



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 30, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0086

TITLE: FINAL RULE: EXPANSION OF THE NATIONAL SOURCE
TRACKING SYSTEM (RIN 3150-A129)

The Commission (with Chairman Jaczko and Commissioner Lyons approving and Commissioners Klein and Svinicki disapproving) responded to the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 30, 2009.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Lyons
Commissioner Klein
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0086

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	6/16/09
COMR. LYONS	X				X	6/18/09
COMR. KLEIN		X			X	6/26/09
COMR. SVINICKI		X			X	6/26/09

COMMENT RESOLUTION

In their vote sheets, Chairman Jaczko and Commissioner Lyons approved the final rule and Commissioners Klein and Svinicki disapproved the final rule. Subsequently, the staff's recommendation to publish the final rule was not approved, as reflected in the SRM issued on June 30, 2009.

AFFIRMATION ITEM

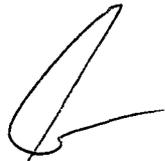
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN JACZKO
SUBJECT: SECY-09-0086 – FINAL RULE: EXPANSION OF THE
NATIONAL SOURCE TRACKING SYSTEM (RIN 3150-
A129)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

06/16/2009

DATE

Entered on "STARS" Yes X No _____

**Chairman Jaczko's Comments on SECY-09-0086,
"Final Rule: Expansion of the National Source Tracking System"**

I approve the staff's recommendation to publish a final rule in the Federal Register that will expand the National Source Tracking System (NSTS) to include Category 3 sources, with one modification as discussed below. The NSTS is a critical component of the agency's security framework and I believe that including Category 3 sources will help to continue to improve that framework.

The staff has proposed setting an effective date of November 30, 2012, for reporting Category 3 sources. It is my understanding that the Web-Based Licensing (WBL) system and the License Verification System (LVS) are also expected to be functioning in the 2012 timeframe. Therefore, the staff should revise the wording of the proposed rule to make it effective when the WBL/LVS are operational. This would allow for all of these reporting systems to be fully integrated, and also allow for efficiencies in data entry because the license information in WBL/LVS will be automatically transferred into NSTS (i.e., NSTS will not have to be separately populated). The final rule should be promulgated now, rather than delayed until 2012, because that will allow the staff to work with licensees to begin the credentialing process prior to the rule going into effect.

The verification of the Category 1 and 2 data, which was transferred into NSTS from the interim database, has been difficult and time consuming for both the staff and for Agreement States. It appears that uploading data from the interim database was likely not the best approach for populating NSTS for Category 1 and 2; however, it is my understanding that staff does not intend to take that approach for Category 3 sources, and I agree that a different approach should be used. Staff has recently initiated multiple efforts to improve data integrity for NSTS and these efforts, as well as lessons learned from Category 1 and 2 data input, will lessen the difficulty of future data entry for Category 3.

Once the expansion goes into effect in 2012, some NRC and Agreement State resources will be needed to inspect licensees to determine whether their reporting of Category 3 sources to NSTS is in compliance with the rule. It is important to note that the rule itself does not establish inspection frequency. Inspection frequency for different types of licensees is provided in Inspection Manual 2800, and these frequencies would not change due to NSTS expansion. Inspections are generally geared towards risk-significant items and not every single area is inspected every time; inspectors could use their judgment as to whether Category 3 source reporting needs to be inspected during a particular visit. As indicated in TI 2800/039, "Verification of Licensee Responses to NRC Requirement for Inventories of Materials Tracked in the National Source Tracking System," inspectors can check a suitable fraction of items in the licensee's inventory rather than physically verifying every item.


06/10/2009
Gregory B. Jaczko

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-09-0086 – FINAL RULE: EXPANSION OF THE
NATIONAL SOURCE TRACKING SYSTEM (RIN 3150-
A129)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached X None



Peter B. Lyons
SIGNATURE

6/ 18 /09
DATE

Entered on "STARS" Yes X No

Commissioner Lyons' Comments on SECY-09-0086
Final Rule: Expansion of the National Source Tracking System

I greatly appreciate the efforts of NRC and Agreement States staff to provide the proposed final rule to expand the National Source Tracking System (NSTS) to the Commission for deliberation before the end of my term. Although I initially believed that it would be proper and prudent to expand the NSTS to include sealed sources containing greater than or equal to 1/10th of the International Atomic Energy Agency (IAEA) Category 3 threshold levels, and supported staff's recommendation to publish a proposed rule reflecting these levels, I am now concerned that further expansion of the NSTS to include sources down to 1/10th of Category 3 levels will divert NRC and Agreement States staff and licensee efforts to fully focus safety and security efforts on risk significant sources.

I concur with Chairman Jaczko on expansion of the NSTS and approve rulemaking to expand the NSTS to include IAEA Category 3. I strongly believe that requiring these additional sources to be tracked nationally will further reduce the potential for aggregating sources to a more risk significant level.

The IAEA efforts (which included significant NRC staff involvement) and publications regarding D-Values, as well as risk-based ranking/categorization of radiation sources and the Code of Conduct, along with staff's analysis, provide the information necessary to support an adequate technical basis to expand the NSTS.

The IAEA defines the source categorization levels based on D-Values. D-Values define dangerous sources, that is to say, a source that could, if not under control, give rise to exposure sufficient to cause severe deterministic effects. A Category 3 source has a D-Value between 1 and 10. The D-Value for Category 2 sources is between 10 and 1000. IAEA noted that aggregation of sources may have safety implications, and that Category 3 sources have the potential to cause severe deterministic effects. IAEA suggests regulators consider including them in a national register with the Category 1 and 2 sources.

D-Values for both external (D_1 values) and internal (D_2 values) exposure were calculated for various scenarios, and the more restrictive of the D_1 and D_2 values was used as the D-Value. Experts, many from the NRC, used operational experience, professional judgment and lessons learned from radiological accidents to establish the final bounding values. The use of professional judgment allowed for consideration of factors other than just source activity to determine the final D-Value, such as the nature of the work, mobility of the source, experience from reported accidents and typical and unique applications of use.

In addition, the license verification system (LVS), which will use information stored in NSTS and the web-based licensing system to ensure radioactive sources are obtained in authorized amounts only by legitimate users, should provide confidence regarding any aggregation towards Category 2 levels.

In acknowledging the comments of stakeholders, including the OAS and CRCPD, regarding the need for more time to gain operating experience with the NSTS system, I approve the delayed implementation date of the final rule proposed by staff. Both the staff and Commission believed that there was a sufficient regulatory basis to publish a proposed rule for comment. I continue to believe that we have an adequate technical basis to make a good decision on publication of a final rule now, and that such a policy decision will not be further informed by additional technical analyses.

NRC has reported to Congress and the Government Accountability Office (GAO) that there was progress in expanding the NSTS. NRC's May 28, 2008, letter responding to the GAO draft report titled, "NRC and DHS Need to Take Additional Steps to Better Track and Detect Radioactive Materials," stated that a final rule for possible expansion of the NSTS would be completed in early 2009. Also, an NRC June 6, 2008, letter to Senator Carl Levin stated that implementation of the expansion of NSTS would occur by October 2009.

Therefore, I approve the final rule to expand the NSTS to include IAEA Category 3 sources. I continue to believe that the staff and the Commission have determined, as originally expressed in the proposed rule, that there is an adequate basis to expand the NSTS. I strongly believe that requiring these additional sources to be tracked nationally further reduces the potential to aggregate sources to a more risk significant level. Furthermore, to address the commenters' concerns on needing more experience with NSTS, I concur with the staff's recommended rule implementation date of November 30, 2012. I believe that additional operational experience with the NSTS and subsequent beneficial updates will be gained by delaying implementation of the final rule.

I also favor deleting "and will impose legally binding requirements on licensees effective October 31, 2012" in the draft Congressional letters.


Peter B. Lyons Date 6/10/09

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Klein
SUBJECT: SECY-09-0086 – FINAL RULE: EXPANSION OF THE
NATIONAL SOURCE TRACKING SYSTEM (RIN 3150-
A129)

Approved _____ Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

6/26/2009

DATE

Entered on "STARS" Yes No ___

**Commissioner Klein's Comments on SECY-09-0086, Final Rule:
Expansion of the National Source Tracking System**

I have given thoughtful consideration to the many different points of view and facts that bear on the matter of whether to expand the National Source Tracking System (NSTS) beyond IAEA Category 2 sources. Chairman Jaczko and Commissioner Lyons strongly believe that implementing this final rule to include Category 3 sources in the NSTS will further reduce the potential to aggregate sources to a more risk significant level. I acknowledge and respect their views, and believe that the extensive discussions my colleagues and I have had on this policy matter exemplify the inherent strength of the Commission's collegial deliberative process. That said, I arrived at a different conclusion on the necessity of issuing this rule now and therefore disapprove the staff's request to publish the final rule in the *Federal Register*.

From my perspective, nothing has changed significantly since I voted on SECY-09-0011, which recommended that this final rule be deferred for a year to allow experience to be gained in operating the NSTS for Category 1 and 2 sources. My disapproval of this final rule is largely based on the same reasons I approved deferring the rule. Any further expansion of the NSTS should be based upon a vulnerability assessment, which should be built off of the interagency risk study for sources that is currently being done under the sponsorship of the Office of Science and Technology Policy. It is worth noting that the Board of Directors of the Organization of Agreement States (OAS), which represents the regulators of 80 percent of the affected licensees, supports the concept of a vulnerability assessment. In a May 13, 2009 letter regarding this draft final rule, the OAS Board stated:

The Board of Directors of the Organization of Agreement States are strongly opposed to the expansion of the NSTS. We believe that a vulnerability assessment must be completed before consideration is given to expanding the NSTS to the lower risk Category 3 sources. Additionally, resolution of the current problems with NSTS is imperative prior to considering initiation of a rulemaking to expand the system.

The OAS Board reiterated this position by letter on June 26, 2009.

I support the point raised by Chairman Jaczko regarding the linkage of NSTS and the Web-Based Licensing system (WBL) and License Verification System (LVS). This proposal would represent a substantive change to the rule. Should the Commission approve this final rule with Chairman Jaczko's proposal to substitute WBL and LVS operability milestones for the rule's November 30, 2012 effective date, it should be renoticed as a proposed rule.



Dale E. Klein

6/26/2009

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-09-0086 – FINAL RULE: EXPANSION OF THE
NATIONAL SOURCE TRACKING SYSTEM (RIN 3150-
A129)

Approved _____ Disapproved XX Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached XX None _____



SIGNATURE

06~~2~~³/09

DATE

Entered on "STARS" Yes No _____

Commissioner Svinicki's Comments on SECY-09-0086
Final Rule: Expansion of the National Source Tracking System (RIN 3150-A129)

I disapprove this final rule and disapprove the publication in the *Federal Register* of the notice of final rulemaking (Enclosure 1 to SECY-09-0086). I disapprove this rule for two principal reasons.

First, consistent with my vote on SECY-09-0011, "Deferral of Rulemaking: Expansion of National Source Tracking System (RIN 3150-A129)", filed on April 8, 2009, wherein I approved the recommendation made by the NRC staff to defer rulemaking on expanding the National Source Tracking System (NSTS) while a year of observational data on the NSTS could be gathered and used to inform any final rule, I find little to nothing in the way of changed circumstances over the past two months to alter my view that finalizing a rule expanding NSTS is premature. As noted by many of the commenters on the proposed rule, delaying issuance of any final rule on potential expansion would allow for experience to be gained with Category 1 and Category 2 sources while providing information on the ability of licensees to participate in the NSTS and allowing the collection of sufficient data on which to base such a rule.

Second, in the rulemaking establishing the NSTS for Category 1 and Category 2 sources, specific rationale was provided for the tracking and inventory requirements for these sources. In that rulemaking, it was noted that the analysis by the U.S. Department of Energy and the NRC of potential health effects due to misuse of sources in a radiological dispersal device or a radiological exposure device identified radionuclide "quantities of concern" to be in the range similar to the IAEA Category 2 threshold values. The final rule now before the Commission provides no similar analytical basis for the proposed expansion to Category 3.

While I puzzle at the staff's use of the word "informed" in the following sentence, I note that the staff itself acknowledges in the proposed Statements of Consideration: "In arriving at an informed and professional judgment of what should constitute radioactive materials of concern, the NRC staff has not performed a detailed analysis of the potential vulnerabilities for possible theft or diversion of these radioactive materials." Several commenters on the proposed rule also exposed the lack of an analyzed threat basis upon which to expand the NSTS and noted the need for such assessment in advance of proposals to expand the NSTS. In the absence of a vulnerability assessment, this final rule lacks a risk-informed foundation for the proposed regulatory action.

I also agree with several commenters who remarked that the improvements to the NRC licensing system such as background investigations; increased inspections; additional license review; pre-licensing verification and site visits; transfer of sources under existing security orders to verify new users; flagging of significant changes in ordering patterns; licensing of end-users; requirements in 10 CFR 30.41 requiring licensees to verify that a recipient is authorized to receive material; and the presence of existing increased control orders for licensees possessing quantities of material that in the aggregate exceed Category 2 levels would be essential factors to be examined as part of any vulnerability assessment supporting a proposed expansion.

For these reasons, I disapprove issuing this rule.



Kristine L. Svinicki

06²⁶/09