



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

July 14, 2006

ALL AGREEMENT AND NON-AGREEMENT STATE

SUPPLEMENT TO THE JUNE 22 HEARING RECORD SUBMITTED TO THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE TO ADDRESS SENATOR CLINTON'S QUESTIONS REGARDING THE NRC BASIS CHANGE RATIONALE FOR THE NATIONAL SOURCE TRACKING SYSTEM (STP-06-063)

Purpose: To inform Agreement State program staff of the supplement to the June 22, 2006 hearing record submitted to the Environment and Public Works Committee. Also, to remind you of the extension to the comment period through June 28, 2006 for the proposed change of basis to the National Source Tracking System (NSTS).

Background: On May 25, 2006, the Commission approved the change in basis for the NSTS from common defense and security to public health and safety. In a letter dated June 13, 2006, (STP-06-051), we gave notice of an opportunity to comment on the Commission's proposed change of basis for the NSTS. The *Federal Register* Notice was published on June 13, 2006 (71 FR 113,34024 - 34025). The comment period for this proposed rule was to have expired on July 3, 2006; however, it has been extended to July 28, 2006.

Contents: The supplement provided in the enclosure was prepared after the June Senate hearing to document the Commission majority position and to address Senator Clinton's questions regarding the NRC basis change rationale for the NSTS. Senator Hillary Rodham Clinton and Representative Edward Markey requested an extension to the comment period. A Chairman response to Senator Clinton's and Representative Markey's questions to NRC is currently being processed. The Office of State and Tribal Programs will provide these response letters once they have been issued. Information regarding the NSTS rule making and the questions posed by Senator Clinton and Representative Markey can be viewed at the following NRC web site.

http://ruleforum.llnl.gov/cgi-bin/library?source=*&library=tracking_lib&file=*&st=prule

NRC Point of Contact: If you have any questions regarding the NSTS, contact Merri Horn, Office of Nuclear Material Safety and Safeguards, telephone (301) 415-8126, e-mail, mlh1@nrc.gov.

If you have any questions regarding this correspondence, please contact the individual named below.

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/RA/

Janet R. Schlueter, Director
Office of State and Tribal Programs

Enclosure:
As stated

STP-06-063

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June 28, 2006

The Honorable George V. Voinovich
Chairman, Subcommittee on Clean Air, Climate Change,
and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested at the June 22, 2006, Subcommittee on Clean Air, Climate Change, and Nuclear Safety hearing regarding oversight of the U.S. Nuclear Regulatory Commission (NRC), enclosed for the record is an insert from Chairman Diaz, Commissioner Merrifield and Commissioner Lyons to address Senator Clinton's questions regarding the NRC basis change rationale for the National Source Tracking Rule.

Sincerely,

/RA/

Rebecca L. Schmidt, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Senator Thomas R. Carper

ADAMS ACCESSION #: ML061800355

**Supplement to the June 22 Hearing Record Submitted to the Environment
and Public Works Committee to Address Senator Clinton's Questions
Regarding the Nuclear Regulatory Commission Basis Change Rationale
for the National Source Tracking Rule**

Previously, on July 28, 2005, the Nuclear Regulatory Commission (NRC) published a proposed rule in the *Federal Register* on national source tracking. The proposed rule was promulgated under the NRC's authority to promote common defense and security. The decision to issue the proposed rule under this authority was based primarily on concerns over effectiveness and timeliness: all licensees will need to begin reporting to the National Source Tracking System (NSTS) at the same time, and the NRC was concerned that Agreement States would not have sufficient time to issue regulations to cover their licensees, potentially making implementation of the reporting requirements less effective. After reviewing the comments on the proposed rule, and after gaining more experience with Agreement State implementation of increased controls on radioactive sources, the NRC staff recommended that the basis of the rulemaking be changed from promotion of the common defense and security to protection of the public health and safety. This change in basis would enable Agreement States to oversee their licensees' data reporting to the NSTS. It is important to note that the system itself will remain a national system developed and maintained by the NRC, and Agreement States will not develop or maintain their own databases. The Commission approved the change of basis in an Affirmation Vote dated May 25, 2006, with Chairman Diaz and Commissioners Merrifield and Lyons voting in favor of the change of basis, and Commissioners McGaffigan and Jackzo voting against it. This supplement was prepared by the three concurring Commissioners to document the majority position. Time constraints at the June 22, 2006 hearing only permitted the minority position to be presented.

The Commission majority view is that, in general, the American people are better served when the NRC works in partnership with the current 34 Agreement States, rather than when the NRC "goes it alone." For the NSTS rule, the path the Commission has chosen will allow for more prompt verification that the rule's reporting requirements are being implemented, and for more effective and efficient inspections as a result of the Agreement States' familiarity with their licensees. Further, this approach will reduce unnecessary regulatory burden on material licensees. At the same time, the NRC has mechanisms to ensure national consistency. The rule will be immediately effective upon promulgation, and, because of its direct and significant transboundary implications, Agreement States will be required to adopt program elements that are essentially identical to those of the NRC. In addition, the NRC will monitor Agreement State oversight of their licensees' implementation of the NSTS reporting requirements through the periodic reviews of Agreement State programs conducted under the Integrated Materials Performance Evaluation Program, or IMPEP. The final NSTS rule complies with the plain language of Section 651 of the Energy Policy Act of 2005, which requires that the NRC issue regulations establishing a mandatory tracking system for radiation sources in the United States, not later than August 8, 2006. The rule clearly does this. The Commission majority further believes that giving the Agreement States an enhanced role in overseeing the rule's implementation will result in more effective fulfillment of the purposes of Section 651.

The NSTS will be a truly national system. The NSTS is being developed, and will be maintained, by the NRC. The system will contain information on NRC licensees, Agreement State licensees, and Department of Energy (DOE) facilities. Licensees will be required to report transactions to the NSTS involving the manufacture, transfer, receipt, disassembly, and disposal of radioactive sources. The NRC has held numerous meetings to engage stakeholders, and to ensure that other government agencies were included in the planning phases for the NSTS. Federal agencies that will have access to information in the NSTS include the U.S. Customs and Border Patrol Service, the Domestic Nuclear Detection Office, and DOE. The NSTS Interagency Coordinating Committee is developing policies and procedures governing requests for NSTS data from other agencies. Agreement States will have access to information on licensees located within their respective States. In addition, Agreement States will have access to the national listing of lost and/or stolen sources to facilitate recovery of these materials.

The NSTS rule imposes data reporting requirements related to source transactions. It does not impose any controls on the use of sources. The actual security and control of the sources is provided by measures imposed pursuant to NRC's authority to protect public health and safety for the majority of licensees possessing IAEA Code of Conduct Category 1 and 2 sources. The NSTS will provide better accountability of the sources and will provide information to the government that was not previously readily available. This information can be used as a tool to enhance both security and safety overall. 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 NRC's and Agreement States' experiences with the interim database currently in use demonstrated that Agreement 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 is expected with the NSTS, which will replace the interim database. Of great importance, the Agreement States have further demonstrated that they can issue legally binding requirements in both a timely and consistent manner, as exemplified by their recent implementation of increased controls on radioactive sources. In this effort, the Agreement States are inspecting and enforcing the implementation of these requirements for over 80% of the applicable licensees in this country. Therefore, it became no longer necessary for the rule to be based on promotion of the common defense and security for the purposes of expediting implementation. The lead time for the NSTS 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 straightforward matter for the States to develop the legally binding requirements.

The time added to inspecting for compliance with NSTS is expected to be minimal, and the NSTS will provide data which will actually simplify aspects of the inspections. For NRC and Agreement State licensees, inspections will be conducted during routine safety and/or security inspections. It is anticipated that no more than 1 hour of inspection effort per licensee will be necessary for the NSTS. The only pre-inspection effort will be to print the inventory/transaction report on the licensee from the NSTS. It is estimated that the NSTS reporting requirements will apply to about 1,000 Agreement State licensees, and the Agreement States will be responsible for providing oversight, i.e., inspection and enforcement, of their licensees' implementation of

these requirements. All licensees should be inspected in the first year 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.

The proposed rule on the NSTS was originally published for a 75-day comment period. Several of the Agreement States requested alignment of the basis for rule with the day-to-day radiation protection activities they conduct to maintain adequate protection of public health and safety. The NRC staff considered the request, and the Commission directed a change in the rule's basis from common defense and security to protection of public health and safety. A 20-day comment period was proposed by the staff and accepted by the Commission because: 1) this rule addressed the majority of the comments received on the proposed rule; 2) the Agreement States were given advance notice of the proposed change; and 3) due to the broad support among the Agreement States for changing the rule's basis, the staff did not believe, at the time, that there would be significant adverse comments on the basis change.

In conclusion, the NSTS rule solely concerns collecting data, submitting it to a national data base developed and maintained by the NRC, and ensuring the data are appropriately updated in a timely manner. Issuing this rule under the NRC's authority to protect the public health and safety in no way diminishes NRC authority to take appropriate action, nor lowers the significance of NRC actions. In fact, the safety of the public is the main reason for implementing security measures for radioactive materials.