



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

February 15, 2012

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0108

TITLE: REGULATION OF CHEMICAL SECURITY

The Commission (with Commissioners Svinicki, Apostolakis, Magwood, and Ostendorff agreeing) disapproved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 15, 2012. Chairman Jaczko approved 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", is 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-11-0108

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	9/12/11
COMR. SVINICKI		X			X	12/22/11
COMR. APOSTOLAKIS		X			X	1/3/12
COMR. MAGWOOD		X			X	12/7/11
COMR. OSTENDORFF		X			X	11/28/11

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Gregory B. Jaczko
SUBJECT: SECY-11-0108 – REGULATION OF CHEMICAL
SECURITY

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



SIGNATURE

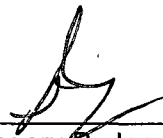
 9/12/11
DATE

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**Chairman Jaczko's Comments on SECY-11-0108,
"Regulation of Chemical Security"**

I approve the staff's recommendation of Option 3 to pursue rulemaking. My approval of Option 3 is based on the multi-year effort that NRC has been engaged in with the Department of Homeland Security to come to agreement on how to implement Section 550 of the DHS Appropriations Act for Fiscal Year 2007 (Public Law 109-295). The act stated that Section 550 would specifically not be applied "to any facility subject to regulation by the Nuclear Regulatory Commission;" however, the intent of Congress was that NRC, as well as the Agreement States, would then have responsibility for chemical security at sites under their regulation. In addition, a Memorandum of Understanding was signed by DHS and NRC on March 31, 2011, that specifies the classes of NRC and Agreement State-regulated facilities that are exempt from DHS Chemical Facility Anti-Terrorism Standards. Option 1, to maintain status quo, is not acceptable. It is clear that a gap exists and the NRC has indicated through its interactions with DHS, concluding with an MOU, the need for regulatory action to be taken. I am also not convinced that Option 2, where licensees would need to work through DHS, is practical or efficient.

Although the full scope of the rulemaking is not completely clear at this time, I believe that there is sufficient information at the present time to agree with the staff's rulemaking option to ensure there is not a gap for chemical security at NRC and Agreement State-licensed facilities. Therefore, the rulemaking process should be undertaken in a timely manner.

 9/12/11

Gregory B. Jaczko Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-11-0108 – REGULATION OF CHEMICAL
SECURITY

Approved _____ Disapproved XX Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

12/22/11

DATE


Entered on "STARS" Yes ☒ No _____

**Commissioner Svinicki's Comments on SECY-11-0108
Regulation of Chemical Security**

As discussed in SECY-11-0108, Congress directed the Department of Homeland Security (DHS) to regulate the security of chemical facilities, while broadly exempting NRC-regulated facilities. The NRC staff has successfully developed and implemented a Memorandum of Understanding with DHS to delineate responsibilities between our agencies for the security of high-risk chemical facilities subject to DHS regulation and for the security of chemicals of interest at facilities subject to NRC regulation. Going forward, it is important that the NRC's approach be appropriately risk-informed, given the security measures already imposed at NRC-licensed facilities and the general effect that NRC's strong regulatory framework for safety at these facilities has in reducing potential hazards by requiring the disciplined handling of materials onsite – regardless of whether their hazards be principally radiological or chemical in nature.

I find that my consideration of the issue does not result in a proposed path forward that aligns with any of the staff's three options. Rather, I believe the agency needs to proceed by addressing those categories of facilities possessing chemicals in quantities of concern outside of their existing security areas. To properly orient this approach, the staff should obtain additional information from all Category III fuel facilities through a request for information to identify and obtain specific information from those facilities that possess chemicals in quantities of interest stored outside of existing security areas about the amounts and location of these chemicals, the current level of security, and any security enhancements proposed to be implemented. Based on the information provided, the staff should provide the Commission with a notation vote paper that describes the staff's evaluation of those measures necessary to constitute an adequate chemical security framework at these facilities. The staff should also propose any necessary security enhancements that should be incorporated into site security plans and should recommend the appropriate regulatory mechanisms for imposing them.

This process will address those facilities that the NRC already identifies as having the potential for chemical security concerns and will do so in a prioritized and expedited fashion. The staff should also approach its evaluation of chemical security with cognizance of the beneficial effects that result from NRC's longstanding safety regulations in place at these facilities and should ensure that any measures proposed to enhance chemical security do not have the potential to adversely affect nuclear safety or the safety of workers or facilities as a whole. Any follow on work addressing chemical security activities at other categories of NRC facilities should be informed by a staff review of DHS's implementation of its chemical security regulations at chemical facilities, to be conducted at the point in time when DHS's implementation is fully underway. The staff should, therefore, maintain cognizance of DHS's program as it is implemented.



Kristine L. Svinicki 12/22/11

Original signed
by Steve Baggett
on 1/3/12 for
Cmr Apostolakis

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-11-0108 – REGULATION OF CHEMICAL
SECURITY

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ____ Attached X None ____



SIGNATURE

 1/5/12
DATE

Entered on "STARS" Yes x No ____

**Commissioner Apostolakis' Supplemental Comments on SECY-11-0108
Regulation of Chemical Security**


I disapprove the staff's recommendation (Option 3) to proceed with rulemaking. Additional information is needed to inform the agency's decision making on the important issues associated with the agency's regulation of chemical security. For instance, the scope of the proposed rulemaking is not clear, such as the nature and potential impacts of any additional security measures that may be required. In addition, the staff did not provide a threat assessment or a vulnerability assessment as a foundation for determining any appropriate changes to the existing security frameworks for the exempted facilities.

I recommend that the staff gain additional insights and clarity from all exempted facilities as part of an assessment of what if any additional security or related safety requirements may be necessary. As a next step, Commission Magwood has proposed reasonable questions for use in obtaining additional information. Staff should also use information and findings from the Department of Homeland Security (DHS) implementation of the Chemical Facility Anti-Terrorism Standards to inform the Staff's findings and proposals regarding security measures for chemicals of interest.

DHS uses threat assessments and vulnerability assessments. Staff should use the DHS process or a similar framework to determine the tiers in which the NRC/Agreement State facilities, and areas outside the security area, fall. This information should be provided to the Commission. Such an exchange of information may result in modifications to the current Memorandum of Understanding to formalize the information exchange.

Staff should specifically solicit input from the licensees and other stakeholders on whether the Commission should rely on its responsibilities regarding the common defense and security or on its health and safety mission in determining the applicability of proposed actions to Agreement States' licensees. Reliance on the responsibility for protection of public health and safety would allow the Agreement States to be directly involved in evaluating proposals for increased security controls and the applicability of the Chemical Facility Anti-Terrorism Standards.

After completing its analysis of the responses and any updated information from DHS, the staff should make recommendations to the Commission on how to proceed, by submitting either the necessary technical basis and policy and legal analysis or offering some other courses of action for better definition of the specific roles of the Department of Homeland Security and the NRC.


George Apostolakis
1/5/12

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-11-0108 – REGULATION OF CHEMICAL
SECURITY

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

7 December 2011

DATE

Entered on "STARS" Yes X No _____

**Commissioner Magwood's Comments on
SECY-11-0108, "Regulation of Chemical Security"**

The security of hazardous chemicals has been long recognized as a significant issue in the United States that has lingered in the decade since the terrorist attacks of September 2001. While the structure and mission of nuclear regulation enabled a rather rapid and comprehensive (though still evolving) response to the changed security environment, the innumerable facilities across the land that maintain, produce, store, and use a wide variety of hazardous chemicals operate under very different regulatory oversight. There was no clear authority for the regulation of security for chemicals at these facilities until Congress passed the Department of Homeland Security (DHS) Appropriations Act for Fiscal Year 2007.

As discussed in SECY-11-0108, Congress directed DHS to issue regulations that provide standards for the security of chemical facilities and require such facilities to develop and implement site security plans. Under the law, NRC-regulated facilities are broadly exempted, but it was immediately clear that for some facilities, NRC's regulatory footprint was insufficient to assure the security of hazardous chemicals. This regulatory "gap" was addressed by the staff as it engaged DHS to develop a Memorandum of Understanding (MOU) to delineate a clear line of responsibility between the two agencies, based on their legal authorities, for security of high-risk chemical facilities subject to DHS regulation and for security of chemicals of interest (COI) at facilities subject to NRC regulation. I commend the staff for this successful effort.

The next question that arises is that which is the central component of SECY-11-0108, *i.e.*, whether additional rulemaking is needed to assure the security of COI maintained in NRC-regulated facilities that are exempted from DHS oversight. While the information provided to the Commission thus far does not identify a security gap in exempted facilities, it is possible that for some facilities, a further optimization of the security-safety interface might prove beneficial. As the staff notes, NRC-regulated facilities are highly secure and most maintain only limited quantities of COI. If any such facilities are impacted, I concur with staff's assessment that the number of affected facilities would be very small.

Given that, I believe a new rulemaking is an unnecessarily broad tool to address any deficiencies that might exist. Therefore, I do not approve the staff's recommendation to proceed with a proposed rule. However, I do believe the agency needs to take a risk-informed approach to assuring that COI at exempted facilities is secure.

Given the nature of the work performed at uranium enrichment plants, conversion facilities, and other fuel cycle facilities, it appears that this class of site is the most likely among NRC-regulated sites to be impacted under the terms of the MOU. Therefore, as a first step, I recommend that staff obtain additional information from all fuel cycle licensees thru a request for information (RFI).

At a minimum, the request should seek responses to the following questions:

- Does the licensee maintain inventories of COI in excess of the thresholds set by DHS?
- Is the COI stored within the owner control area (as defined in regulation) or within the protected area subject to NRC security orders?
- For COI outside the protected area, has the licensee implemented any security measures to assure the protection of the COI?
- Using DHS standards as a general guide, is there a need to enhance the security of COI, and if so, what does the licensee propose?

Once the information provided by the licensees has been analyzed, staff should work with the fuel cycle community to identify what additional security measures, if any, should be incorporated into security plans. In doing so, I caution staff to be cognizant of the interface between safety and security considerations and ensure that any chemical security proposed enhancements do not have an adverse impact on safety.

When the information has been collected and analyzed, staff should provide the Commission with a notation vote paper that describes staff's view of what constitutes adequate security for COI in exempted facilities and outlines any needed enhancements to exempted fuel cycle facilities. Staff should provide the Commission with options to implement any needed enhancements (e.g., through the issuance of orders) at the few facilities that staff believes might be impacted and provide a clear explanation of the NRC legal authorities to implement such enhancements.

Prior to considering new chemical security activities at the other exempted facilities, staff should review DHS's implementation of its chemical security regulation. Lessons learned from DHS's experience should be applied to any actions NRC might take with regard to exempted facilities beyond the fuel cycle facilities discussed above. I therefore recommend that staff remain cognizant of DHS's program, keep the Commission informed of its findings, and provide the Commission any observations regarding how lessons learned might be applied to NRC-regulated facilities.

/RA/

William D. Magwood, IV

12/08/2011

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-11-0108 – REGULATION OF CHEMICAL
SECURITY

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____

 M. Ostendorff
SIGNATURE

 11/28/11
DATE

Entered on "STARS" Yes _____ No _____

Commissioner Ostendorff's Comments on SECY-11-0108, "Regulation of Chemical Security"

I appreciate the staff's diligence in monitoring the Department of Homeland Security's (DHS) development of Chemical Facility Anti-Terrorism Standards (CFATS). I share Congress's interest in chemical security and believe that some limited actions above and beyond the status quo are appropriate. As a key principle, I believe that the information currently available dictates that the agency's involvement in chemical security be risk-informed and measured. Specifically, the robust NRC security measures already in place, the limited regulatory gap identified by the staff, and the lack of information provided to support this security rulemaking, such as a detailed threat analysis, warrant a measured approach outside of the rulemaking process. Further, given the one-of-a-kind nature of the impacted facilities, rulemaking would not be feasible or efficient. Instead, specific actions at the limited number of facilities where a gap has been identified are appropriate. I therefore disapprove rulemaking (Option 3) for increased chemical security at NRC licensed facilities.

It is important to keep in mind that in 2005, the Commission reviewed the need to impose additional chemical security measures at the most chemically hazardous NRC-licensed facilities and determined that there was no need for additional action. I understand that the staff has since visited several licensed facilities and concluded that a potential gap exists at some Category III fuel facilities where chemicals of concern could be stored outside of protected areas. However, no compelling new threat, vulnerability, or consequence information exists to call into question the staff's previous conclusion that the current level of chemical security inside the protected areas at these facilities is adequate. Further, based on my discussions with the NRC staff, I believe that chemicals stored inside the protected area are secure. While I believe that reasonable actions should be taken to avoid having unprotected chemicals at NRC facilities, the narrow gap identified necessitates that rather than initiating rulemaking, regulatory actions be limited to Category III fuel facility licensees possessing chemicals in quantities of concern outside of the protected area.

The staff should proceed with an approach similar to Option 2 that incorporates any necessary enhancements into security plans of Category III licensees, but without, as proposed in Option 2, issuance of NRC regulations or utilizing DHS's web based tools. While use of site security plans as indicated in Option 2 will facilitate site specific implementation of any necessary security enhancements, I agree with the staff's assessment of the cons of the use of DHS's web based tools. To properly inform the NRC, the staff should obtain from the limited number of Category III facilities that may possess chemicals in quantities of interest stored outside of protected areas additional information on the amounts and location of these chemicals, the current level of security, and any security enhancements proposed by licensees. To promote a common understanding of the regulatory gap and acceptable chemical security measures, the staff should hold a workshop with the affected licensees. Based on the information provided, the staff should work with the affected licensees to incorporate any necessary security enhancements into site security plans using tools such as orders or license conditions, as

necessary. I believe such an approach balances the call for common sense actions in this area with the lack of information provided to support a formal rulemaking.

The staff's evaluation of what, if any, actions are necessary to enhance security of chemicals should be guided by the complexity of this issue given the involvement of multiple agencies. For example, the staff's actions may need to consider the implication of Occupational Safety and Health Administration safety requirements on any proposed security revisions as well as security provided by agencies such as the Transportation Security Administration during transport of chemicals to the site. Regulatory actions should provide the flexibility for site-specific, risk-informed approaches. The staff's actions will also need to balance the interface between safety and security considerations. In particular, the staff should ensure that any chemical security enhancements do not adversely affect safety.

The staff should inform the Commission of any security enhancements planned as a result of the information requested. If requirements beyond the limited circumstances outlined above are necessary, the staff should provide a notation vote paper to the Commission.