

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Hanson

SUBJECT: SECY-17-0083: RE-EVALUATION OF CATEGORY 3
SOURCE SECURITY AND ACCOUNTABILITY IN
RESPONSE TO SRM-COMJMB-16-0001

Approved Disapproved Abstain Not Participating

COMMENTS: Below Attached None

Entered in "STARS"
Yes No

SIGNATURE
Christopher T. Hanson

DATE 10/18/2021

Chairman Hanson's Comments on SECY-17-0083, "Re-evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-001"

Over the past 18 years, the Government Accountability Office (GAO) has reported some weaknesses in the NRC and Agreement State regulatory practices regarding source security. As a result, NRC, Agreement States, and licensees implemented several measures outside of rulemaking to improve the regulatory framework for source security. However, some of the potential vulnerabilities identified by the GAO regarding Category 3 source security and accountability remain unaddressed. In SECY-17-0083, the staff presented its conclusions and proposed recommendations in response to the Commission direction to re-evaluate the regulations or processes governing Category 3 source protection and accountability. After reviewing the staff's evaluation of the areas of concern, I approve and disapprove portions of the staff's recommendations, as outlined below.

Concern 1: Ability to obtain a valid license using a fictitious company or by providing false information

In 2015, the GAO successfully obtained a materials license using a fictitious company with a rented warehouse space to establish legitimacy during the pre-licensing visits. Since then, the staff has implemented enhanced steps for vetting new applicants, including non-rulemaking enhancements to the pre-licensing guidance and site visits, and training. However, there is still a proposed enhancement that needs to be addressed via rulemaking. Specifically, the staff concluded that requiring applicants to have safety and security equipment in place before a license is granted will help to confirm the validity of new applicants. Although the NRC has implemented this enhancement through guidance, I agree that establishing the requirement in the regulations will increase predictability in the licensing process for the National Materials Program and for new applicants. Therefore, I approve the staff's recommendation to pursue rulemaking to amend 10 CFR Parts 30, 40, and 70 to include the proposed requirement.

Concern 2: Ability to alter a valid license to obtain more or different radioactive material than authorized or to counterfeit a license to obtain radioactive materials illicitly

During the 2015 investigation, the GAO also successfully altered the obtained materials license to procure additional radioactive material above the authorized limit. Although the GAO did not actually acquire material throughout their investigation, the GAO demonstrated the vulnerability of alteration or falsification of a license without adequate verification by the source distributor or manufacturer during the procurement/transfer process.

In SECY-17-0083, the staff proposed two minor amendments to 10 CFR Parts 30, 40 and 70 to address Concern 2 (certification method and removal of the obsolete "reporting services" method). Although I approve those amendments, these changes alone would not solve the issue of falsification/alterations of licenses, specifically for Category 3 quantities. The current process for Category 3 quantities transfers still relies on the licensed manufacturer/distributors to verify with the requester and does not rely on an independent method of authentication. Hence, the vulnerability remains for a malevolent requester to falsify or alter a license.

To resolve the issue, the staff should require verification for transfers of Category 3 quantities of radioactive material through the License Verification System (LVS) or the regulatory authority (staff's Concern 2, Option 2). LVS uses information stored in the Web-Based Licensing (WBL) and the National Source Tracking System (NSTS) so users can verify that a licensee is valid, accurate, and authorized to acquire quantities and types of radioactive material being requested. Agreement States that do not use the WBL system would need to either voluntarily provide their licenses authorizing Category 3 quantities to the NRC to facilitate verification through LVS or perform manual license verification. To date, only seven Agreement States use WBL but eleven more are in the process of adopting it. I applaud the staff's continued efforts to encourage Agreement States to adopt WBL as

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their license tracking system. Increasing the use of WBL by Agreement States would enhance the accuracy of license data within the system and would eliminate the time and costs associated with providing license amendments to the NRC staff for loading into WBL.

I believe that with all these enhancements, we will more effectively deter the falsification or alteration of Category 3 licenses. This will also close the regulatory challenge identified by the GAO and the reliance on paper licenses. Therefore, for Concern 2, I disapprove the staff's recommendation under Option 1 and approve Option 2. I also approve the staff's recommendation to reduce the license verification/authentication frequency for transfers to established licensees. I believe this will benefit both the regulators and the industry, without impacting safety or security. This would result in minimal disruption on the transfer of Category 3 sources for medical use and other applications.

Concern 3: Ability to accumulate or aggregate Category 3 sources to a Category 2 quantity of radioactive material requiring enhanced security

The GAO recommended the NRC require the addition of all Category 3 sources to NSTS to facilitate oversight of the potential for aggregation of sources to a Category 2 quantity of radioactive material. However, in SECY-17-0083, the staff concluded that NSTS does not have the capability to serve this function. The NSTS is not a material accounting system; it is a registry of sources. Licensees report transfers after they occur, not as part of license verification before transfers and thus do not provide real-time information or stop shipments. Therefore, the staff recommended not requiring that Category 3 sources be reported to the NSTS.

I agree with the staff's recommendation. The current licensing and inspection program provided through 10 CFR Parts 20 and 37, with the additional enhancements to license verification addressed in Concern 2, will provide reasonable assurance that radioactive materials will be used securely and deter malicious entities from acquiring sources that aggregate to higher quantities of concern. Adding Category 3 sources to the NSTS will not appreciably improve safety or security and is therefore not necessary.

Concern 4: Limited accountability, lack of pre-licensing evaluations, and lack of routine oversight of Category 3 sources contained within generally licensed devices

The staff re-evaluated the security and accountability of generally licensed devices as part of the broader evaluation of source security and accountability of Category 3 quantities of radioactive material. Although the staff determined that no regulatory changes are warranted based on security and accountability, the staff determined that additional evaluations were needed to ensure the protection of public health and safety. Some Agreement States expressed concerns in regard to accountability and reliance on the user to handle the generally licensed devices, specifically for those Category 3 generally licensed devices that are in the higher quantity range of material and which could become a safety issue. Some of these Agreement States even suggested that generally licensed devices should be specifically licensed. The staff recognized that there is a lack of oversight for generally licensed devices as there is no routine inspection process for the General License program.

As mentioned in SECY-17-0083, the staff initiated some efforts to assess different options regarding the General License program. Therefore, within six months of the final Staff Requirements Memorandum, the staff should provide to the Commission a notation vote paper with the staff's evaluation and recommendations developed by the General License Program Re-Evaluation Working Group and the General License Program Modernization Working Group.