

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN SVINICKI
SUBJECT: COMSECY-17-0002: RULEMAKINGS MANDATED BY
STATUTE OR IMPLEMENTING U.S. GOVERNMENT
POLICY ON EXPORT LICENSING CONTROLS

Approved XX In-part Disapproved XX In-Part Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

02/24/17

DATE

Entered on "STARS" Yes No _____

**Chairman Svinicki's Comments on COMSECY-17-0002
Rulemakings Mandated by Statute or Implementing U.S. Government Policy on Export
Licensing Controls**

I appreciate the staff's continued focus on identifying areas for potential additional agency efficiency. In this vein, I approve the staff's recommendation that the staff be relieved from the Commission's directive to prepare a rulemaking plan for rulemakings that either are mandated by statute or that implement U.S. Government policy on export licensing controls in cases where the NRC lacks the authority to exercise discretion as to the content of the rule. However, I disapprove the staff's companion recommendation to delegate to the staff the authority to initiate rulemaking for matters that require a limited exercise of discretion.

The Commission's direction regarding its own involvement in the early stages of rulemaking was less than a year old at the time of the staff's request to further exempt matters from the scope of this direction. The process, which developed to ensure Commission involvement, resulted from substantive deliberation among members of the Commission and involved engagement with our oversight Committees in the Congress. I agree with the observation offered by Commissioner Burns that the staff's framework would appear to give the staff the authority to determine unilaterally when to exercise discretion and what form the exercise of that discretion should take in the case of statutorily-mandated rulemaking. Such determinations are central to the Commission's quasi-legislative function in such matters. In the alternative, I approve the proposal advanced by Commissioner Burns, wherein the staff would prepare and submit to the Commission a short paper seeking Commission approval to proceed with a rulemaking on matters involving the exercise of minor levels of discretion.



Kristine L. Svinicki

02/  /17

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: COMSECY-17-0002: RULEMAKINGS MANDATED BY
STATUTE OR IMPLEMENTING U.S. GOVERNMENT
POLICY ON EXPORT LICENSING CONTROLS

Approved xx Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below xx Attached _____ None _____

I agree with the NRC staff that a rulemaking plan is generally unnecessary for rulemakings mandated by statute or implementing U.S. government policy on export licensing controls. As recommended by the staff, the Commission should continue to review rulemaking plans for any such rulemaking that involves (1) substantial NRC discretion in implementing the statutory mandate or government policy on export licensing controls or (2) any significant policy or regulatory issues in determining the regulatory approach to be adopted. I support the staff's proposal to provide a Commissioner's Assistant (CA) note each time a rulemaking is initiated without a rulemaking plan because the rulemaking is required by statute or implements U.S. policy on export licensing controls. This will allow any Commissioner to convert the CA note into a voting matter if the Commissioner believes that the rulemaking described in the CA note involves a policy or regulatory issue that should be considered by the Commission.

Entered in "STARS"

Yes X

No _____



SIGNATURE

1/27/17

DATE

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Burns

SUBJECT: COMSECY-17-0002: RULEMAKINGS MANDATED BY
STATUTE OR IMPLEMENTING U.S. GOVERNMENT
POLICY ON EXPORT LICENSING CONTROLS

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"

Yes

No



Signature

15 February 2017

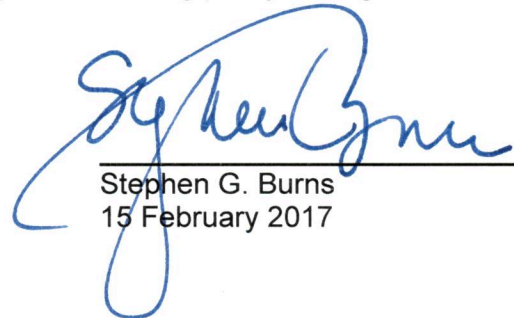
Date

**Commissioner Burns's Comments on
COMSECY-17-0002: Rulemakings Mandated by Statute or Implementing
U.S. Government Policy on Export Licensing Controls**

Although I appreciate the staff's efforts to identify areas where efficiencies may be had with respect to rulemakings required by statute or intended to implement the U.S. Government's policy on export licensing, I am not persuaded that the full scope of the staff's proposal should be adopted at this time. I agree with the staff's recommendation that the staff not be required to prepare rulemaking plans for rulemakings that either are mandated by statute or implement U.S. government policy on export licensing controls in cases in which NRC exercises no real discretion as to the content of the rule.

However, I do not approve the staff's remaining recommendation to delegate those rules that require some, albeit potentially limited, discretion on the part of the staff. The Commission has recently taken several significant actions to reestablish its role in NRC rulemaking activities. My concern is that the staff's framework would give the staff the authority to unilaterally determine when to exercise discretion and what discretion should be exercised for any statutorily-mandated rulemaking as well as what constitutes "significant" policy. In my view, these determinations are at the core of the Commission's responsibilities under the law and as such should remain with the Commission.

As an alternative to the staff's proposal, I am not opposed to the possibility that, in lieu of immediately preparing a rulemaking plan, the staff prepare and submit to the Commission a short paper seeking Commission approval to proceed with a rulemaking on "minor" matters involving discretion. Such a paper would be significantly more succinct than a rulemaking plan, and would present staff's arguments as to why a particular statutory requirement that the NRC initiate a rulemaking provides little or no discretion or does not raise significant policy issues. In such a case, the Commission could make the delegation and rulemaking plan determinations prior to the staff expending resources to initiate the rule. In all of the scenarios discussed above, the Commission would still retain its authority over deciding policymaking and rulemaking questions.



Stephen G. Burns
15 February 2017