

Basis Change Rationale for the National Source Tracking Rule

Background

The basis provided in the proposed rule on national source tracking was promulgation under the Commission's authority to promote common defense and security. During the Agreement State review period, several Agreement States opined that the basis for the rulemaking should be under protection of the public health and safety for consistency with the framework established for issuance of the increased controls, which was developed after the approval of the source tracking proposed rule. Comments on the basis for the rule were also received during the public comment period.

As a result of these continued interactions, and the Commission direction in the Staff Requirements Memorandum for COMSECY-05-0028, the SafeSource Steering Committee convened to further discuss the basis for the national source tracking rule. The Steering Committee has carefully considered this issue, including the advantages and disadvantages discussed below, and recommends that the basis of the rulemaking be changed to protection of the public health and safety, with an immediate mandatory Compatibility Category B designation. The time-frame for implementation under a public health and safety approach would need to be consistent with the scheduled roll-out of the National Source Tracking System (NSTS).

Discussion

The National Source Tracking System should improve source accountability and foster greater control over radioactive sources. However, the rule does not impose any controls on use of the sources, it imposes data reporting requirements related to source transactions. The actual security and control of the sources is provided by measures imposed under public health and safety for the majority of licensees possessing Category 1 and 2 sources. The security and control for Category 1 and 2 sources possessed by irradiator licensees and manufacturer and distributor licensees is imposed under both common defense and security (NRC Orders) and public health and safety (20.1801 and 20.1802 and Agreement State equivalents). While the system would not increase actual security and control, the system would be part of the overall security program. The system should provide better accountability of the sources and will provide information to the government that was not previously readily available. Inspectors had access to the information only during inspections of licensees. This information can be used as a tool to enhance both the overall security and safety programs. As a practical matter, safety and security are intertwined in the industrial, medical, and academic uses of materials, and the goal in both safety and security is to prevent the loss of control of material.

The decision to issue the rule under common defense and security was based primarily on a concern over timeliness. All licensees needed to begin reporting at the same time; Agreement States may not have had time to issue regulations to cover their licensees.

Under the common defense and security basis, Agreement States would have the option to perform inspections for and on behalf of NRC by entering into Section 274i Agreements. NRC would retain implementation responsibility for Agreement State licensees in States which do not sign Section 274i Agreements. In addition, NRC would retain broad oversight and implementation responsibility for Agreement State licensees in States signing Section 274i

Agreements. This includes, for example, issuance of final inspection reports, issuance of enforcement actions, inspection accompaniment of State inspectors, and contractual oversight.

Advantages of Common Defense and Security Basis

- Consistent with Commission direction for the Orders to Irradiators and Manufacturers and Distributors.
- The existing Section 274i Agreements could potentially be expanded to include the inspections for the National Source Tracking System.
- Ensures national consistency in implementation because it would be fully implemented by NRC.
- Provides a directly enforceable method for implementing the National Source Tracking System.

Disadvantages of Common Defense and Security Basis

- Need for expansion and indefinite commitment of NRC resources for inspection and enforcement of Agreement State licensees against the national source tracking requirements. These resources would be needed to fund those States that sign the Section 274i Agreements, and NRC inspection and follow-up actions in States not signing Section 274i Agreements.
- NRC would have continued need to maintain administrative and oversight costs for Section 274i Agreements.
- Based on NRC's experience in related program areas, it is not clear that Agreement States would be willing to enter into 274i Agreements.
- Could be perceived as dual regulation, especially by small licensees, where the State currently performs inspections of its requirements, and NRC would perform new National Source Tracking System inspections.
- If a future decision is made to lower the threshold for source tracking (i.e., include Category 3 or lower sources), it will likely be harder to justify under a common defense and security basis using a cost benefit analysis.

There are benefits to allowing the Agreement States to implement the National Source Tracking System in their states. Experience with the interim database demonstrated that State licensees responded more promptly when contacted by Agreement State officials with whom they were familiar than when contacted by NRC officials with whom they had no history. A similar effect could be expected with the National Source Tracking System. The Agreement States have demonstrated that they can issue legally binding requirements in both a timely and consistent manner with the recent implementation of the increased controls. The lead time for the National Source Tracking System requirements will be about 6 months from the date of publication of the final rule. The requirements are already laid out in the rule; and it should be a

relatively straight forward matter to develop the legally binding requirements. The majority of the Agreement States support the change in basis.

Advantages of Public Health and Safety Basis

- Agreement State implementation is consistent with the conventional division of responsibilities with NRC overseeing NRC licensees and Agreement States overseeing Agreement State licensees, in protecting public health and safety relating to the possession and use of certain Atomic Energy Act materials.
- Consistent with the framework established for the increased controls for sources containing quantities of concern.
- Enable safety and National Source Tracking System requirements to be inspected during the same inspection, maximizing efficiency of inspection resources and reducing travel costs. Actual inspection time is expected to be about 60 minutes.
- Anticipated resource savings for the NRC (e.g., Agreement States would have oversight of Agreement State licensees.)
- Consistent with the Agency's strategic goal of integrating safety, security, and emergency preparedness.

Disadvantages of Public Health Safety Basis

- The possibility exists that not all Agreement States will adopt timely and adequate legally binding requirements in a manner consistent with Commission direction. However, States have recently demonstrated their ability to issue timely and consistent increased control requirements for these same sources.

Resources

The original intent of the staff was to add the inspections for the National Source Tracking System to the existing infrastructure. For NRC licensees, inspections would be conducted during routine security and/or safety inspections. It is anticipated that on average about 1 hour of inspection effort would be necessary for the National Source Tracking System. The only pre-inspection effort would be to print the inventory/transaction report on the licensee from the National Source Tracking System database. This additional inspection effort is covered by the existing budget. For Agreement State licensees, the staff expected to use the same infrastructure that was in place to inspect against the Orders to Agreement State licensees. The additional inspection effort would have been minimal. However, with the shift in the framework for the increased controls, the infrastructure that staff planned to use is not in place. If the rule is promulgated under public health and safety, the Agreement States will be responsible for inspection and enforcement for their licensees, and there will be no additional NRC resources necessary. If the rule is promulgated under common defense and security, resources will need to be reprogrammed to address the inspection and enforcement effort for the Agreement State licensees. Some Agreement States may choose to expand the current Section 274i Agreements to include National Source Tracking System inspections and some

States may decide to enter into new 274i Agreements. It is estimated that there will be about 1,000 Agreement State licensees impacted by the National Source Tracking System requirements. The approximate NRC resources needed to support inspection and enforcement effort is \$750,000 and 20 FTE for the first year and \$250,000 and 7 FTE for later years. It is anticipated that in the first year all licensees should be inspected to make sure they have reported their entire inventory of Category 1 and 2 sources. In later years, the inspection effort would be based on reporting discrepancies.

Conclusion

Although timely and adequate implementation of the National Source Tracking System can be accomplished under either basis, both the Steering Committee and the staff recommend proceeding under public health and safety. A public health and safety basis is consistent with the framework for the increased controls established by the Commission. It would send a mixed message to licensees and the public to impose actual security controls under public health and safety and impose transaction reporting requirements under common defense and security. The Agreement States have demonstrated that they can issue legally binding requirements in a timely and consistent manner. Under either basis, NRC would maintain the database and Agreement States would only have access to information on licensees located within their State.

If the Commission approves the change in basis of the rule to protection of the public health and safety, the staff will work with the Agreement States to ensure that the legally binding requirements are issued in a timely manner such that both NRC and Agreement State licensees all begin reporting at the same time.