

PR 20 and 32
(73FR19749)



NUCLEAR ENERGY INSTITUTE



DOCKETED
USNRC

Felix M. Killar, Jr.
SENIOR DIRECTOR
FUEL SUPPLY/MATERIAL LICENSEES
NUCLEAR GENERATION DIVISION

May 13, 2008

June 16, 2008 (9:10am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Mr. Nathan Frey
Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB-10202 (3150-0001, 0014, 0202)
Washington, D.C. 20503

Subject: RIN-3150-AI29: OMB Review of NRC Information Collection Requirements and Solicitation of Public Comments on NRC Proposed Rule Regarding Expansion of the National Source Tracking System

Dear Mr. Frey:

The Nuclear Energy Institute (NEI)¹ on behalf of radioactive materials licensees submits the following comments to the Office of Management and Budget (OMB). These comments are in response to the request for public comments addressing the burden associated with the information collection requirements included in the Nuclear Regulatory Commission's (NRC) proposed rule regarding the expansion of the National Source Tracking System (NSTS). *See 73 Fed. Reg. 19749* (April 11, 2008). Comments on this portion of the proposed rulemaking were requested by May 12, 2008.

NEI submits that key proposed reporting and recordkeeping regulations related to the yet-to-be deployed NSTS, which would affect radioactive materials users nationwide, are premature, unnecessary to protect public health and safety, unnecessary to facilitate NRC and Agreement State regulatory oversight, unduly burdensome for impacted licensees, and inconsistent with the Paperwork Reduction Act. The following comments are provided for your consideration.

Specifically, NEI believes that OMB should not approve the revised definition of "Nationally tracked source" and corresponding information collection requirements proposed in Sections 10 C.F.R. §20.1003, §20.2207, §32.2 and Appendix E to Part 20.

¹ The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

Template = SECY-067

SECY-02

Mr. Nathan Frey

May 12, 2008

Page 2

NEI believes that the NRC and Agreement States have effective and efficient regulatory tools in place now through existing licensing, inspection and enforcement programs that do not depend on additional record keeping and reporting requirements to ensure adequate protection of public health and safety. The NRC rule package fails to provide a convincing rationale or basis for why NSTS—not yet deployed or functioning for high-risk sources—is being considered for expansion to capture much lower-risk sources. Expansion of NSTS goes beyond the system's original intent, purpose and design, and is being proposed in the absence of evidence to suggest that existing regulatory programs or licensee performance have posed an unacceptable threat to public health and safety. Therefore, as described in the enclosure to this letter, NEI believes that the proposed regulations are premature, unnecessary and cannot be justified under the Paperwork Reduction Act.

If we can provide further information that would assist in resolving the concerns expressed in this letter, please contact me at 202-739-8126; fmk@nei.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Felix M. Killar, Jr.", written in a cursive style.

Felix M. Killar, Jr.

Enclosure

c: Records and FOIA/Privacy Services Branch (T-5F52), NRC

Industry Comments on Information Collection Requirements in the NRC Proposed Rule on Expansion of the National Source Tracking System

I. Expansion of the National Source Tracking System at This Time is Premature

First, and most significantly, the proposed expansion of the National Source Tracking System (NSTS) is premature. The original scope and purpose of the NSTS was to track, monitor and account for the nationwide use of Category 1 and 2 sources, as defined in the International Atomic Energy Agency's Code of Conduct as the most hazardous sources from a public health and safety perspective. NSTS development and deployment has experienced significant technological delays (years) and increased costs and is not in use today for Category 1 and 2 sources by NRC and its licensees, much less by the Agreement States who represent the other 85% of radioactive materials licensees nationwide. Therefore, the Agreement States and affected licensees nationwide who would be subject to the expanded NSTS rule have had little to no visibility of how the system will actually work. As a result, there is not sufficient information or data on which to evaluate the validity, accuracy and completeness of the reporting burden estimated by NRC in the Regulatory Analysis (e.g., estimates for certain required actions range from 2 minutes per transaction to 20 hours of computer programming). Therefore, NEI firmly believes that the proposed expansion of the NSTS beyond Category 1 and 2 sources to include much lower risk sources, i.e., Category 3 and 1/10th of Category 3 sources, is premature in the absence of a fully functioning NSTS as originally intended. At minimum, NRC, Agreement States and licensees should gain experience with tracking the higher-risk Category 1 and 2 sources in NSTS for about two years before revisiting the decision of *whether* to expand it. Such an approach is more efficient and effective considering the high NRC cost of developing and expanding the NSTS (see discussion in section II below) as well as the associated costs for implementation by the Agreement States and licensees nationwide.

II. The Proposed Requirements Are Unnecessary

The NRC has not provided sufficient evidence to suggest that existing requirements and the current regulatory approach to source security is not adequate to oversee licensed activities and ensure public health and safety. Specifically, the NRC and Agreement States have guidance in place for the conduct of additional screening and "pre-licensing" visits during the initial licensing process to further ensure that byproduct material licenses are issued only to legitimate persons. This guidance was further revised in response to the General Accounting Office's (GAO) audit of NRC's licensing process during the spring of 2007 (GAO-07-1038T, dated July 12, 2007). As such, the regulator's role in, and emphasis on, ensuring that source recipients are legitimate has increased. Also, byproduct materials licensees have been for years and are currently subject to 10 C.F.R. §30.41, "Transfer of byproduct material." This requirement explicitly describes the licensee's responsibility to ensure that, prior to transfer of generally- or specifically-licensed material, the licensee verify that the recipient is authorized to receive the type, form and quantity of the byproduct material to be transferred. Agreement State regulations have comparable requirements in place for their licensees. Also, licensees possessing quantities of certain sources that, in the aggregate, meet or exceed the Category 2 level are already subject to the NRC orders for increased control of sources (and corresponding Agreement State requirements). Thus, there is enhanced tracking, control and monitoring of sources of concern below the Category 2 level. NRC's statement that it needs to be in

a position to monitor the "real-time tracking" of certain sources is somewhat unfounded, in that, who better to track such sources in "real-time" than legitimate licensees whom the regulator has scrutinized prior to licensing and is responsible for overseeing licensee compliance with applicable requirements. Also, spending NRC resources to expand NSTS now also seems counter intuitive to the NRC statement that expansion of the NSTS would "increase public confidence." Specifically, public confidence would likely be increased more if NRC were to use these resources (i.e., \$7.7 million/year for the first 3 years for initial NSTS deployment and operation and \$7 million each year thereafter for NSTS operation) to enhance its existing regulatory programs, increase its coordination with the Agreement States, and solicit input from affected licensees after gaining experience with tracking Category 1 and 2 sources rather than imposing new requirements to expand NSTS at this time. Finally, NEI is somewhat concerned that Agreement State resources, already stretched thin in some states due to the increased control of sources and fingerprinting requirements imposed in 2005 and 2007, will be further exacerbated by the need to dedicate resources to implement an expanded NSTS for lower-risk sources in the absence of a clear public health and safety basis to do so. Clearly, it is not in anyone's interest—including the public's-- to have scarce regulatory resources diverted from higher-risk source activities to much lower-risk source activities.

III. The Proposed Information Collection Requirements Do Not Satisfy the Paperwork Reduction Act

The requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. (the "Act"), are implemented by OMB. This federal statute is intended primarily to minimize the paperwork burden for individuals and businesses resulting from the collection of information by or for the federal government and to ensure the greatest possible public health and maximum utility from such collected information. The Act is also intended to improve the "responsibility and accountability" of OMB and all other federal agencies to Congress and to the public for reducing the burden of federal reporting and information collection requirements (See 44 U.S.C. 3501(1), (2) (11). The Act criteria include, but are not limited to, "an evaluation of the need for the collection of the information," "a specific, objectively supported estimate of the burden," and a "test of the collection program through a pilot program, if appropriate."

NEI offers the following responses to the specific questions in the Federal Register.

1. *Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?*

No. NEI believes that there is no evidence to suggest that NRC's stated concern regarding the "potential" for individuals to accumulate sources in quantities to reach the Category 2 level has been observed or is likely to occur if the NRC and Agreement States continue with their existing regulatory programs, fully implement the "pre-licensing guidance" and consider dedicating additional resources for even more rigorous licensing, inspection and enforcement programs to ensure licensee compliance with existing requirements, e.g., 10 C.F.R. §30.41. NRC also states that expanding the NSTS will "improve regulatory knowledge." NEI believes that, as stated above, the regulator's knowledge would be improved and increased by considering certain enhancements to its existing programs, e.g., more frequent contact with the licensee by the regulator, rather than relying on new record keeping and reporting requirements.

2. *Is the estimate of the burden accurate?*

It is difficult to determine the associated burden at this time. As stated previously, affected licensees who would be subject to the expanded NSTS recordkeeping and reporting requirements do not have experience with or sufficient information or data regarding NSTS on which to evaluate the validity, accuracy and completeness of the reporting burden estimated by NRC in the proposed rule (from 2 minutes per transaction to 20 hours of computer programming). Such experience could be gained, however, if NRC terminated this rulemaking and dedicated its resources to deploying a fully functional NSTS for Category 1 and 2 sources and allowed sufficient time (e.g., 2 years) to gain experience with the system, make modifications as indicated, solicit input from all potentially impacted licensees and the Agreement States, and then revisited the decision of *whether* to expand the NSTS to include lower-risk sources, e.g., Category 3 and 1/10th of Category 3 sources. As such, a functioning NSTS for Category 1 and 2 sources could be considered a "pilot program" as suggested by the Paperwork Reduction Act. It should also be noted that licensees authorized for Category 1 or 2 sources are, in many cases, not the same licensees authorized for Category 3 or lower sources. Also, it is this lower-risk group of licensees who have not had visibility of NSTS since they were not the subject of or subject to the requirements of the original NSTS rule.

3. *Is there a way to enhance the quality, utility, and clarity of the information to be collected?*

It is unclear at this time. In the absence of a fully deployed NSTS, it is not clear whether there is a way to enhance the quality, utility and clarity of the information to be collected. Experience with collecting the required information on Category 1 and 2 sources in NSTS will yield such insights and is a logical first step to implementing the program. This is particularly true since not only are there more Category 3 and 1/10th Category 3 source licensees (3500 licensees) than Category 1 and 2 licensees (1300 licensees), but the number of sources per licensee is likely to be higher due to the nature of their use in medical, academic, industrial and commercial applications.

4. *How can the burden of the information collection be minimized, including the use of automated collection techniques?*

NEI believes that NRC has identified acceptable methods for licensees to submit the required information to NSTS, e.g., on-line, fax, mail. However, as stated above, only experience with the NSTS will yield such insights and identify necessary modifications to the system to reduce the burden where possible.

Evangeline Ngbea

From: Annette Vietti-Cook
Sent: Friday, June 13, 2008 4:38 PM
To: Evangeline Ngbea; Emile Julian
Subject: FW: NEI letter to OMB on RIN 3150-AI29
Attachments: 05-13-08_OMB_RIN-3150-AI29 OMB Review of NRC Information Collection Requirements (2).doc; 05-13-08_OMB_RIN-3150-AI29 OMB Review of NRC Information Collection Requirements_Enclosure.doc

Please advise.

From: SCHLUETER, Janet [mailto:jrs@nei.org]
Sent: Friday, June 13, 2008 12:58 PM
To: INFOCOLLECTS Resource
Cc: Annette Vietti-Cook
Subject: NEI letter to OMB on RIN 3150-AI29

NRC official -

On May 13, NEI forwarded the attached letter with enclosure to OMB on the proposed rule for the expanded National Source Tracking System. As directed in the Federal Register notice, a copy was also forwarded to NRC's Records and FOIA/Privacy Services Branch. As of today, NEI's letter is not currently posted at the www.regulations.gov docket for this rulemaking (NRC-2008-0200). Please post the attached files. Confirmation of receipt of this email is requested by return email.

Thanks, Janet Schlueter

Janet R. Schlueter
Senior Project Manager

Nuclear Energy Institute
1776 I St. N.W., Suite 400
Washington, DC 20006
www.nei.org

P: 202-739-8098
F: 202-533-0132
E: jrs@nei.org

nuclear. clean air energy.

This electronic message transmission contains information from the Nuclear Energy Institute, Inc. The information is intended solely for the use of the addressee and its use by any other person is not authorized. If

you are not the intended recipient, you have received this communication in error, and any review, use, disclosure, copying or distribution of the contents of this communication is strictly prohibited. If you have received this electronic transmission in error, please notify the sender immediately by telephone or by electronic mail and permanently delete the original message. IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Sent through outbound.mailwise.com