

**RULEMAKING ISSUE**  
**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Carrie M. Safford, Secretary  
**FROM:** COMMISSIONER CAPUTO  
**SUBJECT:** SECY-22-0112: Radioactive Source Security and  
Accountability Rulemaking (Docket ID No. NRC-2022-  
0103; RIN No. 3150-AK83)

Approved  Disapproved  Abstain  Not Participating

COMMENTS: Below  Attached  None

**Entered in STAR**

Yes

No

  
\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

2-13-24

**Comments of Commissioner Caputo on SECY-22-0112:  
Proposed Rule: Radioactive Source Security and Accountability**

In SECY-22-0112, the staff recommends approval to publish a proposed rule amending regulations to further ensure validity of applicants and require license verification through the License Verification System (LVS) or by contacting the license issuing authority for transfers of category 3 quantities of radioactive material. The proposed rule, if approved, will also update transfer verification methods and require generally licensed devices containing category 3 quantities of radioactive material to be transferred to licensees possessing a specific NRC or Agreement State license. First, I commend the staff for all their extensive work and efforts on the radioactive source security and accountability and delivering the proposed rule ahead of schedule. Chair Hanson, and Commissioner Crowell believe approving this rulemaking will further enhance the security of Category 3 sources. I recognize and respect their views. However, I arrived at a different conclusion on the need of requiring license verification via LVS for transfers of Category 3 and requiring new Category 3 quantities of radioactive material to become specific licenses. Therefore, I disapprove, in part, the staff's request to impose additional requirements to Category 3 quantities of material. I believe that the proposed enhancements to the security and control of Category 3 quantities of material will pose significant burden that is not cost justified nor risk informed.

The US has many years of experience with implementing a graded approach for security in the licensing, oversight, and control of radioactive materials. The strong regulatory framework that NRC and its Agreement State partners employ ensure adequate protection without unnecessary burden by integrating safety and security programs that accounts for the overall risk posed by these radioactive materials.<sup>1</sup> The NRC and its Agreement States have re-evaluated their regulatory framework over and over and 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. Additionally, the Energy Policy Act of 2005 created the Radiation Source Protection and Security Task Force (Task Force) which is comprised of independent experts from 14 Federal agencies and one State organization. The Task Force recommendations represent the national consensus on source security in the United States. This Task Force over the years has analyzed the radionuclides and thresholds appropriate for enhanced security measures to protect risk significant radioactive sources and has determined that the Category 2 thresholds values are appropriate for determining the quantities of radionuclides that warrant enhance security and protection.<sup>2</sup> The Task Force 2018 report concluded that "current measures for the security and control of radioactive sources are appropriately protective of risk-significant quantities of radioactive." Most recently, the 2022 Task Force report found that "there are no significant gaps in the area of radioactive source protection and security that are not already being addressed."<sup>3</sup>

As regulators, we have a responsibility to follow the Principles of Good Regulation particularly in this case the efficiency principle which states that regulatory activities should be consistent with the degree of risk reduction they achieve and the option which minimizes the use of resources

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<sup>1</sup> Cervera, M. and White, D. "The Application of the Graded Approach to Physical Protection of Radioactive Sources in the United States," Presented at the International Conference on Nuclear Security 2020. February 13, 2020.

<sup>2</sup> U.S. Nuclear Regulatory Commission. "The 2010- Radiation Source Protection and Security Task Force Report," August 11, 2010.

<sup>3</sup> U.S. Nuclear Regulatory Commission. "The 2022 Radiation Source Protection and Security Task Force Report," (August 5, 2022) (Agencywide Documents Access and Management System (ADAMS) No. [ML22213A157](#)).

should be adopted. The security measures should be proportionate to the risk. As stated in staff's regulatory analysis, the NRC considers all aspects of the safety and security risk - threat, vulnerability, and consequence for the regulatory baseline to determine the appropriate policies and requirements. In 2017, the NRC staff conducted a threat, vulnerability and consequence assessment which informed SECY-17-0083 and concluded that the data does not support additional security and accountability controls for Category 3 sources covered under a specific license.<sup>4</sup> The threat, vulnerability, and consequence assessment shows that the threat environment have not changed significantly between 1975 and 2017. Evidence<sup>5</sup> continues to support the same conclusion. The multiple GAO audits identified isolated instances with the implementation of our robust framework however it did not identify a problem with existing regulatory requirements.<sup>6</sup> Furthermore, the NRC has taken multiple actions to improve the regulatory framework and implementation practices where it makes sense.

Given all the information before us on this issue, the facts inarguably support staff's conclusion in SECY-17-0083 to not recommend the additional security and accountability controls for Category 3 sources covered under a specific license. I believe this proposed rule misses the target of becoming a more risk informed regulator. There will be more than 4000 material licensees impacted by this rulemaking with a net rulemaking cost of 23.1 million which are not cost justified and does not have any quantified increased safety or security benefit. Therefore, I disapprove the changes in 10 CFR 30, 40 and 70 to require license verification through the License Verification System or by contacting the license issuing authority for transfers of Category 3 quantities of radioactive material and to require generally licensed devices containing Category 3 quantities of radioactive material to be transferred to licensees possessing a specific NRC or Agreement State license. The staff should continue to monitor and analyze incidents involving Category 3 quantities of material and inform the Commission of evidence that would demonstrate an increased threat warranting Commission re-evaluation of enhancements to the security and control of Category 3 quantities of material.

In addition, the existing enhanced pre-licensing processes provide appropriate controls to verify the identity and validity of unknown applicants and assess their readiness to use radioactive material as intended. For this reason, amending 10 CFR 30.33(a)(3), 40.32(d), and 70.23(a)(5) to require applicants to have safety and security equipment in place before the NRC would issue a license is unnecessary.

I do approve staff recommendation to amend regulations to update the oral certification method and remove the obsolete method of obtaining other sources of information.

I appreciate the staff's effort to develop this proposed rulemaking. However, staff's evaluation of the potential for this proposed rule to constitute a backfit was not adequately performed. The staff fails to consider 10 CFR Part 70 licensees' potential modification of procedures to transfer radioactive material sources and whether it constitutes a backfit. It appears that the staff may have predetermined the backfit conclusion without considering the impacts to 10 CFR Part 70 licensees. The staff should have fully analyzed the impacts to Part 70 licensees under § 70.76(a)(3). In the event the staff determined the proposed rulemaking constituted a backfit, it

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<sup>4</sup> SECY-17-0083, "Re-Evaluation of Category 3 Source Security and Accountability in Response to SRM-COMJMB-16-0001," September 6, 2017, Page 9.

<sup>5</sup> One event reported by licensee involving a Category 3 source in the Nuclear Material Events Database (search parameters: January 2017 to February 2024).

<sup>6</sup> Frequently asked questions about NRC's response to the 2019 GAO audit <https://www.nrc.gov/security/byproduct/faq-response-2019-gao-audit.html>

should have explained whether there would be a substantial increase in the overall protection of public health and safety or the common defense and security and whether the direct and indirect costs of implementation for the facilities are justified in view of this increased protection. This is one example of many where staff did not adequately address backfit in a rulemaking. Staff should re-evaluate and improve its processes for conducting backfit analyses for rulemakings.