



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

June 18, 2012

SECRETARY

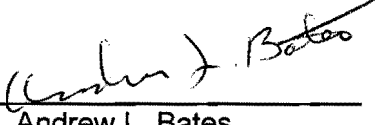
COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0066

TITLE: CRIMINAL PENALTIES FOR THE UNAUTHORIZED  
INTRODUCTION OF WEAPONS INTO FACILITIES  
DESIGNATED BY THE U.S. NUCLEAR REGULATORY  
COMMISSION AND FOR SABOTAGE OF NUCLEAR  
FACILITIES OR FUEL

The Commission (with Commissioners Svinicki, Apostolakis, Magwood, and Ostendorff approving, and Chairman Jaczko approving in part and disapproving in part) acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 18, 2012.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

  
\_\_\_\_\_  
Andrew L. Bates  
Acting 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-12-0066

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X	X			X	5/30/12
COMR. SVINICKI	X				X	6/5/12
COMR. APOSTOLAKIS	X				X	6/8/12
COMR. MAGWOOD	X				X	5/16/12
COMR. OSTENDORFF	X				X	5/18/12

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: Gregory B. Jaczko

SUBJECT: SECY-12-0066 – CRIMINAL PENALTIES FOR THE  
UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE U.S.  
NUCLEAR REGULATORY COMMISSION AND FOR  
SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Approved in Part   X   Disapproved in Part   X   Abstain       

Not Participating       

COMMENTS: Below        Attached   X   None       

  
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SIGNATURE

5/30/12  
\_\_\_\_\_  
DATE

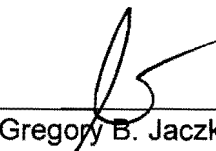
Entered on "STARS" Yes   X   No

**Chairman Jaczko's Comments on SECY-12-0066,  
"Criminal Penalties for the Unauthorized Introduction of Weapons into the Facilities  
Designated by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear  
Facilities or Fuel"**

I appreciate the staff's work in this area and I approve in part and disapprove in part. I disapprove the staff's recommendation that the wrongful introduction of weapons on the premises of facilities possessing byproduct material should not be subject to criminal sanctions under the Atomic Energy Act. The staff's principle concern was that criminal penalties under AEA would not be a deterrent. Currently, we have no data or analysis to support the conclusion that the penalties would or would not be a deterrent. Further, it is speculative to conclude that anyone who wrongfully introduces weapons into a hospital or university is suicidal or willing to die during the commission of their crime, and is therefore not deterred by criminal penalties. NRC's role is to provide for adequate security of licensed radiological materials, and an essential part of the security of these materials is the establishment of a weapons-free zone around them. We should authorize criminal penalties for compromising the security of radiological sources, and allow the courts to determine the mental state of those that violate the law.

I also note that the AEA is not specific about the location of signs warning of criminal penalties for the wrongful introduction of weapons into areas with radiological sources. It uses ambiguous terms, including "the location" and "the facility," which would allow for broad interpretation by the licensee. Licensees that may be concerned about calling attention to the exact location of radiological sources have flexibility to post signs at the entrance of the hospital or university.

Second, I approve the staff's recommendation to defer a decision on whether to proceed with a rulemaking to add certain radioactive materials or other property to the scope of criminal penalties for sabotage identified in Section 236 of the Atomic Energy Act. The staff cited the ongoing analysis of issues related to Section 236, and suggested that a decision should be deferred until the analysis is complete, since there is no compelling need for a rulemaking at this time. I agree with Commissioner Ostendorff that that staff should make a determination regarding the expansion of the scope of Section 236 once the related analysis is complete, and that if the staff determines that an expansion is necessary, the staff should provide a notation vote paper to the Commission.

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

5/30/12  
\_\_\_\_\_  
Date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-12-0066 – CRIMINAL PENALTIES FOR THE  
UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE U.S.  
NUCLEAR REGULATORY COMMISSION AND FOR  
SABOTAGE OF NUCLEAR FACILITIES OR FUEL

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

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

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

  
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06/5/12  
\_\_\_\_\_  
DATE

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

**Commissioner Svinicki's Comments on SECY-12-0066**  
**Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities**  
**Designated by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear**  
**Facilities or Fuel**

I approve the staff's finding that no further rulemaking is currently warranted to expand the list of facilities subject to criminal sanctions under section 229 of the Atomic Energy Act (AEA). The staff assesses that the NRC has already identified in its regulations the most significant classes of facilities and materials that should be subject to the criminal sanctions set forth in section 229 of the AEA and that States and other Federal agencies have a variety of existing laws available to prosecute and penalize individuals for the acts of concern (in some cases, under the threat of more stringent penalties than those authorized under the AEA).

I further approve the staff's recommendation to defer rulemaking action related to criminal penalties for sabotage under section 236 of the AEA until ongoing analyses regarding this and related security issues are complete and staff can establish whether there is a compelling basis to initiate rulemaking on this matter. If the staff so concludes, the staff should provide a notation vote paper to the Commission, including the results of the analysis, and other items, as proposed by Commissioner Ostendorff, in his vote.

  
\_\_\_\_\_  
Kristine L. Svinicki      06/ 5 /12

**NOTATION VOTE**

**RESPONSE SHEET**

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

**FROM:** COMMISSIONER APOSTOLAKIS

**SUBJECT:** SECY-12-0066 – CRIMINAL PENALTIES FOR THE  
UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE U.S.  
NUCLEAR REGULATORY COMMISSION AND FOR  
SABOTAGE OF NUCLEAR FACILITIES OR FUEL

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

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

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

  
\_\_\_\_\_  
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6/8/12  
\_\_\_\_\_  
DATE


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

Commissioner Apostolakis' Comments on SECY-12-0066,  
"Criminal Penalties for the Unauthorized Introduction of Weapons in to the Facilities Designated  
by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear Facilities or Fuel"

I appreciate the staff's efforts to obtain additional stakeholder comment and to assess the merits of rulemaking that would expand the application of Federal criminal penalties under sections 229 or 236 of the Atomic Energy Act of 1954, as amended, or both.

I approve the staff's recommendation that the Commission not pursue rulemaking to designate additional facilities under section 229 (criminal penalties for unauthorized introduction of firearms or explosives). The staff observes that the most significant classes of facilities and materials are already covered and a variety of existing laws are available to prosecute individuals who are determined to commit malevolent acts with respect to facilities and materials that are not covered.

I also approve the staff's recommendation that the Commission delay rulemaking to specify facilities or materials related to Federal criminal penalties for sabotage under section 236. The staff identifies a number of issues that support delay, and the staff deems the statutory language sufficiently clear for Federal prosecution for criminal acts involving the most significant facilities that the NRC regulates. I support Commissioner Ostendorff's proposal that the staff prepare and submit a notation vote paper if it determines that an expanded application of section 236 is necessary.



George Apostolakis 6/08/12



**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-12-0066 – CRIMINAL PENALTIES FOR THE  
UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE U.S.  
NUCLEAR REGULATORY COMMISSION AND FOR  
SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Approved   X   Disapproved        Abstain       

Not Participating       

COMMENTS: Below   X   Attached        None       

I approve staff's recommendations to refrain, at this time, from initiating a rulemaking to impose additional Federal penalties under Section 229 of the AEA and to defer consideration of penalties under Section 236 pending further action by the Federal government with regard to chemical security.

However, Federal sanction might be appropriate in materials facilities under certain narrow conditions—such as the introduction of weapons or explosives into Material Access Areas. I suggest that staff provide a Commissioner Assistants' note regarding this and related security concerns. After this further analysis is provided the Commission will be in a position to determine whether further action is necessary.

  
\_\_\_\_\_  
SIGNATURE

16 May 2012  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes   X   No

## NOTATION VOTE

### RESPONSE SHEET

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

**FROM:** COMMISSIONER OSTENDORFF

**SUBJECT:** SECY-12-0066 – CRIMINAL PENALTIES FOR THE  
UNAUTHORIZED INTRODUCTION OF WEAPONS  
INTO FACILITIES DESIGNATED BY THE U.S.  
NUCLEAR REGULATORY COMMISSION AND FOR  
SABOTAGE OF NUCLEAR FACILITIES OR FUEL

Approved  X  Disapproved   Abstain

Not Participating

**COMMENTS:** Below  X  Attached   None

I approve staff's recommendations to not expand the list of facilities subject to criminal sanctions under § 229 of the Atomic Energy Act (AEA) and to defer initiation of rulemaking to expand the scope of radioactive materials or other property subject to criminal penalties for sabotage under § 236 of the AEA. I agree with staff that safety and security would not be enhanced by expanding the coverage of § 229 or § 236 and that, therefore, neither of these actions are necessary at this time.

Staff stated that there are a number of ongoing actions that relate to a significance determination under § 236a.(7) of the AEA. Upon completion of these activities, staff should determine whether there is a compelling reason to expand the scope of § 236 given the statements in this SECY paper that safety and security would not be increased and also that state and Federal agencies already have laws in place that address these issues. If the staff determines that an expansion of § 236 is necessary, the staff should transmit to the Commission in a notation vote paper an analysis of the significance of potential sabotage on the materials subject to any proposed rule, existing state and Federal laws that address sanctions for sabotage of the material at issue, and any impacts on Agreement State programs.

  
\_\_\_\_\_  
**SIGNATURE**

5/18/12  
\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes  x  No