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Duran-Hernandez, Doris

Subject: FW: Re: Docket ID NRC-2016-0276, Category 3 Source Security and Accountability
Attachments: NC Comments - Cat 3 Source Accountability -FINAL.pdf

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From: Wu, Irene
Sent: Monday, March 06, 2017 3:32 PM
To: Duran-Hernandez, Doris <Doris.Duran-Hernandez@nrc.gov>
Subject: FW: Re: Docket ID NRC-2016-0276, Category 3 Source Security and Accountability

From: Crowley, David P [<mailto:david.crowley@dhhs.nc.gov>]
Sent: Monday, March 06, 2017 3:31 PM
To: Wu, Irene <Irene.Wu@nrc.gov>
Cc: Ford, Monica <Monica.Ford@nrc.gov>; Cox, Lee <lee.cox@dhhs.nc.gov>; Albright, James <james.albright@dhhs.nc.gov>; Cartoski, Travis <travis.cartoski@dhhs.nc.gov>; larry.haynes@duke-energy.com; OAS Executive Board <ogasboard@agreementstates.org>; Plott, Carmine M <cmplott@novanthealth.org>; Opila - CDPHE, Jennifer <jennifer.opila@state.co.us>
Subject: [External_Sender] Re: Docket ID NRC-2016-0276, Category 3 Source Security and Accountability

Ms. Wu,

Please see the attached comments from North Carolina's Agreement State Program regarding the Federal Register Notice published on January 9th, 2017 asking for feedback on "Category 3 Source Security and Accountability."

Should you have any questions, please feel free to contact me. Thank you for this opportunity.

Very respectfully,

David Crowley
Manager
Division of Health Service Regulation, Radioactive Materials Branch
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March 6, 2017

Irene Wu
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Docket ID NRC-2016-0276, Category 3 Source Security and Accountability

Please accept the below comments from the North Carolina Agreement State Program.

General Comments:

North Carolina opposes the expansion of the National Source Tracking System (NSTS) to include Category 3 quantities of radioactive material. North Carolina believes that such a move will only marginally increase the safety and security of these quantities of radioactive material, if any at all, while adding a significant regulatory burden and cost to the Nuclear Regulatory Commission (NRC), Agreement States, and licensed entities.

The 2015 undercover operation conducted by the U.S. Government Accounting Office (GAO) did not reveal a systemic failure in the current regulatory environment. Rather, it pointed out the importance of following current licensing practices for the issuance of new radioactive materials licenses. The addition of Category 3 quantities of radioactive materials to the NSTS would not have prevented the GAO from acquiring that radioactive materials license under the circumstances that occurred in that Agreement State. The argument that the GAO did procure that license, modified it, placed orders for radioactive material and could have aggregated that material into a Category 2 or more quantity of material is an unconvincing argument for including Category 3 quantities of radioactive material in NSTS. By that reasoning, someone with malevolent intent and strong financial backing could procure the number of exempt sources to achieve the same end-result while remaining completely undetected. Although this example is extreme, it appears to apply the same reasoning leading to the recommendation to include Category 3 quantities of radioactive materials into NSTS.

In addition, given that there are devices containing Category 3 quantities of radioactive materials that can be possessed under a general license, North Carolina fails to see how expanding NSTS would improve overall safety and security without a corresponding fundamental change in the regulatory environment. It seems more imperative that we dissolve the general license program and only allow the possession of radioactive material under the specific license program or exempt it from regulation.

While North Carolina can add additional checks and administrative measures for tracking Category 3 sources, it is unclear if this additional effort will provide any real added security benefit, though it would clearly add immediate burdens to licensees and regulators. North Carolina feels strongly that a security risk benefit analysis be conducted based upon

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operational experience with existing practices for the control of Category 1 and Category 2 quantities of radioactive materials prior to moving forward with new regulations or regulatory expectations regarding Category 3 quantities of radioactive materials and NSTS. This analysis should cite specific events that show how NSTS and other tracking tools prevented the wrong individuals from accessing materials. In addition, a study to show how this regulation would have directly benefited the Country's Cat 3 licensed community in past real world (not GAO) scenarios. A well-funded and organized terrorist group could easily meet all the licensing criteria and still receive materials legally, even with imposed additional constraints, and chances are they would apply directly for the Category 1 or 2 sources instead of ordering suspiciously large amounts of Category 3 sources.

General Questions Related to License Verification

1. Should the current methods for verification of licenses prior to transferring Category 3 quantities of radioactive material listed in 10 CFR 30.41(d)(1)–(5), 10 CFR 40.51(d)(1)–(5), and 10 CFR 70.42(d)(1)–(5) be changed such that only the methods prescribed in 10 CFR 37.71 are allowed?

No. There is no evidence that in the current terrorist threat environment that the distribution of these sources is not already well controlled. The current regulations have been, and in North Carolina's experience, are, adequate to assure that these transfers occur safely. Eventually, if the technology and resources can accommodate this without any extra burden, then it might be worthwhile, but at this time, it seems like very little gain for a lot of extra effort.

2. Would there be an increase in safety and/or security if the regulations were changed to only allow license verification through the NRC's License Verification System (LVS) or the transferee's license issuing authority for transfers of Category 3 quantities of radioactive material? If so, how much of an increase would there be?

North Carolina is not aware of a security or safety problem with current Category 3 quantity radioactive source transfer practices and we do not believe that requiring license verification through LVS or the Agreement States' regulatory authorities would result in any improvement in safety or security. The increased costs to the Agreement States to administer this program does not appear to be cost justified.

3. If the NRC changed the regulations to limit license verification only through the LVS or the transferee's license issuing authority for transfers of Category 3 quantities of radioactive material, should licensees transferring Category 3 quantities to manufacturers and distributors be excepted from the limitation?

Yes.

4. Is there anything else we should consider when evaluating different methods of license verification prior to transferring Category 3 quantities of radioactive material?

The NRC should perform an analysis of the cost benefit of any new rules and the security benefit based on the present threat environment and allow for public discussion of this analysis before creating any additional requirements.

General Questions Related to the NSTS

1. Should Category 3 sources be included in the NSTS? Please provide a rationale for your answer.

North Carolina does not believe that Category 3 quantity sources should be included in the NSTS. This will be a burden on licensees and the State, and adds nothing augmenting source safety or security. Inspectors regularly check that inventories are within the limitations as issued on a license and rarely is anything in disagreement.

2. If Category 3 sources are included in the NSTS, should the NRC consider imposing the same reporting requirements currently required for Category 1 and 2 sources (10 CFR 20.2207(f))?

No.

3. Should the NRC consider alternatives to the current NSTS reporting requirements for Category 1 and 2 sources to increase the immediacy of information availability, such as requiring the source transfers to be reported prior to, or on the same day as, the source shipment date?

No. The existing reporting requirements for the transfer and accounting of Category 1 and 2 quantities of radioactive materials currently in 10 CFR Part 37 are sufficient, and adding additional reporting requirements for NSTS will not increase the level of safety or security for these sources while adding significantly to the regulatory burden on licensees and the State.

4. Would there be an increase in safety and/or security if the regulations were changed to include Category 3 sources in the NSTS? If so, how much of an increase would there be?

No.

5. Is there anything else we should consider as part of our evaluation of including Category 3 sources in the NSTS?

A realistic assessment of the value-added, or lack thereof, for this action in relation to the costs of administering this additional program element needs to be performed and made available to all relevant stakeholders for discussion. Also, the issue is less of inventories, limits and accountability of sources, but rather the validation of the licenses. North Carolina feels the emphasis for any future security risk benefit studies should prioritize LVS efforts over NSTS at this time.

Specific Question for Agreement States Related to the NSTS

1. The NRC currently administers the annual inventory reconciliation process on behalf of the Agreement States. This process involves providing hard copy inventories to every licensee that possesses nationally tracked sources at the end of the year, processing corrections to inventories, and processing confirmations of completion of the reconciliation into the NSTS. The process involves a significant amount of staff time and resources from November to February. If the Agreement States were to adopt administration of the annual inventory reconciliation process and if Category 3 sources were included in the NSTS, what would the additional regulatory burden be on the Agreement States to perform the annual inventory reconciliation for Category 1, 2, and 3 sources?

The entire purpose of NSTS is that it is a national database. It is more efficient and cost-effective to have the NRC continue in its current role as the single point of contact maintaining this database. Deferring this responsibility to the Agreement States will result in significant costs to the Agreement States with a corresponding decrease in data reliability, data security, and availability. Also, North Carolina respectfully reminds the NRC that this initiative is the NRC's initiative, not that of the Agreement States. The costs, therefore, are the NRC's to bear.

Other Questions

1. Should physical security requirements for Category 1 and 2 quantities of radioactive material be expanded to include Category 3 quantities?

No.

2. Some Category 3 sources are covered under a general license (10 CFR 31.5). Should the NRC consider establishing maximum quantities in general licensed devices, thereby reserving authorization to possess Category 1, 2, and 3 quantities of radioactive?

Yes – with the additional opinion that North Carolina feels that the possession and use of radioactive material should be regulated under either the specific licensing program or exempt from regulation. The general licensing program, as currently administered, is costly and yields few net benefits.

Thank you for the opportunity to comment on this important issue. If you have any questions regarding the positions of North Carolina, please contact me at 919-814-2303 or david.crowley@dhhs.nc.gov.

Very respectfully,



David Crowley
Manager, Radioactive Materials Branch
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