

RULEMAKING ISSUE AFFIRMATION

September 29, 2006

SECY-06-0205

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED
SOURCES (RIN 3150-AH48)

PURPOSE:

To request Commission approval to publish a final rule in the *Federal Register* that would amend Parts 20 and 32 of Title 10 of the *Code of Federal Regulations*. The amendments establish the regulatory foundation for the National Source Tracking System. The final rule requires licensees to report transactions involving the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. This paper does not address any new commitments.

BACKGROUND:

In a Staff Requirements Memorandum (SRM) dated May 25, 2006, the Commission approved the final rule on National Source Tracking (SECY-06-0080, April 6, 2006). The Commission also approved the change of the rule's basis to public health and safety. The basis change was published in the *Federal Register* (71 FR 34024) for a 20-day public-comment period, on June 13, 2006. The Commission extended the comment period for an additional 25 days on July 3, 2006 (71 FR 37862). In SECY-06-0080, the staff committed to resubmit the final rule to the Commission if substantive comments were received on the basis change. As noted in the discussion section below, several substantive comments were received on the basis change. In the response to Senator Jeffords, the U.S. Nuclear Regulatory Commission (NRC) committed to address all the comments received on the basis change. Therefore, the staff is resubmitting the final rule on National Source Tracking for Commission approval.

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The Energy Policy Act of 2005 requires issuance of the final regulation by August 8, 2006. With the extension of the comment period and the determination to address all the comments, the NRC was not able to meet that date. Appropriate members of congress have been notified of the change in the date of issuance of the rule.

DISCUSSION:

The NRC received 14 comment letters on the basis change. The comment letters were from 11 Agreement States and representatives from three industry organizations. Seven of the commenters (six Agreement States) supported the basis change to public health and safety and Compatibility Category "B," and five Agreement States were opposed. One commenter was neutral and the other commenter did not object to the basis change and provided comments supporting the inclusion of Category 3 sources in the system. In addition, the June 22, 2006, letter from Senator Hillary Rodham Clinton and Representative Edward J. Markey was placed in the rule docket at the request of Senator Clinton's office. Senator Clinton and Representative Markey objected to the basis change. The Commission responded to them in a letter from the Chairman dated August 1, 2006 (ML061870515).

The primary reason for opposition to the basis change cited by the Agreement States was resources. NRC understands the resource concerns expressed by the five Agreement States which oppose the basis change. NRC will utilize existing mechanisms for communicating and working with the Agreement States to help ensure a consistent uniform national approach to implementing the rule. The staff will use an approach similar to the one used with the increased controls, e.g., routine calls, electronic communications, formation of an NRC-State working group. Through these interactions the staff will continue to cooperate with the states to understand issues with the resource implications of implementing the NSTS. NRC will work with all of the Agreement States to further verify the rule requirements, the implementation period and approach, and identify and address implementation issues as they arise. Since each of the 34 Agreement States may choose different implementation mechanisms and have different numbers of licensees, it is difficult to estimate the costs for each Agreement State. From the Regulatory Analysis, NRC estimates that on average, each Agreement State would expend 0.2 full-time equivalents (FTE) at \$76,000/FTE to issue the legally binding requirements. In addition, Agreement States will need to conduct inspections of the National Source Tracking System reporting requirements. These inspections would be included as part of routine inspections. As also described in the Regulatory Analysis, the NRC estimates between one half to one hour would be needed to conduct the inspection for National Source Tracking to verify the inventory listing in the system matched the inventory onsite. The total effort would be \$87,000 (i.e., \$87 per hour x 1 hour per licensee x 1000 licensees) for the Agreement States for 2008. In later years, the inspection effort would be based on reporting discrepancies, therefore, beginning in 2009, the cost would be \$29,000 for Agreement States.

The staff continues to support issuance of the final rule under public health and safety. The staff believes that the public health and safety basis is consistent with the framework for the increased controls established by the Commission and, the conventional division of responsibilities between the NRC and Agreement States. Changes have been made to the *Federal Register* notice (Enclosure 1) to address the comments received on the basis change.

The new text is located in section III Analysis of Public Comments in the introductory paragraph and comments/responses G.12 through G.19.

The staff has made the changes to the *Federal Register* notice as directed in the SRM. In addition, the staff has changed the reporting compliance date to reflect the current status of the system development. The date in the rule is now June 2007. The staff has also added text to the end of the Category 3 issue response that reflected the Commission direction to conduct a one-time survey and develop a proposed rule for Category 3 sources.

The Office of Management and Budget (OMB) has approved the information collection requirements for the final rule. If the Commission changes the basis back to common defense and security, NRC will need to resubmit the information collection for OMB approval.

AGREEMENT STATE ISSUES:

Agreement States will need to issue legally binding requirements for their licensees, which can be accomplished through promulgating a rule, issuing orders, or adding or revising individual license conditions. The Agreement States will have approximately 6 months in which to issue the legally binding requirements. The Agreement States will be responsible for inspection and enforcement of their licensees' compliance with the requirements.

NRC staff has analyzed the final rule in accordance with the procedures established within Part III of the Handbook to Management Directive 5.9, "Categorization Process for NRC Program Elements." Staff has determined that the final rule is classified as Compatibility Category "B." The NRC program elements in this category are those that apply to activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of NRC.

RECOMMENDATIONS:

That the Commission:

1. Approve, for publication in the *Federal Register*, the attached notice of final rulemaking (Enclosure 1).
2. To satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605 (b), certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities. This certification is included in the attached *Federal Register* notice.
3. Note:
 - a. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b);
 - b. A final Regulatory Analysis has been prepared for this rulemaking (Enclosure 2);

- c. The staff has determined that this action is not a “major rule,” as defined in the Congressional Review Act of 1996 [5 U.S.C 804(2)] and has confirmed this determination with the OMB . The appropriate Congressional and Government Accountability Office contacts will be informed;
- d. The appropriate Congressional committees will be informed;
- e. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register; and
- f. The final rule contains amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). OMB has approved the information collection requirements.

RESOURCES:

To complete the rulemaking, less than 0.1 FTE position will be required. These resources are included in the current budget.

COORDINATION:

The Office of the General Counsel has no legal objection to the final rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

/RA/

Luis A. Reyes,
Executive Director
for Operations

Enclosures:

1. Final Rule: *Federal Register* notice
2. Regulatory Analysis

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