

VOTING SUMMARY - SECY-05-0092

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	6/28/05
COMR. McGAFFIGAN	X				X	6/15/05
COMR. MERRIFIELD	X				X	6/07/05
COMR. JACZKO	X				X	6/29/05
Comr. LYONS	X				X	6/09/05

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 30, 2005.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DIAZ

SUBJECT: **SECY-05-0092 - PROPOSED RULE: NATIONAL
SOURCE TRACKING OF SEALED SOURCES
(RIN 3150-AH48)**

Approved XX *[Signature]* Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments and edits.

[Signature]
SIGNATURE
6/28/2005
DATE

Entered on "STARS" Yes No _____

Chairman Diaz's Comments on SECY-05-0092, Proposed Rule: National Source Tracking of Sealed Sources

I approve publication of the proposed rule in the *Federal Register* to amend 10 CFR Parts 20, 32, and 150 to require licensees to report transactions involving the manufacture, transfer, receipt, and disposal of nationally tracked sources, subject to the following comments and attached detailed edits. I offer the following general comments and specific edits to the Federal Register notice.

I commend the staff on a high quality rulemaking package. I agree with my fellow Commissioners that this rulemaking is a critical part of the NRC's and the U.S. Government's overall strategy for increasing the security for sealed sources and should be completed as soon as possible. Implementation of the National Source Tracking System (NSTS) will fulfill the U.S. Government commitment to implement the IAEA Code of Conduct recommendation to develop a national registry of Category 1 and 2 radioactive sources.

The NSTS is intended to be a national system and the staff has done an excellent job of working closely with other Federal agencies in the development of this system. Since beginning this effort, the Department of Homeland Security established the Domestic Nuclear Detection Office (DNDO) which may have an interest in the rulemaking. Also, it is not clear that DOE's National Nuclear Security Administration has had visibility of the proposed rule. The staff should raise this coordination issue with the Interagency Coordinating Committee to ensure that all Federal agencies that have a stake in NSTS are fully aware of our rulemaking efforts. The staff should also clearly state in the FRN that NRC will be the database manager of NSTS and the other Federal Agencies will be the users.

The NSTS should track the 15 radionuclides from the IAEA Code of Conduct (16 radionuclides minus Ra-226) and the additional seven radionuclides listed in the Staff Requirements Memorandum of August 21, 2003, and I approve making the list of 22 radionuclides publicly available.

Additional Detailed Edits

1. FRN, Page 24, states that the proposed rule would impose a new reporting requirement that could duplicate reporting to the Nuclear Materials Management Safeguards System (NMMSS). The staff has indicated that it does not believe that the limited number of licensees and transactions likely to be affected by the dual reporting requirement would impose an unnecessary burden. The FRN should emphasize that source tracking and Material Control and Accounting have two different purposes and, therefore, NMMSS and NSTS should remain separate.
2. FRN, Page 8, states that, "National source tracking is part of a comprehensive radioactive source control program for radioactive material of greatest concern. Although neither a national source tracking system nor source registry can ensure the physical protection of sources, it will improve source accountability." This statement in the FRN should be clarified to reflect that, in general, increased accountability will foster increased control by licensees.
3. The staff, in the FRN, has solicited comments from the public on several issues. The staff should consider soliciting additional comments regarding:
 - a. The suggestion that the Commission allow Agreement States to adopt the source-tracking requirements and be recognized as the regulatory authority in that State for the enforcement and inspection of the NSTS reporting requirements. .
 - b. Whether Agreement States would develop regulations that require their licensees to report Ra-226 to the State and therefore could be included in NSTS.
 - c. Whether there should be requirements on licensees to protect information related to their NSTS accounts.
 - d. Whether there should be requirements on waste broker or disposal facility licensees to at least investigate shipments for tampering, if they are not expected to open waste containers to verify the presence of a nationally tracked source included as part of a waste shipment.
 - e. Agreement State views on the fact that transfer transactions only cover transfers between different licensees and/or authorized facilities. The result of this requirement would be that, for example, a radiographer conducting business would not need to report to the NSTS transfers between temporary job sites, even if a temporary job site is located in another state or if the work is conducted under a reciprocity agreement.

NOTATION VOTE

RESPONSE SHEET

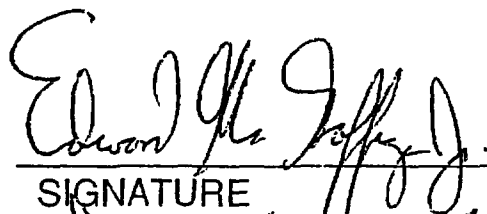
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-05-0092 - PROPOSED RULE: NATIONAL
SOURCE TRACKING OF SEALED SOURCES
(RIN 3150-AH48)**

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See Attached Comments.



SIGNATURE
June 15, 2005

DATE

Entered on "STARS" Yes No _____

Commissioner McGaffigan's Comments on SECY-05-0092

I approve for publication the staff's proposed amendments to Parts 20, 32, and 150. I also approve the proposed draft Federal Register notice.

I believe this rulemaking is a very important part of NRC's, and indeed the U.S. government's, overall strategy for increasing the security for sealed sources. It is evident by the quality and content of this rulemaking package that the staff feels the same way. The staff has obviously put a great deal of effort into thinking through possible problems and issues and has developed a proposed National Source Tracking System (NSTS) rule that meets my expectations.

I agree with Commissioner Merrifield and Commissioner Lyons that this proposed rule should be completed as soon as practicable. However, we must be wary of speed in complex IT procurements. It will do the Commission no good to get a tracking system on time if it does not work or is not FISMA compliant so that it can not be used. I am comfortable with the staff taking more time, if needed, to ensure that the tracking system works well, and is fully compliant with all IT requirements. The Interim database is in place and will be maintained until the NSTS is completed so there is less urgency to get the rulemaking and associated procurement done on a rapid schedule. There are many examples from inside the agency (Starfire and ADAMS) and from outside the agency (FBI case management the latest) where large first-of-a-kind IT projects are developed on an aggressive schedule and then do not work as planned once they are completed. The NSTS is much too important to have that happen.

As for the specifics of the proposed rule, consistent with my vote on COMSECY-05-0012, I do not oppose including the entire seven DOE radionuclides which are almost non-existent at NRC and Agreement State licensees according to the interim database. We continue to get somewhat mixed signals from elements of DOE on the importance of tracking these radionuclides, but we can work this out during the comment process.

I also support the NSTS only tracking Category I and II sources, as mandated by the IAEA Code of Conduct on the Safety and Security of Radioactive Sources. I understand the difficulties in trying to track aggregation of Category III sources. I also agree with the staff's proposal to ask for more information concerning Category III sources, but our first priority needs to be to carry out our existing international obligations for above threshold radionuclides of concern. That in itself is going to involve a complicated IT system procurement and lots of implementation detail as we deal with about 2300 NRC and Agreement State licensees nationwide. Going beyond our core international obligation in this first step would be an example of letting the perfect be the enemy of the good, as Chairman Diaz often says (in other contexts). I believe this is an area the Commission will have to address soon, but we do not have enough information to address it today. One way to address this issue in the future may be to expand the NSTS to include some or all Category III sources. Another potentially more

implementable option to increase the security for Category III sources would be for NRC and the Agreement States to issue specific licenses to some or all of them.

I believe it would be fairly easy to draft a short provision in Part 32 which does not conflict with any other provision and simply states that all sources containing radionuclides of concern greater than category 2.5 (or 2.75 or 3) must be specifically licensed. The staff needs to determine where the best place is to draw the line between specifically licensed and generally licensed sources containing radionuclides of concern. However, I believe this type of provision would potentially be a way to increase the security for these sources most efficiently. Just as we urge DOE not to reinvent the IAEA Code, NRC staff should not invent a totally different methodology from the Code of Conduct and its supporting guidance documents for the demarcation between generally and specifically licensed sources containing radionuclides of concern.

Finally, although the staff did an excellent job of including other agencies in the development of this rule, the family of potentially interested Federal agencies and sub-agencies has been in flux. For example, the new DHS Domestic Nuclear Detection Office did not exist during the development of this rule, but it could possibly have an impact on the final characteristics of the NSTS. The staff should go ahead and issue the proposed rule at this time, but should ensure that DNDO is aware of it. The staff should also plan to have high level meetings with DOE, DHS, DOS, DOT, and others to ensure that those agencies at the highest levels understand that the NSTS and our plans for finalizing it. To facilitate these meetings I suggest that once the SRM is complete, copies of the Commission paper, the voting record and the SRM should be given to the Interagency Coordinating Committee, the Safesource Steering Committee, the Working groups and the Agreement States.

E. M. G.

NOTATION VOIE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-05-0092 - PROPOSED RULE: NATIONAL
SOURCE TRACKING OF SEALED SOURCES
(RIN 3150-AH48)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comment.



SIGNATURE
6/17/05

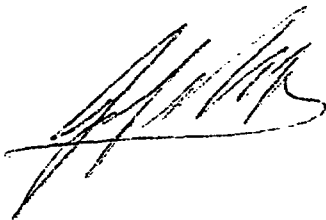
DATE

Entered on "STARS" Yes No

Comments from Commissioner Merrifield on SECY-05-0092:

I approve, with the attached editorial correction, the staff recommendations in SECY-05-0092 concerning a proposed rule providing for a national tracking system for appropriate sealed sources. This effort is of vital interest to the nation and should be completed expeditiously.

Separate from the rulemaking, staff is developing the actual computer software to support the national tracking system database. This effort is complicated because it attempts to meet the needs of multiple stakeholders. Yet, at the same time, it is very important to implement the program quickly with a high quality product. We cannot afford the luxury of beta testing an inadequate system for several years until corrections are implemented. Senior management attention must be directed to ensuring a high quality software and database system is developed on schedule (or sooner) and within reasonable costs. The Commission should be appropriately and frequently informed of the status of this effort. In addition, since this is a national database, staff should continue their efforts to obtain funding from other agencies to offset the NRC costs. Our licensees should fund appropriate activities from their fees, but they should not be required to support the total cost of the national program.



6/7/05

- IV. Criminal Penalties.
- V. Agreement State Compatibility.
- VI. Plain Language
- VII. Voluntary Consensus Standards.
- VIII. Environmental Impact: Categorical Exclusion.
- IX. Paperwork Reduction Act Statement.
- X. Public Protection Notification.
- XI. Regulatory Analysis.
- XII. Regulatory Flexibility Certification.
- XIII. Backfit Analysis.

I. Background

As a result of the terrorist attacks in the United States on September 11, 2001, the NRC has undertaken a comprehensive review of nuclear material security requirements, with particular focus on radioactive material of concern. This material, ^{(which includes} including Cobalt-60, ^{as well as the isotopes)} Cesium-137, Iridium-192, and Americium-241 isotopes, has the potential to be used in a radiological dispersal device (RDD) or a radiological exposure device (RED) in the absence of proper security measures. The NRC's review takes into consideration the changing domestic and international threat environments and related U.S. Government-supported international initiatives in the nuclear security area, particularly activities conducted by the International Atomic Energy Agency (IAEA).

Commissioner Jaczko's Comments on SECY-05-0092
Proposed Rule: National Source Tracking of Sealed Sources

I approve the staff recommendation to publish in the Federal Register the proposed amendments to Parts 20, 32 and 150 of 10 CFR. These changes will provide the regulatory structure to implement the "National Source Tracking System of Sealed Sources." The National Source Tracking System is an integral part of the Nuclear Regulatory Commission's efforts to enhance the security and control of sealed sources to prevent their malevolent use by a terrorist. I applaud the efforts of my fellow commissioners and the staff who have worked for many years to move this effort forward.


There are, however, some aspects of the rule that I believe should be improved to provide the greatest possible security for our nation.

First, although the rule will provide rigorous accounting for many of the most dangerous sources, it will not require definitive tracking information on even a limited basis for these sources. While notification of lost or stolen sources remains a requirement, the rule will not provide a mechanism to monitor the location of the material before or after it is lost. I recognize that there are many technical challenges to implementing such a tracking system at this time, but I believe that the National Source Tracking System should at least ensure the flexibility to incorporate such a system, if it were developed. I urge the staff to consider soliciting public comment on this important issue during the comment period.

Second, as I indicated in my views on COMSECY-05-0012, the staff should continue to explore the need to track sealed sources that, when aggregated, meet the threshold value to qualify as a category 1 or 2 source under the International Atomic Energy Agency's Code of Conduct and the need to track sealed sources that fall below the category 2 threshold. Although there are inherent difficulties in accounting for this material, the staff should solicit public comment on the need and on the best methods to accomplish this task.

Third, the staff should ensure that, as both Commissioner Lyons and Merrifield indicated, the information technology infrastructure to support the National Source Tracking System is completed as expeditiously as possible. As I indicated above, however, the system should be flexible and adaptable enough to meet potential future additional burdens that may be placed on the system.

The National Source Tracking System is a crucial element of the NRC's efforts to control and secure nuclear materials throughout our nation. ^{and the rules} Together with upcoming security orders and the new part 110 regulations, the NSTS should provide a comprehensive and coherent regulatory structure to meet the nation's security needs. Nonetheless, I continue to urge the staff, as I have previously, to continue to consider additional measures that may be necessary to achieve the most effective level of safety against possible malevolent acts involving nuclear materials.



Gregory B. Jaczko

6/29/05
Date

NOTATION VOTE

RESPONSE SHEET


TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-05-0092 - PROPOSED RULE: NATIONAL
SOURCE TRACKING OF SEALED SOURCES
(RIN 3150-AH48)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.


Peter B. Lyons

SIGNATURE
June 9, 2005

DATE

Entered on "STARS" Yes No

Comments from Commissioner Lyons on SECY-05-0092

I approve the Staff's recommendation to publish the proposed rule providing for National Source Tracking of Sealed Sources. I believe that this is an important activity for the agency and our nation. Therefore, it should be completed as quickly as possible.

I also would like to take this opportunity to stress to staff that the computer system being developed in support of this rulemaking needs to be completed expeditiously. To have a successful National Source Tracking System, it is imperative that DOE is fully participating in the development of the system as well as implementing the system. Therefore I recommend that senior level management engage with DOE's senior management to obtain funding and ensure DOE's complete participation in the process.