

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: COMJMB-16-0001: PROPOSED STAFF
RE-EVALUATION OF CATEGORY 3 SOURCE
ACCOUNTABILITY

Approved XX Disapproved Abstain Not Participating

COMMENTS: Below Attached XX None



SIGNATURE

18 August 2016

DATE

Entered in "STARS" Yes ✓ No

Chairman Burns' Comments on COMJMB-16-0001, "Proposed Staff Re-Evaluation of Category 3 Source Accountability"

I appreciate Commissioner Baran issuing this memorandum calling for a re-evaluation of Category 3 source accountability in response to the recently released U.S. Government Accountability Office (GAO) report on the effectiveness of the NRC's radioactive material control program (GAO-16-330). I would like to acknowledge the on-going efforts in this area by the two NRC/Agreement State working groups that were established in response to the GAO's investigation. I appreciate the staff's prompt and appropriate measures to address GAO's concerns immediately upon presentation of GAO's preliminary findings in October 2015.

I am not convinced that GAO's covert testing identified a regulatory gap. The GAO's covert testing revealed a single, isolated failure on the part of an individual in one of our 37 Agreement State partners to fully implement the pre-licensing site visit guidance that was put in place following the GAO's 2007 audit of the licensing process. The NRC, 13 of its federal counterparts, and the Agreement States, have continuously evaluated radioactive source security over the past 10 years, as required by the Energy Policy Act of 2005, and have not identified any significant regulatory gaps in source security. Most recently, the Task Force on Radiation Source Protection and Security reaffirmed the focus on higher-risk Category 1 and 2 sources in its August 2014 report by stating, "the global use of radioactive sources has remained stable both in species and quantity such that the addition of novel radionuclides or changes in thresholds for the existing list is not justified at this time." The agency has been deliberate in its application of enhanced security requirements and the elimination of the good faith presumption in a logical, methodical, and risk-informed manner. The current NRC regulations for transfers of radioactive sources are adequate to protect public health and safety, commensurate with the associated risks.

However, I agree with Commissioner Baran that now that we, as an agency, have a period of operating experience with the higher-risk sources and in light of GAO's findings, it would be appropriate to evaluate whether it is necessary to revise our regulations or processes governing source protection and accountability to continue to ensure adequate protection of public health and safety.

Therefore, I approve Commissioner Baran's proposal to direct the staff to submit a notation vote paper to the Commission that includes the following: 1) an evaluation of the pros and cons of different methods of requiring transferors of Category 3 sources to verify the validity of a transferee's license prior to transfer; 2) an evaluation of the pros and cons of including Category 3 sources in the National Source Tracking System; and 3) based on these evaluations, options for addressing the GAO recommendations. I would also ask that the staff's notation vote paper include a review of our overall source protection and accountability strategy for all radioactive sources.

The staff is currently finalizing an assessment of the security requirements in 10 CFR Part 37, as required by the Energy and Water Development and Related Agencies Appropriations Bills for Fiscal Year 2015. Any resulting recommendations and lessons learned from this assessment should be used to inform the staff's evaluation of the overall source protection and accountability strategy. The staff should specifically review how Category 3 sources are licensed and the appropriateness of current safety and physical protection requirements for Category 3 sources. As this would be no small effort, and as to not interfere with completing the required report to Congress on the effectiveness of Part 37, the staff's evaluation and notation vote paper should be provided to the Commission within 10 months of the issuance of the Staff

Requirements Memorandum. The staff should continue to collaborate with its Agreement State partners, as well as industry including the reactor community, to fully assess the regulatory impact for any recommendations made in the notation vote paper.



Stephen G. Burns

180 August 2016

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: COMJMB-16-0001: PROPOSED STAFF
RE-EVALUATION OF CATEGORY 3 SOURCE
ACCOUNTABILITY

Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

09/ 21 /16

DATE

Entered in "STARS" Yes No _____

**Commissioner Svinicki's Comments on COMJMB-16-0001
Proposed Staff Re-evaluation of Category 3 Source Accountability**

As a member of the Commission who voted in 2009 to disapprove issuance of a rule to amend 10 CFR Parts 20 and 32 to expand the National Source Tracking System (NSTS) to include additional specific licensees that possess sealed sources containing the International Atomic Energy Agency (IAEA) Category 3 threshold quantities of radioactive material, I stand by my decision in that matter as sound and reasonable. As I noted at that time, the rulemaking establishing the NSTS for Category 1 and Category 2 sources provided a specific rationale for the tracking and inventory requirements for these sources, in the form of an analysis by the U.S. Department of Energy and the NRC of potential health effects due to misuse of sources in a radiological dispersal device or radiological exposure device. This analysis identified "quantities of concern" as those constituting IAEA Category 2 threshold values. In 2009, the NRC staff did not conduct or provide an analyzed threat basis other than this upon which to expand the NSTS, a failure that the Commission's deliberation could not remedy.

In the absence of an alteration in the threat with respect to these sources, a possible basis for expanding the NSTS would be the identification of a regulatory gap. In 2009, as now, I do not conclude that the GAO's covert testing has identified a gap in our regulations. The GAO's covert testing demonstrated an individual failure on the part of a State regulatory official in an Agreement State agency; specifically, a failure to execute the pre-licensing site visit element of the security program that was put in place following the GAO's 2007 audit of the licensing process and was operative at the time of the GAO's covert testing.

Much as a failure to implement or enforce existing law cannot be remedied by passing additional laws, evidence indicating a failure to implement existing regulations properly or enforce them adequately can only be addressed through root cause investigation of inspection, enforcement, and oversight processes and the implementation of corrective actions directed at remedying the root causes of the deficiencies found. In this vein, I share the Chairman's conclusion that the NRC "has been deliberate in its application of enhanced security requirements and the elimination of the good faith presumption in a logical, methodical, and risk-informed manner. The current NRC regulations for transfers of radioactive sources are adequate to protect public health and safety, commensurate with the associated risks."

Arguments that sources at the high end of Category 3 can be aggregated to Category 2-levels are similarly unavailing. Such arguments are inherent to any scheme that manages hazard through the application of a set of graded requirements, escalating in stringency as one progresses through the categories. Such categorization approaches are replete in the NRC regulatory framework for managing hazard and the logic of aggregation, lacking more, does not invalidate them.

Consistent with our commitment to assess our regulations continually for changed circumstances and new information, however, the staff is currently engaged in a comprehensive assessment of the agency's security regime in this area. I agree with Chairman Burns that an orderly process must provide for completing this assessment and factoring the results from it into the evaluation called for by Commissioner Baran, conducting them sequentially and not in an overlapping manner. The evaluation of possible expansion of NSTS would best be informed by the staff's ongoing broader evaluation of the overall source protection and accountability strategy for sources. Any proposed expansion must also include a vulnerability assessment and an evaluation of impacts (i.e., whether safety and security benefit commensurate with or


exceeding any costs or foregone benefits resulting from the proposed change would be realized).

In light of this, I approve Commissioner Baran's proposal, predicated on its initiation after completion of the ongoing staff assessment due to the Congress at the end of this year and subject to its expansion to incorporate the full set of considerations needed for fully-informed and rigorous regulatory decision-making. These expanded elements include the following:

1. A vulnerability assessment which identifies changes in the threat environment between 2009 and today that argue in favor of or against expansion of the NSTS to include Category 3 sources.
2. A regulatory impact analysis of the accrued benefit and costs of the change, to include impacts to the NRC, Agreement States, non-Agreement States, and regulated entities.
3. A discussion of potential regulatory actions that would not require changes to our regulations that arose from or were considered by the staff working groups, to include changes to guidance, training, and other program improvements such as more closely monitoring the implementation of the staff recommendations using the IMPEP process.
4. Any other factors arising from the staff's currently ongoing assessment that the staff concludes would bear on the Commission's deliberation on the proposed change.

I do not, however, join in the Chairman's call to expand the assessment to include "all radioactive sources." I would limit the question to the expansion of NSTS to include Category 3 sources, as advanced by Commissioner Baran. Additionally, because this expanded re-evaluation would be more resource and time intensive than Commissioner Baran's initial proposal, the staff should provide a notation vote paper with its re-evaluation and any recommendations for proposed expansion of NSTS to Category 3 sources to the Commission within 12 months of the date of the Commission's staff requirements memorandum in this matter.

Finally, the staff should develop its recommendations through continued collaboration with the Agreement States but should also engage non-Agreement States, regulated entities, public interest groups, industry interest groups such as those in the medical and industrial fields, and other regulated entities. Public meetings should be considered by the staff as a possible outreach mechanism.


Kristine L. Svinicki 21 September 2016