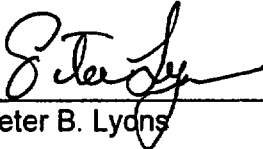
6/ 29 /06

DATE

Entered on "STARS" Yes No

Commissioner Lyons' Comment on SECY-06-0139

I approve the staff's publication of the proposed amendment to 10 CFR Part 73 to implement Section 656 of the Energy Policy Act of 2005 with the following comment. Replace the wording "or Orders that they receive upon becoming licensees" in the second paragraph on page 13 of the Federal Register notice with "or new or amended Orders" to clarify that Orders can be issued to a new or existing licensee at anytime. I commend the staff for leveraging the manifest requirements of other federal partners (the Department of Transportation and the Department of Homeland Security) in concert with NRC security measures to develop a workable solution for addressing Section 652.


Peter B. Lyons Date 6/29/06