



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

August 12, 2008

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-08-0083

TITLE: PROPOSED RULE ESTABLISHING CRIMINAL PENALTIES  
FOR THE UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE NRC

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 12, 2008.

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 Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-08-0083

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	7/31/08
COMR. JACZKO	X				X	7/22/08
COMR. LYONS	X				X	7/28/08
COMR. SVINICKI	X				X	7/7/08

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved 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 August 12, 2008.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** CHAIRMAN KLEIN  
**SUBJECT:** SECY-08-0083 – PROPOSED RULE  
ESTABLISHING CRIMINAL PENALTIES  
FOR THE UNAUTHORIZED INTRODUCTION  
OF WEAPONS INTO FACILITIES DESIGNATED  
BY THE NRC

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_



\_\_\_\_\_  
SIGNATURE

7/31/08

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

Chairman Klein's Comments on SECY-08-0083

I approve publication of the proposed rule, subject to the following comments.

I share the interest of my fellow Commissioners in undertaking an effort to provide definition to the terms "dangerous weapon," "dangerous instrument or material," "explosives" and quantities of concern." Specifically, I believe it would be useful if the Federal Register notice sought comments on whether definitions should be provided for these terms and, if so, what definitions or guidance would be appropriate. Further discussion, definition or guidance on these terms might then be incorporated into the rule or addressed in regulatory guidance. However, I do not believe it is necessary to seek comment on the meaning of "willful," a term which has long been employed in the law, including provisions of the Atomic Energy Act.

I agree with Commissioner Jaczko that the criminal penalties associated with the authorizing legislation appear to be modest at best (at most, 1 year imprisonment and/or \$5,000). I think it would be useful to have staff review these penalties as well as other criminal penalties contained in the Atomic Energy Act and provide recommendations to the Commission, after consultation with the Department of Justice, on whether legislation should be sought to increase the penalties.

I also appreciate Commissioner Jaczko's underlying concern in proposing that the rule be expanded to address some portions of hospitals and others facilities. However, Commissioner Jaczko recognizes that that there are obvious complexities in that approach. I concur with Commissioner Lyons that the proposal is premature at this time, and the staff should consider whether to expand the regulation to these types of facilities and uses in the future.

Finally, I agree with Commissioner Svinicki that the staff should consider an alternative location in NRC regulations for the proposed posting requirement.



Dale E. Klein

7/31/08

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER JACZKO  
**SUBJECT:** SECY-08-0083 – PROPOSED RULE  
ESTABLISHING CRIMINAL PENALTIES  
FOR THE UNAUTHORIZED INTRODUCTION  
OF WEAPONS INTO FACILITIES DESIGNATED  
BY THE NRC

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached  X  None

  
\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

7/22/08

Entered on "STARS" Yes  X  No

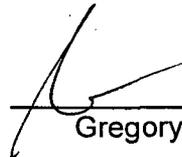
**Commissioner Jaczko's Comments on SECY-08-0083, Proposed Rule Establishing  
Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities  
Designated by the NRC**

I approve of this proposed rule. I agree with Commissioner Svinicki that, despite the challenges involved the proposed rule should seek comment on the various undefined terms involved and important for this regulation, including "dangerous weapon", "dangerous instrument or material", "explosive" or the quantities of concern. I also believe the proposed rule should seek comments on whether or not the regulations should define the term "willful" and if so, what that definition should be.

I understand the staff anticipates receiving comments from the Department of Justice (DOJ) during the comment period. I would encourage the staff to contact DOJ and ensure this happens, especially regarding the need for and definitions of these various terms. This is a regulation intended for criminal prosecution, and thus ensuring the prosecutors find it effective is essential.

Additionally, the staff should modify this rule to expand the criminal penalties associated with section 654 of the Act to some portions of hospitals and other facilities which are licensed to house radiological materials at the quantities of concern included in the National Source Tracking System. There are obviously some complexities that would be involved in this approach, but I believe the current threat environment requires us to take a hard look at including these facilities within these criminal penalty provisions.

In order to make these criminal penalties more meaningful, I also believe staff should provide the Commission with draft amendments to this legislation that would increase the criminal penalties associated with these crimes in its next proposed legislation package. The current legislation seems meek at best, only providing for criminal penalties of, at most, 1 year imprisonment and/or \$5,000. These are serious violations and the penalties should be commensurate with the dangers imposed by these actions.

  
\_\_\_\_\_  
Gregory B. Jaczko                      7/22/08  
Date



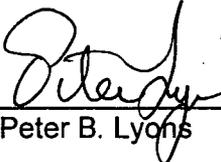
**Commissioner Lyons' Comments on SECY-08-0083 - Proposed Rule  
Establishing Criminal Penalties for the Unauthorized Introduction of  
Weapons into Facilities Designated by the NRC**

I approve publication of the proposed rule and have the following comments.

In general, I agree with my fellow Commissioners that the terms to be used in this rulemaking, e.g., "dangerous weapon," "dangerous instrument or material," "explosives," and "willful," should be better defined to make implementation of this rule easier. However, I appreciate that this will not be an easy task. "Dangerous weapon," for example, could be defined not only as a specific weapon such as a gun or knife, but also, more broadly, as an item that is capable of inflicting bodily harm or harm to property. For this reason, some of the details of implementation may be more appropriately addressed in regulatory guidance in order to provide maximum flexibility to licensees implementing the requirements at sites with unique attributes. I also agree with Commissioner Svinicki that it would be awkward to locate the requirement addressing the specific language for the notices and the placement of the sign within 10 CFR 73.70(i) and that the staff should consider an alternative location for it within Part 73.

I believe it is premature to support Commissioner Jaczko's statement that this rule should be expanded to include some portions of hospitals and other facilities that are licensed to possess radioactive materials that are in the National Source Tracking System; however, I appreciate his concern that a clear basis for not including such facilities is lacking and should be included. I believe controlling the carrying of a weapon into these facilities could be an enormous challenge. In that regard, I would note that there are currently a larger number of persons permitted to carry concealed weapons. In some states students are allowed to carry guns into classrooms and on campus. Thus, implementing such a program at a major medical teaching hospital/university in a state that allows people to carry concealed weapons would be a tremendous undertaking. Future expansion of this regulation to cover waste facilities and other installations that are subject to Agreement State jurisdiction should be coordinated with these states since the varying state concealed weapon laws and the inclusion of facilities that possess radioactive materials down to 1/10<sup>th</sup> of Category 3 sources need to be carefully considered. If the staff concludes that this regulation should be expanded at a future date, it should come back to the Commission with its basis and recommendation.

I also support Commissioner Jaczko's comment regarding criminal penalties being more meaningful. However, before I support directing the staff to develop draft legislation, the staff should provide the Commission with a paper that reviews the agency's existing enforcement penalties for safety and security violations and makes recommendations based on these penalties. The staff should coordinate such a paper with the Department of Justice prior to providing it to the Commission.

  
Peter B. Lyons  
Date 7/28/08

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-08-0083 – PROPOSED RULE  
ESTABLISHING CRIMINAL PENALTIES  
FOR THE UNAUTHORIZED INTRODUCTION  
OF WEAPONS INTO FACILITIES DESIGNATED  
BY THE NRC

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached  X  None

  
\_\_\_\_\_  
SIGNATURE

7-7-2008   
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No

**Commissioner Svinicki's Comments on SECY-08-0083**  
**Proposed Rule Establishing Criminal Penalties for the Unauthorized Introduction**  
**of Weapons into Facilities Designated by the NRC**

I approve publication of this proposed rule and make the following comments.

The proposed rule fails to define the terms "dangerous weapon" and "dangerous instrument or material." The proposed rule also does not define the term "explosive" or the quantities of concern. State laws vary greatly with respect to defining objects that constitute dangerous weapons or instruments. As I see it, the staff has two options. Either define these terms based on trends in case law prior to publishing the proposed rule or explicitly seek comment through the rulemaking process on how these terms should be defined. I prefer the latter approach. In either case, the Commission should review the staff's proposed definition prior to issuance of a final rule.

I also note that the proposed rule would require that the signs be "easily readable" at night. I don't believe that the staff intends for the signs to be self-illuminating (like a building exit sign) but no clarification is provided and the requirement is, consequently, unclear. Staff should research other signage requirements currently in regulation to ensure consistency with the proposed rule.

Finally, I believe the recommended placement of a new signage requirement within 10 CFR 73.70 (i), as staff has proposed, may be awkward since the preceding subsections deal with logs and records. Staff may want to consider alternative placement, elsewhere within Part 73.



Kristine L. Svinicki

07/ 708