



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

June 1, 2010

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0183

TITLE: PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART I OF 10 CFR PART 26

The Commission (with Commissioners Svinicki, Apostolakis, Magwood and Ostendorff agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 1, 2010. Chairman Jaczko disapproved the paper.

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

VOTING SUMMARY - SECY-09-0183

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO		X			X	1/29/10
COMR. SVINICKI	X				X	1/26/10
COMR. APOSTOLAKIS	X				X	5/10/10
COMR. MAGWOOD	X				X	5/21/10
COMR. OSTENDORFF	X					5/17/10

COMMENT RESOLUTION

In their vote sheets, Commissioners Svinicki, Apostolakis, Magwood and Ostendorff approved the staff's recommendation and Commissioners Svinicki, Apostolakis and Magwood provided some additional comments. Chairman Jaczko disapproved the staff's recommendation and provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 1, 2010.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Gregory Jaczko  
**SUBJECT:** SECY-09-0183 – PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART 1 OF 10 CFR PART 26

Approved \_\_\_\_\_ Disapproved  X  Abstain \_\_\_\_\_

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

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

Disapproved with comments attached.

  
\_\_\_\_\_  
SIGNATURE

1/29/10  
\_\_\_\_\_  
DATE

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

**Chairman Jaczko's Vote on SECY-09-0183**  
**Proposed Modification for Including Quality Control and Quality Verification Personnel**  
**within the Scope of Subpart I of 10 CFR Part 26**

I disapprove of the staff request to reduce the proposed work hour requirements for personnel performing quality control and quality verification functions. Quality control and quality verification are important to ensuring safe and secure operation of nuclear power plants. Personnel performing these functions have an important oversight responsibility for activities (e.g., maintenance) that have a direct effect on the safe and secure operation of nuclear power plants. Alertness in the personnel performing these functions is key in avoiding human error.

In Staff Requirements Memorandum (SRM) M070417B, the Commission approved and directed the staff to make a number of changes to the final rule amending 10 CFR Part 26, "Fitness for Duty Programs." The final rule revised, reorganized, and clarified drug and alcohol testing programs and established requirements for managing worker fatigue at operating nuclear power plants. Two of the many changes that the Commission directed the staff to make were:

"The provisions for minimum days off during normal operating conditions (e.g. 26.205(d)(3)) should provide maintenance personnel within the scope of 26.4(a)(2) a minimum of 2 days off per week when working 10 or 12 hour shifts and 1 day off per week when working 8 hour shifts, as averaged over a 6 week shift cycle."

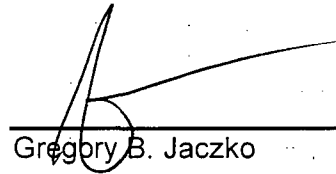
And

"The staff should ensure that personnel who actually perform independent quality control/verification (QC/QV) checks under the licensee's NRC-approved Quality Assurance Program are subject to the same Subpart I provisions as operating personnel defined in category § 26.4(a)(1). If staff and OGC determine that this provision of the rule requires re-notice and comment under the APA, staff should issue the final rule without this provision. In that case, staff should separately initiate the additional appropriate noticing for this provision."

During its deliberations on the final rule, the Commission decided to reduce the work hour requirements of personnel performing maintenance that were proposed by the staff and to extend enforceable work hour requirements to personnel performing quality control and quality verification. The work hour requirements for personnel who perform quality control and quality verification was added to compensate for the reduction in the work hour requirements on personnel who perform maintenance functions. Because the addition of work hour requirements for personnel who perform quality control and quality verification would have required re-noticing the rule and delay its implementation, this important and necessary change was not made at that time.

I believe the work hour requirements for maintenance personnel originally proposed by the staff would not have created a situation in which it would be difficult to obtain a qualified work force and would have ensured the fitness for duty of maintenance workers. I found the compromise reached by the Commission acceptable, because the safety and security benefits that remained in the rule for personnel that have direct effect on the safe and secure operation of nuclear power plant are a substantial improvement over the previous rule. Because the addition of work hour requirements for personnel who perform quality control and quality verification was to compensate for the reduction in the work hour requirements for personnel who perform maintenance functions, I am not persuaded by the staff's comparative analysis that the

proposed work hour requirements for personnel performing quality control and quality verification functions should be reduced. The staff should finish making all the changes as directed by the Commission in SRM M070417B.

  
\_\_\_\_\_  
Gregory B. Jaczko                      1/29/10  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-09-0183 – PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART 1 OF 10 CFR PART 26

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

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

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

  
\_\_\_\_\_  
SIGNATURE

01/26/10  
\_\_\_\_\_  
DATE

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

**Commissioner Svinicki's Comments on SECY-09-0183  
Proposed Modification for Including Quality Control and Quality Verification  
Personnel Within the Scope of Subpart I of 10 CFR Part 26**

I approve the staff's recommendation to include the individuals who perform quality control/ quality verification (QC/QV) inspections under the same Subpart I provisions of 10 CFR Part 26 as individuals who perform maintenance functions specified in 10 CFR 26.4(a)(4). After studying the deliberations of the prior Commission action on SECY-06-0244, as documented in the voting record arising from the notation voting process on that paper, I believe I would have sided with the Commission minority (consisting of, as I interpret it, Commissioners McGaffigan and Merrifield) on this question. Namely, I would have rejected the requirement to subject QC/QV personnel to the same Subpart I provisions as operating personnel. The staff's comparative analysis, conducted after the prior Commission's direction and documented in SECY-09-0183, only strengthens my conclusion in this regard in finding, "the QC/QV inspection functions are aligned with functions performed by maintenance personnel, with respect to the effects of fatigue on the four key dimensions: sustaining attention, problem solving, decision making, and communicating and working as a team." Consequently, I support the staff's recommendation to modify the prior direction.

  
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Kristine L. Svinicki                      01/26/10

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Apostolakis  
SUBJECT: SECY-09-0183 – PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART 1 OF 10 CFR PART 26

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS: Below   X   Attached        None       

I approve the staff's recommendation to include the individuals who perform quality control/quality verification inspections under the same Subpart I provisions as individuals who perform maintenance functions specified in 10 CFR 26.4(a)(4). I acknowledge that this recommendation is a change from the Commission's prior direction as described in SRM-M070417B.



SIGNATURE

5/10/10

DATE

Entered on "STARS" Yes        No



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-09-0183 – PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART 1 OF 10 CFR PART 26

Approved  X  Disapproved       Abstain      

Not Participating      

COMMENTS: Below       Attached  X  None      



\_\_\_\_\_  
SIGNATURE

May 21, 2010

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No

**Commissioner Magwood's Comments on SECY-09-0183**  
**Proposed Modification for Including Quality Control and Quality Verification Personnel**  
**within the Scope of Subpart I of 10 CFR Part 26**


As instructed by the Commission in 2007, the staff has developed the subject modification to 10 CFR Part 26 (generally known as the "Fitness for Duty" Rule) and has recommended that individuals who perform quality control/ quality verification (QC/QV) inspections fall under the same provisions of Part 26 as individuals who perform maintenance functions. I appreciated the staff's diligence in meeting the Commission's charge to address this issue. The majority of my colleagues have voted to approve this recommendation and, while I have significant reservations which I highlight below, I join the majority in supporting the staff recommendation.

Having reviewed the record, I understand the history of how the Commission reached the point where it determined that implementing Part 26 was necessary. However, I echo the concerns expressed by Commissioner Merrifield who in his vote on the Part 26 Final Rule noted: "The available scientific data to support both the industry and the staff positions is either lacking in its direct applicability or not supportive of the level of detail contained in this rule."

Based on my review of the record and my interactions with stakeholders, I believe that sufficient questions exist such that the Commission should review carefully the implementation of Part 26 and to consider whether substantive modifications are in order. Licensees now have considerable experience with the implementation of Part 26. Anecdotal evidence exists to suggest that there have been unintended consequences at some licensee facilities. Examples include decisions by some personnel impacted by Part 26 to obtain second jobs to compensate for the loss income caused by application of the rule to their work schedules. Certainly, this agency is not in the business of regulating licensee personnel time off, but unanticipated consequences of this nature could undermine the very purpose of the rule.

Further, licensees have, on occasion, indicated that the bureaucratic burden and lack of flexibility associated with implementation of the rule is onerous and burdensome without providing a commensurate benefit in safety. The Commission must understand whether these and other concerns are isolated examples or more prevalent developments that should be addressed by the agency.

With these concerns regarding implementation of Part 26, I hesitate to expand the reach of this rule without a full assessment of its overall success in meeting its intended purpose. However, I concur with the staff's recommendation with the expectation that within the coming months, agency staff will engage stakeholders and discuss with the Commission the practical application of Part 26 and to propose improvements or modifications to the rule should they be needed.

  
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William D. Magwood, IV    Date    5/21/10

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER OSTENDORFF  
SUBJECT: SECY-09-0183 – PROPOSED MODIFICATION FOR INCLUDING QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL WITHIN THE SCOPE OF SUBPART 1 OF 10 CFR PART 26

Approved X Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

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

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

(This confirms my original vote, signed on my behalf by Ho Nieh on 5/17/10)

  
\_\_\_\_\_  
SIGNATURE

5/20/10  
\_\_\_\_\_  
DATE

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