

Summary of Background Information that Informed the Category 3 Re-Evaluation and Analysis

Following the events of September 11, 2001, the U.S. Nuclear Regulatory Commission (NRC) and Agreement States took action to enhance licensee protection of risk-significant quantities of radioactive material.¹ Multiple sets of orders were issued using a prioritized, risk-informed approach, and were in effect beginning in June 2003. After incorporating lessons learned by the NRC and Agreement States in implementing the post-September 11 Security Orders and extensive stakeholder input, the NRC published Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," as a final rule on March 19, 2013 (78 FR 16922). This rule established security requirements for the use and transport of Category 1 and Category 2 quantities of radioactive material.

The NRC employs a suite of information technology (IT) tools that support materials licensing, oversight, and radioactive source accountability. The key systems that support the National Materials Program, which include the NRC and Agreement State materials programs, are the National Source Tracking System (NSTS), the Web-Based Licensing (WBL) System, and the License Verification System (LVS). The integration of these systems form a comprehensive program (the Integrated Source Management Portfolio (ISMP)) to ensure the security and control of risk-significant quantities of radioactive material by tracking information related to NRC and Agreement State licensees and the risk-significant radioactive materials they possess. A brief summary of each system of the ISMP is provided below. The use of these systems requires the user to undergo a credentialing process,² after which system access is enabled through the use of a security token, or one-time password.

National Source Tracking System. NSTS was deployed in 2008, and is a secure, national registry that accounts for Category 1 and Category 2 sources licensed by the NRC and Agreement States from the time they are manufactured or imported through the time of their disposal, decay, or export. This system accounts for over 77,000 Category 1 and Category 2 sources held by approximately 1,400 NRC and Agreement State licensees and processes approximately 7,500 to 10,000 source transactions³ per month. Transactions are required to be reported to NSTS by close of business the day after which they occur; thus, the NSTS is not a real-time tracking system. Licensees are required to reconcile their inventory annually, in the month of January. NSTS enhances the NRC's and Agreement States' ability to detect and act upon inventory discrepancies, respond to emergencies, and verify the legitimate use and transfer of sources.

Web-Based Licensing. WBL was deployed in 2012, and is an up-to-date repository of NRC and Agreement State licenses that authorize possession of Category 1 and Category 2 quantities of radioactive materials. The system is used solely by regulatory bodies. WBL contains all of the radioactive materials licenses (Categories 1 to 5) for the NRC and is available for use by any Agreement State. Currently, the NRC and four Agreement States use WBL as their license tracking system, and additional Agreement

¹ Risk-significant quantities of radioactive material are defined as those meeting the thresholds for Category 1 and Category 2 as included both in the International Atomic Energy Agency (IAEA) *Code of Conduct on the Safety and Security of Radioactive Sources* and in 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material."

² The credentialing process entails an employment verification, need-to-know determination, and identity proofing.

³ Licensees who manufacture, transfer, receive, disassemble, or dispose of a nationally tracked source are required to report these transactions to the NSTS.

States are in the process of adopting full utilization of WBL. The NRC has encouraged all the Agreement States to adopt WBL as their licensing system to reduce the burden of providing license updates to the NRC for inclusion in WBL. However, some Agreement States have indicated that they are unable to use non-State IT systems.

License Verification System. LVS was deployed in 2013, and is used by radioactive materials licensees to confirm that a license is valid and accurate, and that a licensee (often a customer) is authorized to acquire the quantities and types of radioactive materials being requested. LVS performs automated verification checks using data that reside in WBL and NSTS in order to verify that Category 1 and Category 2 possession limits are not exceeded by licensees. The system provides secure access to the license verification function via the internet. A process is in place for Agreement States that do not use WBL as their license tracking system to voluntarily submit their licenses to the NRC to enable the use of LVS. In this process, license information is profiled in WBL by NRC contractor staff, and the license images are uploaded to WBL to make these licenses available for license verification through LVS.

The NRC and Agreement States have undertaken numerous efforts to ensure that the source security and accountability infrastructure is adequate to protect public health and safety and maintain common defense and security. Some of these efforts were in response to initiatives directed by the President and Congress. The effectiveness of these efforts has also been evaluated by the U.S. Government Accountability Office (GAO) or through NRC staff-initiated or Commission-directed evaluations related to the scope and content of existing requirements. A summary of these efforts is provided below to add context to the discussions provided in the body of this paper.

Past GAO Audits/Investigations and Response to GAO Recommendations

The GAO has conducted several audits and investigations involving the NRC and Agreement States' radioactive materials licensing and security programs. In its first such report, issued in 2003, the GAO recommended that the NRC take action to ensure that its licensing process verified the intended use of radioactive material sought by an applicant (GAO-03-804, "Nuclear Security: Federal and State Action Needed to Improve Security of Sealed Radioactive Sources"). The GAO recommended that the "NRC (1) collaborate with states to determine availability of highest risk sealed sources, (2) determine if owners of certain devices should apply for licenses,⁴ (3) modify NRC's licensing process so sealed sources cannot be purchased until NRC verifies their intended use, (4) ensure that NRC's evaluation of federal and state programs assess security of sealed sources, and (5) determine how states can participate in implementing additional security measures." Regarding the accountability of generally licensed devices, the GAO recommended that the NRC "determine, in consultation with the Agreement States, the costs and benefits of requiring owners of devices that are now generally licensed to apply for specific licenses and whether the costs are commensurate with the risks these devices present." In response to the GAO recommendations, among other activities, the NRC issued "Implementation Guidance to Ensure That Radioactive Materials Will Be Used as Intended," in December 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML063480256) to ensure that license applicants are legitimate, and that if licensed, they will use radioactive materials safely and securely.

⁴ See later discussion in this enclosure about generally licensed devices.

Subsequently, in 2007, the GAO conducted an investigation of the 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 radioactive material. The GAO testimony issued pursuant to the investigation, GAO-07-1038T, "Nuclear Security: Actions Taken by NRC to Strengthen Its Licensing Process for Sealed Radioactive Sources Are Not Effective," included three recommendations. Specifically, GAO recommended that the NRC: (1) improve pre-licensing guidance, including consideration of mandatory site visits for new applicants; (2) perform periodic oversight of license application reviewers; and (3) improve measures to prevent counterfeiting of licenses.

In August 2007, the NRC staff submitted an action plan to the Commission to respond to GAO and other recommendations for addressing security issues in the National Materials Program (SECY-07-0147, "Response to U.S. Government Accountability Office Recommendations and Other Recommendations to Address Security Issues in the U.S. Nuclear Regulatory Commission Materials Program" (ADAMS Accession No. ML072360070)). The Commission approved the staff's action plan in the Staff Requirements Memorandum (SRM) for SECY-07-0147 (ADAMS Accession No. ML072620088), which included the formation of the Independent External Review Panel (IERP), the Materials Program Working Group (MPWG), and the 2008 Pre-Licensing Guidance Working Group (2008 PLWG). The IERP provided an external review of potential vulnerabilities in the NRC's radioactive materials licensing program, whereas the MPWG provided an internal assessment of security vulnerabilities in NRC and Agreement State radioactive materials programs. The 2008 PLWG's tasking was to review and revise interim guidance that had been issued in response to the GAO investigation. The recommendations from the IERP were considered by the MPWG. The IERP presented its recommendations to the Commission on March 18, 2008 (ADAMS Accession No. ML080700957), and the MPWG completed its report in October 2008 (non-public). The recommendations from these groups led the NRC and the Agreement States to strengthen their licensing, inspection, and regulatory processes employed to incorporate physical security and other security enhancements and prevent malevolent individuals from obtaining a radioactive materials license.

The MPWG took anti-counterfeiting measures into consideration as a result of the GAO's ability to use commercially available computer software to alter an NRC radioactive materials possession license. The MPWG considered the cost to produce a paper license, the effectiveness of the document only at the point of sale/transfer, the availability of successful countermeasures, and the inherent interference that the anti-counterfeiting measures would create with the legitimate verification measures prior to transfers of material (by faxing or scanning the paper license). After evaluating these factors, the MPWG concluded that although anti-counterfeiting measures could add to the security/authenticity of the paper license, the time and resources necessary to develop methodologies to preclude the ability to counterfeit a paper license outweighed the potential benefit. The MPWG further concluded that the long-term goal of license verification through LVS and the ability to track transfers of risk-significant quantities of radioactive materials would render the physical counterfeiting of the paper license ineffective. The IERP supported this position.

In September 2008, the 2008 PLWG issued to the NRC and Agreement States revised pre-licensing guidance that consisted of two separate checklists. One checklist was to be used for all new applicants in order to provide a basis of confidence that radioactive material will be used as specified on the license. The second checklist was developed for requests for risk-significant radioactive material in order to further evaluate the preparedness of the entity to fully implement the required physical protection regulations.

In 2014, the GAO initiated an audit of the radioactive materials licensing program to determine whether the licensing vulnerabilities identified in its 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: GAO rented storefront/warehouse space to demonstrate its 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 a license for a Category 3 well logging source in one of its attempts. This was the result of an Agreement State license reviewer not properly following available guidance and licensing procedures in place to prevent this scenario. Upon receipt of the license, 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 radioactive material, although at no point in the investigation were radioactive materials actually obtained by GAO.

Once notified by GAO of the investigation outcome 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. One working group considered enhancements to the pre-licensing guidance (the 2016 Enhancements to the Pre-Licensing Guidance Working Group, or PLWG) while the second working group was established to determine the need for enhancements to existing requirements or guidance for license verification and source tracking of radioactive material quantities below Category 1 and Category 2 thresholds (the License Verification Working Group and Transfer of Category 3 Sources, or LVWG).

On July 15, 2016, the GAO published its final report documenting the results of its radioactive material licensing audit and investigation, GAO-16-330, "Nuclear Security: NRC Has Enhanced the Controls of Dangerous Radioactive Materials, but Vulnerabilities Remain." The GAO recommended that the NRC include Category 3 sources in NSTS, require license verification prior to transfers of Category 3 sources, and determine if unknown applicants are prepared to implement security measures as part of the pre-licensing site visit process.

The PLWG and LVWG completed their chartered activities in October 2016.⁵ The associated Steering Committee met with the working groups to discuss and evaluate the working groups' recommendations, while also taking into consideration Commission direction in the SRM for COMJMB-16-0001, "Proposed Staff Re-Evaluation of Category 3 Source Accountability" (ADAMS Accession No. ML16292A812) that had just been issued. The Steering Committee endorsed the majority of the PLWG's recommendations to enhance pre-licensing guidance and conduct rulemaking, but deferred endorsement of the LVWG's recommendations due to: 1) the existence of substantial overlap between the LVWG's activities and tasks in the SRM for COMJMB-16-0001; 2) the need to consider cost/benefit, vulnerability, and threat analyses required by the SRM for COMJMB-16-0001 to inform any decisions on the LVWG's recommendations; and 3) the need to develop a project plan for responding to the SRM for COMJMB-16-0001 in order to determine potential decisionmaking timeframes for recommendations related to Category 3 source security and accountability. The results of the

⁵ The PLWG and LVWG were chartered in response to the staff identified vulnerabilities as a result of the 2015 GAO investigation described in GAO's 2016 materials licensing audit report (GAO-16-330).

PLWG and LVWG activities were used to inform the current Category 3 source security and accountability initiatives described in this paper. In February 2017, the NRC staff provided the Commission an update on source security and accountability activities in SECY-17-0025, “Update on Source Security and Accountability Activities” (ADAMS Accession No. ML16344A108). That paper included updates on the PLWG and LVWG activities and informed the Commission of the initiation of Category 3 source security and accountability initiatives to address the tasks in SRM-COMJMB-16-0001, and potential strategies for addressing rulemaking activities affecting materials licensees.

Past Evaluations of Providing Enhanced Controls for Category 3 Sources

The NRC has previously analyzed whether enhanced controls or tracking for Category 3 sources are warranted, specifically to address aggregation of Category 3 sources to a Category 2 quantity of radioactive material.

In the SRM for SECY-05-0092, “Proposed Rule: National Source Tracking of Sealed Sources,”⁶ the Commission directed the staff to provide recommendations for the tracking and control of sources below Category 2 thresholds. Subsequently, in SECY-06-0094, “Tracking or Providing Enhanced Controls for Category 3 Sources” (ADAMS Accession No. ML052200199), the NRC staff informed the Commission that existing data was insufficient to support comprehensive and accurate cost estimates for including Category 3 sources in NSTS. In the SRM for SECY-06-0094 (ADAMS Accession No. ML061630030), the Commission approved the staff’s plan to remedy this lack of data and directed the staff to perform a one-time data collection of Category 3 source information to determine the number of Category 3 licensees and sources. On September 29, 2006, the NRC staff submitted the NSTS final rule (SECY-06-0205, “Final Rule: National Source Tracking of Sealed Sources” (ADAMS Accession No. ML062290442)) to the Commission, with the rule including Category 1 and Category 2 sources only. Comments received on the proposed rule reflected strong opposing views on the possible inclusion of Category 3 sources in NSTS. Some stakeholders raised additional issues related to possession of Category 3 sources under a general license (GL) that deserved additional consideration. In the SRM for SECY-06-0205 (ADAMS Accession No. ML062990089), the Commission approved the final NSTS rule and directed the staff to work with NRC external stakeholders to develop and recommend to the Commission alternative and less burdensome reporting and verification guidelines for Category 3 sources which would provide adequate protection of the public health and safety commensurate with the reduced risk associated with these radioactive materials.

In response to SECY-07-0147, which described the agency’s action plan for addressing the 2007 GAO investigation (see earlier discussion), the Commission approved consideration of expanding the (then pending) NSTS to include Category 3 sources plus a subset of “high-end” Category 4 sources (SRM-SECY-07-0147). On March 6, 2008, following the work of the MPWG and associated rulemaking activities, the NRC staff submitted SECY-08-0031, “Proposed Rule: Expansion of the National Source Tracking System” (ADAMS Accession No. ML080370532), for Commission approval. The proposed rule sought Commission approval to expand the NSTS to include additional licensees who possess sealed sources containing greater than or equal to

⁶ SECY 05-0092 is available in ADAMS (Accession No. ML051100211). The SRM for SECY-05-0092 is available in ADAMS (Accession No. ML062190417).

one-tenth⁷ of the IAEA Category 3 threshold levels. The reasons for expanding the NSTS to include Category 3 sources were (1) the increase in accountability of Category 3 sources, using as a technical basis the IAEA definition of Category 3 as “dangerous,” and (2) the potential for aggregation of Category 3 sources to a Category 2 quantity of concern. In the SRM for SECY-08-0031 (ADAMS Accession No. ML080860123), the Commission approved the staff’s recommendation to publish the proposed rule. 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 Category 2 source information to the NSTS. On January 15, 2009, in SECY-09-0011, “Deferral of Rulemaking: Expansion of National Source Tracking System” (ADAMS Accession No. ML083540566), the NRC staff requested to defer further expansion of NSTS to allow time to monitor the operation of the newly-launched NSTS for 1 year and to apply any insights gained for the decision on continued system expansion. This request for deferral was not approved by the Commission in its SRM for SECY-09-0011 (ADAMS Accession No. ML091480775). As a result of the Commission’s direction, on June 10, 2009, the NRC staff issued SECY-09-0086, “Final Rule: Expansion of the National Source Tracking System” (ADAMS Accession No. ML091390176), which requested approval of the final rule amending 10 CFR Parts 20 and 32 to expand reporting to the NSTS to include Category 3 sources. On June 30, 2009, the Commission issued the SRM for SECY-09-0086 (ADAMS Accession No. ML091811125) stating that it was not able to reach a decision and as a result, the final rule was not approved. Some of the Commission votes on the matter indicated that further expansion of NSTS should be based upon a vulnerability assessment, built off an interagency risk study for sources,⁸ and that the original recommendation lacked a risk-informed foundation for proposed regulatory action.

Direction from the President and Congress

The Energy Policy Act of 2005 directed that the NRC establish the Radiation Source Protection and Security Task Force (Task Force) to evaluate and provide recommendations relating to the security of radiation sources in the U.S. from potential terrorist threats, including acts of sabotage, theft, or use of a radiation source in a radiological dispersal device. The Task Force is comprised of independent experts from 14 Federal agencies and one State organization, and is chaired by the NRC. The independent Task Force members represent agencies with broad authority over all aspects of radioactive source control, including regulatory, security, intelligence, and international activities. As mandated by legislation, the first Task Force report was submitted in August 2006 (ADAMS Accession No. ML062190349). In that report, the Task Force found no significant security gaps that are not already being addressed and that the current regulatory framework provides reasonable assurance that Category 1 and Category 2 sources are safe and secure. In its 2010 report (ADAMS Accession No. ML102230141), the Task Force confirmed that Category 1 and Category 2 sources should continue to be the focus of increased protection. In its 2014 report (ADAMS Accession No. ML14219A642), the Task

⁷ The NRC does not define “one-tenth of Category 3” or “Category 3.5” currently, but at the time of the proposal, the understanding was that it would represent a quantity equal to or greater than the Category 4 threshold (one-tenth of the Category 3 threshold) but less than the Category 3 threshold. Later terminology used one-tenth of Category 3 exclusively to alleviate some confusion, however, as a result, terminology is mixed between “Category 3.5” and “one-tenth of Category 3” when referring to sources of the same activity level. The IAEA does not define either subset.

⁸ In 2009, the Radiation Sources Subgroup of the Radiation Source Protection and Security Task Force published (non-public) their interagency report detailing the methodology and basis for the confirmation and determination that Category 2 is the appropriate lower threshold of radioactivity for physical protection against a defined significant radiation exposure device and significant radiological dispersal device.

Force concluded that “although the U.S. still faces a general, credible, threat of terrorism utilizing radioactive materials, the Task Force is not aware of any specific threat leveled against a specific target. In addition, the global use of radioactive sources has remained stable both in species and quantity such that the addition of novel radionuclides or changes in thresholds for the existing list is not justified at this time.”⁹ The Task Force is mandated to continue evaluating all aspects of the prevention of malicious uses of radioactive materials, and to document the results of its work in a report to the President and the Congress every 4 years.

In 2016, the NRC staff completed a Congressionally-mandated review of 10 CFR Part 37 (program review) which included evaluating the effectiveness of the associated requirements and determining whether such requirements are adequate to protect Category 1 and Category 2 quantities of radioactive material. The program review encompassed an evaluation of nine 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, an evaluation of events reported under the provisions of the rule, and an evaluation of current tracking and accounting practices for radioactive sources. The review also included consideration of the definition of “aggregation” as it applies to lower category radioactive sources, including well logging sources (which are often Category 3 or lower), due to another GAO recommendation¹⁰ that the NRC reconsider the definition of “collocated” (not used or defined in 10 CFR Part 37). For the program review, the review team and an external expert evaluated various storage practices, interviewed both NRC and Agreement State inspectors about their experiences and knowledge of how the definition of aggregation is applied by licensees of various types, and solicited specific feedback from stakeholders about the definition. Additionally, the review team evaluated the available guidance that the NRC developed to determine if it was adequately descriptive or in need of augmentation, both for licensees to maintain compliance with 10 CFR Part 37 and for inspectors to verify compliance. The review team concluded that the requirements of 10 CFR Parts 20 and 37 provide reasonable assurance of preventing the theft of lower category radioactive sources in storage and that the additional modality-specific requirements (e.g., those contained in 10 CFR Part 39 for well logging sources) add appropriate control for sources regardless of activity. However, enhancements to NRC guidance for licensees, and for inspectors on the conduct of inspections, may strengthen the overall security program. The results of the program review were documented in a report to Congress that was issued in December 2016 (ADAMS Accession No. ML16347A398) and, consistent with Commission direction, were used to inform the re-evaluation of source security and accountability of Category 3 quantities of radioactive material.

Past Evaluation of Limiting the Quantity of Byproduct Material in a Generally Licensed Device

Although the GL program dates back to 1959, the current regulatory requirements for higher risk, generally licensed devices in 10 CFR 31.5 is based on the final rule published on December 18, 2000 (65 FR 79162 - 79190). The rule was promulgated so that the NRC could better track general licensees and the generally licensed devices they possess that present a higher risk of exposure to the public or property damage in the case of loss of control (compared to other generally licensed devices), and to better ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material.

⁹ The “existing list” mentioned as part of the Task Force report quotation refers to the 16 radionuclides and associated Category 2 threshold quantities listed in the IAEA *Code of Conduct on the Safety and Security of Radioactive Sources* (http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf).

¹⁰ The GAO recommendation to reconsider collocation appears in report GAO-14-293, “Nuclear Nonproliferation: Actions Needed to Increase the Security of U.S. Industrial Radiological Sources.”

This rule was informed by NUREG-1551, “Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices” published in October 1996. The December 2000 rule included a number of new requirements to increase accountability and awareness of regulatory requirements, including (1) registration of generally licensed devices that were considered to present a higher risk (compared to other generally licensed devices) of potential exposure to the public and property damage in the case of loss of control; (2) recovery of NRC costs through an annual fee; (3) appointment of a responsible person knowing the regulatory requirements; (4) limitation on the amount of time a general licensee can keep an unused device in storage; (5) allowing transfers to specific licensees authorized under 10 CFR Part 30 or equivalent Agreement State requirements; (6) notification of name and address changes; (7) reporting requirements in the event of incident to ensure that the premises and environs are suitable for unrestricted release; and (8) revision to the reporting requirement for transfer of a generally licensed device to another general licensee taking possession at the same location. The NRC does not regularly conduct inspections at facilities possessing generally licensed devices to ensure that they are being used and maintained safely or securely, but does conduct reactive inspections upon reports of devices that have been found or upon receipt of allegations.

The NRC has previously evaluated the threshold for generally licensed devices and considered whether to limit the quantity of certain byproduct material allowable in these devices. This effort was first included in the action plan developed in response to the 2003 GAO audit. In the SRM to SECY-05-0092, the Commission directed staff to “provide a paper to the Commission regarding tracking or providing enhanced controls for sources below the Category 2 thresholds.” In SECY-06-0094, the NRC staff informed the Commission of the results of its analysis and recommended rulemaking to change certain regulations governing the possession, use and distribution of generally licensed devices. In the SRM for SECY-06-0094, the Commission approved the NRC staff’s recommendation to amend certain generally licensed device and associated manufacturer requirements. The Commission also approved the one-time data collection and analysis of Category 3.5 sources and use of the data to evaluate both the general and specific licensing limits. The Commission approved further evaluation of specific licensing of Category 3.5 and higher generally licensed devices based on an assessment of public health and safety benefits that would result from enhanced controls at the Category 3.5 level, along with resource impacts on licensees and the NRC. On August 3, 2009, the NRC published a proposed rule “Limiting the Quantity of Byproduct Material in a Generally Licensed Device” (74 FR 28372). The proposed rule would have amended the regulations to limit the quantity of certain byproduct material allowed in a generally licensed device to below one-tenth of the IAEA’s Category 3 thresholds, and to require licensees with devices containing byproduct material at or above this limit to obtain a specific license. On August 10, 2010, the NRC staff provided SECY-10-0105, “Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device” (ADAMS Accession No. ML100690242), to the Commission for consideration. In the SRM for SECY-10-0105 (ADAMS Accession No. ML103360262), the Commission disapproved publication of the final rule limiting the activity level allowed in generally licensed devices, but approved revision of the compatibility categories¹¹ of 10 CFR 31.5 and 31.6 from B to C. The four Commissioners who disapproved the publication of the final rule noted that the proposed rule did not present a robust safety or security argument, was not warranted based on the current threat environment, and posed a significant economic impact on licensees.

¹¹ Agreement State compatibility categories are described in <https://scp.nrc.gov/procedures/sa200.pdf>. The change from B to C allowed Agreement States to increase the controls pertaining to generally licensed devices above the requirements established by the NRC.