

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Gregory B. Jaczko

SUBJECT: SECY-11-0129 – FINAL RULE: REQUIREMENTS FOR
DISTRIBUTION OF BYPRODUCT MATERIAL, 10 CFR
PARTS 30, 31, 32, 40, AND 70 (RIN 3150-AH91)

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

1 2/14/11

DATE

Entered on "STARS" Yes x No ___

**Chairman Jaczko's Comments on SECY-11-0129,
"Final Rule: Requirements for Distribution of Byproduct Material,
10 CFR Parts 30, 31, 32, 40, and 70"**

I approve some parts, and disapprove other parts, of this proposed final rule. This rule is intended to revise the regulations to make the requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up-to-date. For the most part, this proposed rule does just that; however, I have some concerns as described below.

As I indicated in my vote on the proposed rule in September 2009, I do not agree that a new class exemption should be added to the rule. The agency is generally moving towards more accountability of radioactive material, not less. Therefore, staff should remove the provision for a new class exemption.

Staff has requested that the Commission reconsider its previous direction given during the proposed rule phase, and now approve development of a proposed rule that would revise the safety criteria for products to be used under the existing class exemptions and the general license in 10 CFR 31.5. In February 2010, the Staff Requirements Memorandum for the proposed rule had directed the staff to instead consider revision of these safety criteria as part of its effort to develop the technical basis for possible revision of the NRC's radiation protection regulations to be consistent with the 2007 recommendations of the ICRP (ICRP-103). In the SECY paper for this final rule, staff has indicated that "[t]he existing criteria for the approval of devices under §31.5 present both safety and security concerns." My staff has discussed this issue with FSME staff and it would appear that although there are currently no devices licensed under these safety criteria that could cause a concern, there is the possibility for an applicant to apply for such a device in the future. Therefore, staff should continue to follow the previous direction regarding the revision of the safety criteria but should notify the Commission if it appears that there is an applicant for a device that could lead to safety or security concerns under the current regulations.

In this rule, staff has proposed imposing a quantity limit in order to, among other things, address concerns about aggregation and misuse of exempt sources. In his vote, Commissioner Ostendorff has disapproved the staff's recommendation of a quantity limit in exempt devices, stating that "there is no clear threat of such an occurrence or indication that this scenario is likely beyond the notion that aggregation is possible." I disagree with Commissioner Ostendorff on this point. As relayed in several media outlets a few years ago, a British national was found guilty and sentenced to life in prison after pleading guilty to planning attacks on financial centers, with some plans including the use of radioactive material obtained from purchasing smoke detectors. His plans were meant to cause "injury, fear, terror, and chaos," as specifically discussed in NRC's Fact Sheet on Dirty Bombs. Also, the interagency 2010 Radiation Source Protection and Security Task Force Report discusses the fact that some radionuclides may be of concern when aggregated. In addition, the staff has indicated that there are other benefits to quantity limitations, such as the fact that lower quantities will contribute to the ability to ensure that overall impacts to waste disposal workers are not significant. Therefore, I support staff's approach of using quantity limits to help ensure the safety and security of exempt devices.



Gregory B. Jaczko

12/14/11
Date