



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

March 24, 2011

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0003

TITLE: STATUS OF ENFORCEMENT DISCRETION REQUEST AND  
RULEMAKING ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, "MANAGING FATIGUE"

The Commission acted on the subject paper as indicated in the attached vote sheets and recorded in the Staff Requirements Memorandum (SRM) of March 24, 2011.

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", 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-11-0003

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	2/16/11
	X	X			X	3/11/11
COMR. SVINICKI	X				X	3/4/11
COMR. APOSTOLAKIS	X				X	3/11/11
COMR. MAGWOOD	X				X	3/4/11
COMR. OSTENDORFF	X	X			X	3/11/11

COMMENT RESOLUTION

The Commission acted on the subject paper as indicated in the attached vote sheets. Comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on March 24, 2011

**NOTATION VOTE**


**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Gregory B. Jaczko  
SUBJECT: SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, “MANAGING FATIGUE”

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached  X  None

  
\_\_\_\_\_  
SIGNATURE

2/16/11   
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  x  No

**Chairman Jaczko's Comments on SECY-11-0003,  
"Status of Enforcement Discretion Request and Rulemaking Activities Related To  
10 CFR Part 26, Subpart I, Managing Fatigue"**

On February 8, 2011, the Commission received a briefing on implementation issues associated with the minimum days off requirement in 10 CFR Part 26, Subpart I, "Managing Fatigue," that supplemented the information provided by the staff in SECY-11-0003, "Status of Enforcement Discretion Request and Rulemaking Activities Related To 10 CFR Part 26, Subpart I, Managing Fatigue." The regulatory requirements in Subpart I of Part 26 on work hours for personnel at nuclear power plants are necessary to prevent worker fatigue from adversely affecting public health and safety and the common defense and security. It was mentioned by the staff at the briefing that the importance of fatigue management was one of the many lessons learned from the Three Mile Island accident.

From the information that has been provided to date, it is clear that the minimum days off for operations (i.e., non-outage) requirements are prescriptive, complex, and difficult to implement. Also, from the presentations from both the staff and external stakeholders, I am convinced that there is a viable alternative to the current requirement, which would make the rule easier to implement without weakening the intent of the rule. There appeared to be widespread agreement among all of the stakeholders that the proposed alternative developed by the staff would address the stated concerns. I support making adjustments to the rule that would make implementation easier without changing, from a performance standpoint and a fatigue management standpoint, the effectiveness of the rule.

As stated during the briefing, the staff is planning to provide the Commission with a separate Commission paper next month that further discuss the five options mentioned during the Commission briefing. Because the option that I prefer, rulemaking, was characterized as taking too long, I felt compelled to convert the information paper provided by the staff last month in order to propose an expedited process. I hope the process describe below will encourage the adoption of the rulemaking option by the Commission. Not only do I believe our highly skilled and innovative staff will be able to issue a change to the Part 26 rule in a timely manner, but I believe we are not being honest with ourselves or our stakeholders to not consider rulemaking our preferred option.

I believe an accelerated limited scope rulemaking would be a preferable, viable, and timely solution to the concerns raised during the briefing for three reasons:

- Because of the importance to safety and the acknowledged need for effective fatigue management requirements, it is important to keep a requirement in place. An accelerated limited scope rulemaking provides for an actual replacement of the current requirement with a comparable requirement.
- Because of the extensive interactions with external stakeholders during the development of the Part 26 rule, it would be appropriate to go through a direct final rule or notice and comment process when considering changes to the rule.

As I noted during Commission briefing, a lot of the concerns labeled as unintended consequences were in fact raised by various external stakeholders in letters to the NRC during the public comment period for the changes to 10 CFR Part 26. I do not raise this point to diminish difficulties that some licensees are having implementing the minimum

days off requirements or the need to improve the rule, but simply to acknowledge that the Commission at the time was aware of these concerns prior to approving the rule.

- This is an ideal opportunity for the NRC to demonstrate that rulemakings do not need to take years to complete. I have a long standing belief that one step the NRC can take to improve the timeliness of individual rulemakings is to limit the scope of the rulemaking. A limited scope rulemaking would be easier for external stakeholders to understand and ascertain the impact of proposed rules.

I am confident with the right set of conditions provided by the Commission, an accelerated limited scope rulemaking can be issued as final within four months. A proposed rule and direct final rule should be issued for publication within five weeks. Three days prior to publication in the *Federal Register*, the proposed rule, direct final rule, and final rule should be provided to the Commission. To minimize the overall duration of this rulemaking:

- The scope of the rulemaking should be limited solely to providing an alternative to the current requirement for minimum days off for operations (i.e., non-outage) in Part 26, Subpart I with the new proposed requirement for a 54-hour per week average over a rolling period of up to six weeks for operations (i.e., non-outage).
- The staff should promulgate rule language consistent with the interim approach described by the staff at the February 8, 2011, Commission briefing, allowing an essentially like-for-like alternative to the current non-outage minimum days off requirements.
- The petitions for rulemaking concerning Part 26 and other changes being considered to the rule should be handled in a separate rulemaking effort.
- For this rulemaking, all rulemaking authority is delegated to the Executive Director for Operations. This delegation includes the proposed rule, direct final rule, and final rule, unless substantive changes are made to the alternative that was presented at the February 8, 2011, Commission briefing. If substantive changes are made, the final rule should be provided to the Commission for approval.
- The lead office for this rulemaking should be the Office of General Counsel (OGC), because the staff has done sufficient technical work to establish an appropriate technical basis for the new proposed requirement.
- The offices assisting OGC in this effort should provide assistance on a priority basis.
- Because the staff has done sufficient work to establish an appropriate technical basis for the new proposed requirement, OGC should rely on existing technical work and regulatory analysis. Any additional internal technical reviews should be eliminated or minimized.
- Because of the public interaction held to date on the development of the proposed alternative requirement, the public comment period should be kept to 30 days with no extension of the public comment period.

- Specific comments should be sought on whether the alternative provides comparable assurance of fatigue management. Comments outside the limited scope of the rule change should not be considered or should be addressed under the separate rulemaking on Part 26.

In parallel with this accelerated limited scope rulemaking, the staff should prepare updated regulatory guidance on an expedited basis for issuance in four months.

The Part 26 rule is an incredibly complicated rule, but it is a rule that went through a lot of internal and external discussion; a lot of input from fatigue experts, industry representatives, union representatives, and other external stakeholders; and thoughtful consideration by the Commission. It is a rule that is providing an important safety benefit. Despite our best efforts to strike the right balance between establishing necessary regulatory requirements and imposing a necessary burden on the regulated industry, we sometimes miss the mark. The challenge then is to efficiently use the appropriate regulatory process to make any needed improvements to the regulatory framework to ensure the right balance is restored, which in this case would be rulemaking.

Many months have already lapsed pondering the correctness, wisdom, and possibility of granting the enforcement discretion requested by the Nuclear Energy Institute to relieve power reactor licensees from their obligation to meet the minimum days off requirements that were put in place to ensure worker fatigue was adequately managed to avoid adverse impact on safety from fatigue induced errors. In hindsight, this time would have been better spent advancing an accelerated limited scope rulemaking to put in place an alternative requirement that provides a comparable safety benefit and, in addition, addresses the difficulty that some licensees are having implementing the minimum days off for operations (i.e., non-outage) requirements.

  
\_\_\_\_\_  
Gregory B. Jaczko

2/16/11  
\_\_\_\_\_  
Date

**NOTATION VOTE**

**RESPONSE SHEET**

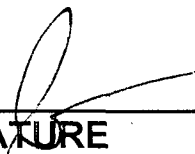
**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Gregory B. Jaczko  
**SUBJECT:** SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, “MANAGING FATIGUE”

Approved  X  Disapproved  X  Abstain

Not Participating

COMMENTS: Below  X  Attached  X  None

The attached comments supplement my vote dated 2/16/11.

  
\_\_\_\_\_  
SIGNATURE


3/4/4   
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  x  No

**Chairman Jaczko's Supplemental Comments on**

**SECY-11-0003, "Status of Enforcement Discretion Request and Rulemaking Activities  
Related To 10 CFR Part 26, Subpart I, Managing Fatigue"**

I appreciate Commissioners Apostolakis' and Ostendorff's support for use of an accelerated limited scope rulemaking to provide an alternative requirement to the non-outage minimum days off requirements in 10 CFR Part 26, Subpart I. Considering the much shorter timeframe it will take to issue an accelerated limited scope rulemaking, I agree with my colleagues that the use of enforcement discretion that is tied to the implementation of an accelerated limited scope rulemaking would be appropriate in this circumstance.

  
\_\_\_\_\_  
Gregory B. Jaczko

3/11/11  
\_\_\_\_\_  
Date



**NOTATION VOTE**

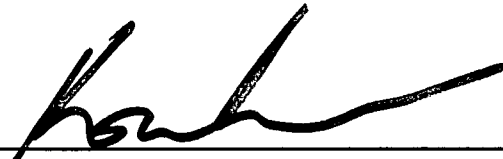
**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, “MANAGING FATIGUE”

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

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

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

  
\_\_\_\_\_  
SIGNATURE

03/4/11  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments on  
SECY-11-0003: Status of Enforcement Discretion Request and Rulemaking Activities  
Related to 10 CFR Part 26, Subpart I, "Managing Fatigue"**

and on

**SECY-11-0028: Options for Implementing an Alternative Interim Regulatory Approach to  
the Minimum Days Off Provisions of 10 CFR Part 26, Subpart I, "Managing Fatigue"**

I approve staff's recommended Option 4, to implement enforcement discretion for licensees failing to meet the requirements of 10 CFR 26.205(d)(3) and to publish the draft notice (Enclosure to SECY-11-0028), as edited in the attached, in the *Federal Register* as immediately effective. I approve the staff's plan to bundle the petitions for rulemaking (PRMs) related to 10 CFR Part 26, Subpart I, received from the Professional Reactor Operator Society, the Nuclear Energy Institute, and Security Officers of the Nine Mile Point Nuclear Station, into the staff's ongoing quality control/quality verification rulemaking as outlined in SECY-11-0003. Through these approvals, and as further discussed below, I advance my disposition of these, and interrelated matters, raised in SECY-11-0003 and SECY-11-0028.

The framing of the issue before us as a choice *between* rulemaking and enforcement discretion is a false one. A fulsome rulemaking process to scrutinize the full range of petitions received, which will include stakeholder input and interaction, is already planned by the staff. That NRC will receive significant adverse comments on any proposed revisions to Subpart I is a near certainty (invalidating, for this and a host of other reasons, the chimera of proceeding to a direct final rule in this case). Let me also be clear that I have made no prejudgment on the outcome of the issues to be addressed through that rulemaking process; rather, I will weigh the regulatory basis for any proposed revision to Subpart I and public comment on it, at the appropriate point in that process. I support that rulemaking process, which is estimated to take approximately 28 months to complete, fully. It is the appropriate venue for permanent revisions to the rule itself.

What I cannot support are attempts to de-legitimize or sensationalize the granting of enforcement discretion in a case such as this, which, in my view, so clearly fits its regulatory purpose. The staff has concluded that an interim alternative to the requirements of 10 CFR 26.205(d)(3), related to minimum days off for normal, non-outage operations, is appropriate while the staff is working on the related rulemaking in order to provide licensees access to immediate restoration of beneficial safety practices that have been curtailed under the existing regulation. The staff has narrowly crafted a functionally equivalent alternative approach to the minimum days off requirement, using the same weekly average of 54 hours worked, but calculated based on a rolling window of up to six weeks. The staff has concluded that this alternative requirement will limit work hours to levels comparable to current requirements while adding simplicity and flexibility, allowing the re-institution of certain safety practices. The staff concludes that enforcement discretion exists for applications such as this, is "well-established," and its use is recommended in this case. I agree. Moreover, the NRC's Principles of Good Regulation require that regulatory activities should be consistent with the degree of risk reduction they achieve and, *where several effective alternatives are available*, the option which minimizes the use of resources should be adopted. In this case, the regulated community has asked for interim flexibility in meeting one of our requirements through alternate means while a rulemaking process is undertaken to analyze a possible revision. I find that I can support this request with no jeopardy to my or the agency's "honest" approach to this issue.

  
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Kristine L. Svinicki

03/4/11

On September 3, 2010, the Nuclear Energy Institute (NEI) submitted a petition for rulemaking (PRM-26-5) (ML102590440). The NEI stated that "the new rule has resulted in consequences not originally envisioned when the rule was developed and that these consequences have diminished the safety benefits of the rule." The NEI has stated that the unintended consequences stem from the minimum days off requirements, specifically § 26.205(d)(3) through § 26.205(d)(6), which create an undue level of complexity and inflexibility in managing worker fatigue. The NEI requested, among other changes, that 10 CFR Part 26, Subpart I, be amended to replace the MDO requirements in § 26.205(d) with a performance-based objective, consisting of an average of 54-hours worked per week, averaged over a calendar quarter rather than over each shift cycle. The NEI also proposed changing the annual assessment in § 26.205(e)(1) to a quarterly assessment to provide a more frequent review of hours worked. The NEI proposed to eliminate the MDO requirements addressed at § 26.205(d)(3) through § 26.205(d)(6) <sup>while</sup> ~~and apply~~ the work hour limit <sup>§</sup> and break requirements (§ 26.205(d)(1)(i), § 26.205(d)(1)(ii), § 26.205(d)(1)(iii), § 26.205(d)(2)(i), and § 26.205(d)(2)(ii)), would remain unchanged and apply during on-line and outage periods. X

Separate from PRM-26-5, on September 23, 2010, NEI submitted a request for enforcement discretion regarding the MDO provisions of Part 26 (ML102710208). The request reiterates NEI's opinion that the regulations <sup>that</sup> ~~which~~ govern fatigue management impede "many safety-beneficial practices at plant sites, adversely [impact] the quality of life of covered workers, and [result] in conflicts between rule requirements and represented bargaining unit agreements." The letter requests that the NRC "exercise enforcement discretion from the [MDO] provisions of the rule" until the final disposition of PRM-26-5. X

The NRC held three public meetings (November 18, 2010, January 6, 2011, and January 25, 2011), during which the staff and stakeholders discussed alternatives to the MDO requirements. Although some of the stakeholders were comfortable with the MDO requirements, most focused their discussion on the unintended consequences, which they claim have diminished the safety benefits of the rule, along with <sup>the need for</sup> ~~needing~~ an alternative that is simpler and would provide greater scheduling flexibility. The staff's goal was to develop an alternative approach that was responsive to the needs of stakeholders, would maintain clear and enforceable requirements, and would ensure that the effects of cumulative fatigue are appropriately managed by licensees.

### Discussion

Cumulative fatigue is caused by consecutive days of restricted or poor quality sleep caused by such things as shift-work, extended work days, and extended work weeks. Currently, Subpart I requires licensees to manage cumulative fatigue primarily by providing workers with a minimum number of days off over the course of a period not to exceed 6 weeks. The distribution of the days off during the 6-week period act to either prevent or mitigate fatigue. An alternative method for managing cumulative fatigue is to establish a requirement to limit actual hours worked. A limit on actual hours worked, when applied to schedules that require regular shift coverage, limits the number of work hours that can contribute to cumulative fatigue and provides indirect assurance of periodic days off for recovery rest. A schedule resulting in a weekly average of 54 hours worked, calculated using a rolling window of up to 6 weeks is such a schedule. In general, most individuals that work their normal shift duration and receive only the minimum number of days off required under the current MDO requirements could average up to 54 hours per week. However, <sup>the</sup> NEI has indicated that implementation of the MDO

requirements has reduced licensee scheduling flexibility and imposed a substantial administrative burden. By comparison, limiting work hours to an average of not more than 54 hours per week by using a rolling window of up to 6 weeks limits the number of consecutive weeks of extended work hours that an individual can work by using a comparable but simpler and more flexible requirement. In addition, this alternative eliminates the burden of tracking the number of days off <sup>that</sup> an individual receives in each shift cycle. X

In summary, the maximum hours that can be worked under the alternative approach is comparable to the maximum hours worked under the current Part 26 MDO requirements, except that the alternative approach provides <sup>for greater</sup> the simplicity and flexibility ~~desired by the industry~~. This alternative is only applicable to § 26.205(d)(3) and covered workers described in § 26.4(a). Neither <sup>the</sup> NEI's PRM-26-5 nor its enforcement discretion request offered any comparably effective alternatives for § 26.205(d)(4), § 26.205(d)(5), and § 26.205(d)(6), nor were any identified during the public meetings; therefore, the staff is taking no action in regard to those regulations. X

The staff determined that replacing the <sup>current</sup> MDO requirements and requiring all licensees to adopt this interim alternative approach has the potential for introducing adverse consequences if those licensees satisfied with MDO requirements were forced to change. As a result, the interim enforcement policy would allow licensees to choose whether or not to implement this alternative approach. Licensees who properly implement this alternative approach will receive enforcement discretion for failing to meet the requirements of 10 CFR 26.205(d)(3). X

Although the rolling schedule required under the alternative approach limits the number of consecutive extended work weeks and thereby limits the potential for cumulative fatigue, there are unusual potential circumstances where the average can be met and the schedule may

X  
be fatiguing; however the industry has stated that these unusual schedules are improbable. Such schedules include having only one <sup>S</sup> day off in every nine, or consistently working the maximum allowable hours, which would likely result in cumulative fatigue. Nevertheless, the staff believes that this alternative approach, together with other aspects of the rule that will remain unchanged, will provide reasonable assurance that licensees manage cumulative fatigue consistent with the protection of public health, safety, and security. The staff will engage licensees during regularly scheduled public meetings in the coming months to identify problems and lessons learned from implementation of the alternative approach.

Licensees must inform the NRC of their intent to adopt the alternative approach, and must comply with all requirements of Subpart I, as applicable. The interim policy will remain in place until the NRC publishes a new final rule associated with the MDO requirements in 10 CFR Part 26, Subpart I, "Managing Fatigue."

X  
The NRC is not requesting public comment on this alternative approach at this time; instead, the NRC will seek public comment on the effectiveness of this approach during the comment period for a proposed rule associated with the MDO requirements in 10 CFR Part 26, Subpart I, "Managing Fatigue."

## PROCEDURAL REQUIREMENTS

### Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

This interim policy is only applicable to licensees who inform the NRC of their intent to adopt the alternative approach. Licensees shall comply with all requirements of Subpart I, as applicable, unless explicitly replaced or amended in this interim policy. The alternative approach to the MDO requirements applies to the work hours of covered individuals<sup>1</sup> during normal (e.g., non-outage/emergency) plant operations. This interim policy will remain in place until the implementation date of a revised final rule associated with the MDO requirements in 10 CFR Part 26, Subpart I, "Managing Fatigue."

A licensee who informs the NRC of its intent to transition to the alternative approach will receive enforcement discretion, and no enforcement action will be taken for the violation of 10 CFR 26.205(d)(3). If at any time while the licensee is implementing this alternate approach it does not meet the requirements, as stated in this interim policy, the licensee may be in violation of 10 CFR 26.205(d)(3) and subject to enforcement action. Once a licensee has transitioned to the alternate approach, it has the option to revert back to the requirement of § 26.205(d)(3), however the licensee is only allowed one opportunity to do so.

#### A. Actions and Requirements for Transition

A licensee must inform the NRC of its intent to transition to the alternative approach. Notification shall be made via a letter to the respective Regional Administrator and shall identify the implementation date which will be set by the licensee. The hours worked prior to the implementation date must meet the requirement of 10 CFR 26.205(d)(3), or enforcement action

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<sup>1</sup> The term "covered workers" refers to those individuals identified in § 26.4(a) who are subject to the requirements in § 26.205.

may be taken. Once the NRC has been notified of the implementation date, the licensee can commence its transition to the alternate approach.

In order to receive continuous enforcement discretion once the alternate approach is implemented, each covered worker is limited to a weekly average of 54 hours worked, calculated using a rolling window of up to 6 weeks. This alternative is not applicable to unit outages or security system outages. Any instance of an individual's average weekly work hours exceeding the requirements for enforcement discretion may result in a violation of the MDO requirements. Typically an instance of an isolated occurrence or occurrences with limited duration would generally be considered either a minor violation or a non-cited violation.

X

#### B. Required Actions for Transition Back to the MDO Requirement

At any time prior to the implementation date of a revised final rule associated with the MDO requirements in 10 CFR Part 26, Subpart I, "Managing Fatigue," the licensee has the option to transition back to the MDO requirements. However, the licensee only has this option once. The licensee must submit a written notification to the respective Regional Administrator stating that it is reverting back to compliance with the MDO requirements as specified under § 26.205(d)(3), and shall give the NRC advance notice of its transition date. There will be no enforcement



that

X action taken on any MDO violations which occurred while the licensee was implementing the alternate approach, unless the licensee failed to meet the requirements as stated in Section 9.2 A of this policy.

Dated at Rockville, MD, this    day of            2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,  
Secretary of the Commission.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Commissioner Apostolakis  
SUBJECT: SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, "MANAGING FATIGUE"

Approved  X  Disapproved   Abstain

Not Participating

COMMENTS: Below   Attached  X  None



\_\_\_\_\_  
SIGNATURE

3/17/11

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No

Commissioner Apostolakis' comments on SECY-11-0003 – STATUS OF ENFORCEMENT DISCRETION REQUEST AND RULEMAKING ACTIVITIES RELATED TO 10 CFR PART 26, SUBPART I, "MANAGING FATIGUE"

AND

SECY-11-0028 – OPTIONS FOR IMPLEMENTING AN ALTERNATIVE INTERIM REGULATORY APPROACH TO THE MINIMUM DAYS OFF PROVISIONS OF 10 CFR PART 26, SUBPART I, "MANAGING FATIGUE"

I recommend action on SECY-11-0003 and SECY-11-0028 as discussed below.

Industry has expressed concern that certain provisions of 10 CFR Part 26, "Fitness-for-Duty Programs" have unintended consequences that may diminish the safety benefit of the regulation. Staff's assessment confirms the need to address the industry's concerns. Staff has engaged industry and the public and developed options to address these issues in SECY-11-0028. I believe a viable, alternate approach has been identified. It would add a voluntary but acceptable alternate requirement to the current rule's requirement regarding minimum days off. Thus, I support the Chairman's proposal to authorize an expedited, limited scope rulemaking of short duration that includes a notice and public comment period, for the purpose of making this amendment to our rules.

I also support updating the regulatory guidance so that it is available for use when the final rule is published. In addition, I approve staff's recommendation in SECY-11-0028 that the Commission exercise enforcement discretion, but only to the extent required to carry out the limited scope rulemaking, updating of guidance, and make effective a rule amendment allowing compliance with an alternate requirement.

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER MAGWOOD  
**SUBJECT:** SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, “MANAGING FATIGUE”

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


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

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

SECY-11-0003 provides the Commission with an updated status of the multiple activities related to Part 26 Subpart I. I support the staff's approach of bundling the three petitions for rulemaking and the NEI request for enforcement discretion into the ongoing QC/QV rulemaking.

Consistent with my vote on SECY-11-0028, “Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off Provisions of 10 CFR Part 26, Subpart I, ‘Managing Fatigue’”, I approve issuing an interim enforcement policy until the rulemaking is complete.

As also noted in my vote on SECY-11-0028, I support the Chairman's desire for an accelerated rulemaking process that could be applied to circumstances such as the present matter. However, I believe the process he recommends requires further consideration and, therefore, am not at this time confident that it can be applied successfully to the issues described in SECY-11-0003. Nevertheless, the concept is worthy of pursuit and I look forward to working with my colleagues and the staff to developing and implementing an accelerated approach for future applications.

  
\_\_\_\_\_  
SIGNATURE

4 March 2011  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  X  No \_\_\_\_\_

**NOTATION VOTE**

**RESPONSE SHEET**

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

**FROM:** COMMISSIONER OSTENDORFF

**SUBJECT:** SECY-11-0003 – STATUS OF ENFORCEMENT  
DISCRETION REQUEST AND RULEMAKING  
ACTIVITIES RELATED TO 10 CFR PART 26,  
SUBPART I, “MANAGING FATIGURE”

Approved  X  Disapproved  X  Abstain

Not Participating

COMMENTS: Below  X  Attached   None

As described in my vote on SECY-11-0028, “Options for Implementing an Alternative Interim Regulatory Approach to the Minimum Days Off (MDO) Provisions of 10 CFR Part 26, Subpart I, ‘Managing Fatigue’,” I approve in part the accelerated limited scope rulemaking to address the non-outage MDO alternative as described in Chairman Jaczko’s vote. However, I disapprove in part the Chairman’s proposal that accelerated limited scope rulemaking alone provides a timely solution for the unintended consequences associated with the current MDO requirements. Thus, in parallel, the staff should provide a more timely solution by immediate granting of enforcement discretion.

  
\_\_\_\_\_  
SIGNATURE

3/11/11  
\_\_\_\_\_  
DATE

Entered on “STARS” Yes  X  No