

CHARTER

PURPOSE

The Category 3 Source Security and Accountability Working Group has been established as a Management Directive 5.3 working group. Its purpose is to evaluate and make recommendations on whether it is necessary to revise U.S. Nuclear Regulatory Commission (NRC) regulations or processes governing source protection and accountability to ensure adequate protection of public health and safety, as stated in the Staff Requirements Memorandum (SRM) for COMJMB-16-0001, "Proposed Staff Re-evaluation of Category 3 Source Accountability," dated October 18, 2016 (Agencywide Document and Management System (ADAMS) Accession No. ML16292A812). The working group's evaluations and recommendations will be documented in a notation vote paper to be provided to the Commission in August 2017.

BACKGROUND

In 2007, the Government Accountability Office (GAO) conducted an investigation (GAO-07-1038T) on NRC's licensing program and was able to obtain a radioactive materials license using a fictitious company and place orders that would have resulted, if actually obtained, in an aggregated Category 3 quantity of material. After the 2007 investigation, the NRC and the Agreement States made a number of important changes to strengthen the licensing and regulatory processes to prevent malevolent individuals from obtaining a radioactive material license. Staff submitted an Action Plan (SECY-07-0147) to the Commission to respond to recommendations for addressing security issues in the National Materials Program. The Commission approved the staff's Action Plan, which included a consideration of expanding the National Source Tracking System (NSTS) to include Category 3 sources plus a subset of "high-end" Category 4 sources (SRM-SECY-07-0147). The Proposed Rule on Expansion of NSTS was published in the *Federal Register* (FR) in April 2008 (73 FR 19749).

In January 2009, licensees began reporting Category 1 and 2 source information to the NSTS. Staff requested to defer further expansion of NSTS to allow staff to monitor operation of NSTS for 1 year and to apply insights gained for the decision on system expansion (SECY-09-0011). This request for deferral was not approved, so in June 2009, the staff requested approval of the final rule amending Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 20 and 32 to expand reporting to the NSTS to include Category 3 sources (SECY-09-0086). In June 2009, the Commission did not reach a decision on the proposed rulemaking (2-2 split vote), and the final rule was not approved (SRM-SECY-09-0086). Some of the Commission votes indicated that further expansion of NSTS should be based upon a vulnerability assessment, built off the interagency risk study for sources, and that the original recommendation lacked a risk-informed foundation for proposed regulatory action.

In 2014, the GAO initiated an audit of the materials licensing program to determine whether the licensing vulnerabilities identified in their 2007 investigation had been addressed by the regulatory framework and other improvements implemented by the NRC and the Agreement States. In 2015, as part of the audit, GAO conducted an investigation that attempted to obtain radioactive materials licenses from one NRC regional office and two separate Agreement States. The investigation sought approval of licenses authorizing the procurement of one Category 3 source using a fictitious company. The 2015 investigation went beyond the 2007 investigation in its sophistication and planning, such that GAO rented storefront/warehouse space to demonstrate their legitimacy during pre-licensing visits. Despite this level of effort, the GAO was unsuccessful in two of three attempts; however, the GAO was able to acquire an

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

Agreement State license for a Category 3 well logging source. GAO successfully placed an order for one Category 3 source, then altered the license and placed an order for a second Category 3 source. The investigation demonstrated that GAO could have acquired an aggregated Category 2 quantity of material, although at no point in the investigation were radioactive materials actually shipped to the fictitious company. Once notified by GAO in October 2015, the NRC and Agreement States took a number of actions, one of which included forming two NRC-Agreement State working groups to evaluate vulnerabilities identified as a result of the 2015 GAO investigation. Specifically, one working group considered enhancements to the pre-licensing guidance while the second working group, the License Verification and Transfer of Category 3 Sources Working Group, was established to determine the need for enhancements to existing requirements or guidance for license verification and source tracking below Category 1 and Category 2 thresholds. The working groups have completed their reports and a steering committee evaluated their recommendations.

On July 15, 2016, the GAO published its final report of the material licensing audit and investigation, GAO-16-330, entitled “Nuclear Security: NRC Has Enhanced the Controls of Dangerous Radioactive Materials, but Vulnerabilities Remain.” The report made three recommendations:

1. Take steps needed to include Category 3 sources in NSTS and add Agreement State Category 3 licenses to the Web-based Licensing System as quickly as reasonably possible.
2. At least until such time that Category 3 licenses can be verified using the License Verification System, require that transferors of Category 3 quantities of radioactive materials confirm the validity of a would-be purchaser’s radioactive materials license with the appropriate regulatory authority before transferring any Category 3 quantities of licensed materials.
3. As part of the ongoing efforts of NRC working groups meeting to develop enhancements to the pre-licensing requirements for Category 3 licenses, consider requiring that an on-site security review be conducted for all unknown applicants of Category 3 licenses to verify that each applicant is prepared to implement the required security measures before taking possession of licensed radioactive materials.

Given the agency’s operating experience with higher-risk sources and in response to the findings by GAO, the Commission issued its SRM for COMJMB-16-0001 and directed the staff to take specific actions to evaluate whether it is necessary to revise NRC regulations or processes governing source protection and accountability. Specifically, the SRM required the staff to submit a notation vote paper to the Commission within 10 months (August 18, 2017) that includes the following tasks:

- 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 NSTS;
- 3) An assessment, based on these evaluations, of these and any additional options that the staff identifies for addressing the source accountability recommendations made by the GAO;

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

- 4) 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;
- 5) 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;
- 6) 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 Integrated Materials Performance Evaluation Program process; and
- 7) 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.

The SRM also directed the staff to assess the risks posed by the aggregation of Category 3 sources into Category 2 quantities (Task 8) and to collaborate with its Agreement State partners, non-Agreement States, regulated entities, public interest groups, industry groups, and the reactor community in order to fully assess the regulatory impact for any recommendations made in the notation vote paper (Task 9).

Additionally, the SRM directed the staff to consider the results of the 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, as a means to inform the staff's evaluation. This assessment, referred to as the "program review" of 10 CFR Part 37, encompassed an evaluation of nine review areas related to implementation of the security requirements in the rule. These areas included the results of inspections conducted of NRC licensees in the first 2 years of rule implementation as well as an evaluation of events reported under the provisions of the rule. The program review also included consideration of the definition of aggregation as it applies to well logging sources and an evaluation of enhanced tracking and accounting of radioactive sources. The results of the program review were documented in a Commission paper that was issued in September 2016 (ADAMS Accession No. ML16161A549).

WORKING GROUP AND STEERING COMMITTEE MEMBERSHIP

The working group and steering committee will operate as an NRC/Agreement State working group as described in Management Directive 5.3, "Agreement State Participation in Working Groups." The working group and steering committee will be co-chaired by an NRC staff member and an Agreement State representative from the Organization of Agreement States. Membership of the steering committee for this working group will be in large part identical to the membership of the steering committee for the Enhancement to the Pre-Licensing Guidance and License Verification and Transfer of Category 3 Sources Working Groups.

Organization	Working Group	Steering Committee
Office of Nuclear Material Safety	Irene Wu, Co-Chair Duncan White, Alternate Co-Chair Ernesto Quinones	Daniel Collins, Co-Chair Pamela Henderson, Alternate Co-Chair

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

Organization	Working Group	Steering Committee
and Safeguards (NMSS)	Margaret Cervera Gina Davis Ed Lohr Gregory Trussell	
Office of Nuclear Security and Incident Response (NSIR)	Gary Purdy	James Andersen
Office of Nuclear Reactor Regulation (NRR)	Juan Peralta Manuel Jimenez	John Adams
Agreement States	Sherrie Flaherty (MN), Co-Chair Randy Crowe (NC), member	Alan Jacobson (MD), Co-Chair Jennifer Opila (CO), Alternate Co-Chair
Office of the General Counsel	Lisa London	Carrie Safford
Regional Offices	Craig Gordon, Region I	John Giessner, Region III

Other NMSS, NSIR, Regional, and Agreement State staff may serve as resources to the Working Group at the request of the Co-Chairs and with the support of their management. Administrative support for the working group will be provided by the Division of Material Safety, State, Tribal, and Rulemaking Programs (MSTR) in NMSS.

Additional support may be obtained from the Office of the Chief Financial Officer, the Office of the Chief Information Officer, Office of the Chief Human Capital Officer, Office of Public Affairs, Office of Congressional Affairs, and any other NRC office at the request of the Co-Chairs and with the support of NRC management.

ACTIVITIES AND SCHEDULE

The working group is responsible for evaluating whether it is necessary to revise NRC regulations or processes governing source security and accountability to continue to ensure adequate protection of public health and safety. The table below describes the activities to be conducted:

Activity	Lead	Completion Date
<p><u>Activity 1:</u> Expand on the analyses and recommendations developed by the License Verification and Transfer of Category 3 Sources Working Group.</p> <ul style="list-style-type: none"> - Evaluate 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. (Task 1 from SRM-COMJMB-16-0001) 	NMSS	March 2017

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

Activity	Lead	Completion Date
<ul style="list-style-type: none"> - Evaluate the pros and cons of including Category 3 sources in the NSTS. (Task 2 from SRM-COMJMB-16-0001) - Assess any additional options for addressing source accountability recommendations made by the GAO. (Task 3 from SRM-COMJMB-16-0001) - Identify potential regulatory actions that would not require changes to our regulations to include changes to guidance, training, and other program improvements. (Task 6 from SRM-COMJMB-16-0001) - Identify 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. (Task 7 from SRM-COMJMB-16-0001) - Assess the risks posed by the aggregation of Category 3 sources into Category 2 quantities. (Task 8 from SRM-COMJMB-16-0001) 		
<p><u>Activity 2:</u> Perform a vulnerability assessment which identifies changes in the threat environment between 2009 and today that argue in favor or against expansion of the NSTS to include Category 3 sources. (Task 4 from SRM-COMJMB-16-0001)</p>	NSIR	March 2017
<p><u>Activity 3:</u> Analyze the regulatory impact of the accrued benefit and costs of the changes requiring rulemaking to include the impacts to the NRC, Agreement States, non-Agreement States, and regulated entities. (Task 5 from SRM-COMJMB-16-0001)</p>	NMSS	April 2017
<p><u>Activity 4:</u> Solicit feedback from Agreement State partners, non-Agreement States, regulated entities, public interest groups, industry groups such as those in the medical and industrial fields, and the reactor community on Activities 1 to 3. (Task 9 from SRM-COMJMB-16-0001)</p> <ul style="list-style-type: none"> - Prepare and issue a <i>Federal Register</i> notice (FRN), which will provide specific questions for stakeholders to consider - Hold public meetings/webinars to facilitate feedback on the FRN - Give presentations to industry groups and professional organizations 	NMSS	March 2017

The products produced from each of the four activities by the working group will be used as input to the Commission notation vote paper required by SRM-COMJMB-16-0001. Upon completion of each activity, the working group will meet with the steering committee to obtain their endorsement of the product. Activities associated with the development and review of certain work products, such as the vulnerability assessment, may be limited to those with a

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

requisite clearance level and need to know, consistent with NRC information security requirements.

MSTR, with assistance from members of the working group, will be responsible for preparation of the notation vote paper that will be reviewed and concurred on by NRC management. The following are the major milestones and tentative dates for the development and submittal of the notation vote paper:

Milestone	Date (Tentative)
Development of Commission notation vote paper	May 2017
Office concurrence on Commission notation vote paper	June 2017
OEDO approval of Commission notation vote paper	July 2017
Submittal of Commission notation vote paper	August 18, 2017

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS

To support the schedule and activities listed above, the following level of effort is expected from the working group participants:

1. Attendance at weekly meetings (2 to 4 hours per week);
2. Attendance at stakeholder outreach events (approximately 15 hours total);
3. Development and/or review of working group products, such as analyses (15 to 30 hours per week);
4. Attendance at 2 to 3 Steering Committee meetings (2 hours per meeting);
5. Periodic briefings with interested managers on the working group activities to solicit feedback and comments (1 hour per briefing).

Working group members should charge time associated with working group activities identified in this charter to Charge Accounting Code: A34005, Nuclear Materials Users Licensing – Security.

MEETINGS

Meetings are pre-decisional and will be closed to the public.

Working group members may delegate an alternative representative for a specific meeting. The working group may also invite individual(s) to a meeting to participate as a resource to assist the working group with a particular issue. However, at least one of the named Co-Chairs must be present during any working group meetings.

Available technology will be used to facilitate interaction with the working group members, (e.g., conference calls, GoToMeeting and electronic mail). Face-to-face meetings, if necessary, will generally be held in the Washington, D.C., area unless alternate locations are agreed upon by working group members. If travel is necessary, travel and per diem expenses for Agreement

U.S. Nuclear Regulatory Commission/Agreement State Working Group
Category 3 Source Security and Accountability

State members of the working group will be covered by MSTR. Regions are responsible for the travel expenses of their staff.

APPROVED

<i>/RA/</i>	12/15/2016
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Daniel S. Collins, U.S. Nuclear Regulatory Commission	Date
<i>/RA/</i>	12/21/2016
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Matt McKinley, Chair, Organization of Agreement States	Date