

**AFFIRMATION ITEM**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Gregory B. Jaczko  
**SUBJECT:** SECY-11-0039 – FINAL RULE: DEFINITION OF  
CONSTRUCTION IN 10 CFR PARTS 30, 36, 39, 40, 51,  
70, AND 150

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

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

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

  
\_\_\_\_\_  
SIGNATURE

9/10/11  
\_\_\_\_\_  
DATE

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

**Chairman Jaczko's Comments on SECY-11-0039,  
"Final Rule: Definition of Construction in 10 CFR Parts 30, 36, 39, 40, 51, 70, and 150"**

I approve the staff's recommendation to publish this final rule to revise the definition of construction for materials licensees.

On a related matter, pre-construction activities can result in significant environmental impacts and these should be appropriately evaluated in our reviews under the National Environmental Policy Act (NEPA). For example, in the final "Environmental Impact Statement for the Proposed Eagle Rock Enrichment Facility in Bonneville County, Idaho" (NUREG-1945, February 2011), the impacts of pre-construction activities on historic and cultural resources, as well as ecological resources, are estimated as "moderate" while the impacts of actual construction are only "small." Similarly, the impact of pre-construction on air quality is estimated to range from "small to large" while the impact of actual construction is only "small." The EIS states that 90% of the impacts on cultural resources and air quality would occur during pre-construction, as would 80% of the impacts on ecological resources. In recognition of the potential for significant impacts from such activities, the staff should ensure that the impacts from pre-construction activities receive the proper level of evaluation and discussion in future NEPA reviews. The approach used in NUREG-1945, as documented in Chapter 4, seems to be the appropriate level of analysis and disclosure.

I agree with Commissioner Ostendorff that guidance will be particularly helpful in the application of this rule to materials licensees. With respect to Commissioner Svinicki's comment in her vote that, "It was the Commission itself, during a meeting with stakeholders in 2008, which recognized the need for and directed that this rulemaking be undertaken," I would like to clarify that the Staff Requirements Memorandum for that meeting stated that "The staff should budget resources to provide the Commission with a proposed rulemaking to... determine whether limited work authorization provisions are appropriate for in-situ uranium facilities" (emphasis added).

  
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Gregory B. Jaczko

  
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Date