

1/9/2017  
82 FR 2399-2 (1)

**Duran-Hernandez, Doris**

**From:** Wu, Irene  
**Sent:** Friday, March 03, 2017 4:33 PM  
**To:** Duran-Hernandez, Doris  
**Cc:** Davis, Gina  
**Subject:** FW: Colorado comments on Category 3 accountability  
**Attachments:** Colorado Cat 3 accountability comment.pdf

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RULES OF PRACTICES

Comments received on Docket ID NRC-2016-0276

**From:** Opila - CDPHE, Jennifer [mailto:jennifer.opila@state.co.us]  
**Sent:** Wednesday, March 01, 2017 6:32 PM  
**To:** Wu, Irene <Irene.Wu@nrc.gov>  
**Cc:** Gary Baughman <gary.baughman@state.co.us>; James Grice <james.grice@state.co.us>; OAS Executive Board (oasboard@agreementstates.org) <oasboard@agreementstates.org>; oasvotingmembers@agreementstates.org; oasstaffmembers@agreementstates.org; Llwwforuminc@aol.com  
**Subject:** [External\_Sender] Colorado comments on Category 3 accountability

Ms. Wu,  
Please accept the attached comments from the State of Colorado Radiation Program on Category 3 source security and accountability.

Please feel free to contact me if you have questions.  
Thank you,  
Jennifer T. Opila, MPA  
Radiation Program Manager  
Colorado Department of Public Health and Environment

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SUNSI Review Complete  
Template = ADM - 013  
E-RIDS= ADM-03  
Add= *I. Wu (IUY2)*



**COLORADO**  
Department of Public  
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

March 1, 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 following comments in response to the NRC's Federal Register notice regarding Category 3 source security and accountability.

General Comments:

1. Colorado agrees with NRC Commissioner Burns and NRC Chairman Svinicki in the following response to NRC Commissioner Baran's Proposed Staff Re-Evaluation of Category 3 Source Accountability (ADAMS ML16292A817): "The current NRC regulations for transfers of radioactive sources are adequate to protect public health and safety, commensurate with the associated risks." Further, Colorado maintains that the Agreement States have effectively adopted and implemented the NRC regulations for source security and accountability.
2. In 2009, when evaluating the rationale for expansion of the National Source Tracking System (NSTS) to Category 3 sources, NRC staff did not conduct or provide a threat basis for Category 3 quantities of radioactive materials. Further, in its 2014 report, the Radiation Source Protection and Security Task Force stated "In preparation for the 2014 Task Force report, the Task Force reviewed information from the intelligence community regarding the current threat of terrorist organizations using radioactive sources or other radioactive materials against the U.S., along with isotope production and usage information, in order to determine whether changes to the radioactive sources list or threshold levels were needed. 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."
3. The 2015 operation by the U.S. Government Accounting Office did not identify a regulatory gap. Instead, the operation revealed a single, isolated failure on the part of one individual in one Agreement State program. One isolated, individual failure does not constitute reason to expand security or accountability requirements for Category 3 quantities of radioactive materials.
4. Colorado agrees with Chairman Svinicki in her following response to Commissioner Baran's Proposed Staff Re-Evaluation of Category 3 Source Accountability (ADAMS ML16292A817): "Arguments that sources at the high end of Category 3 can be aggregated to Category 2-levels are similarly unavailing. Such arguments are inherent to any scheme that manages hazard through the application of a set of graded requirements, escalating in stringency as one progresses through the categories. Such categorization approaches are replete in the NRC regulatory framework for managing hazard and the logic of aggregation, lacking more, does not invalidate them."
5. In light of the above comments, Colorado does not support expansion of license verification requirements to Category 3 quantities of radioactive materials or the inclusion of Category 3 quantities of radioactive materials in the National Source Tracking System.



*General Questions Related to License Verification:*

- In response to question #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, transfers from licensees to manufacturers and distributors should be exempted from the limitations. The NRC should consider such an exemption for transfers of Category 1 and 2 quantities as well.

*General Questions Related to the NSTS:*

- In response to question #3: The NRC should not consider changes to the current NSTS reporting requirements because, as stated in the general comments listed above, there has been no demonstration that the current requirements are not adequate to ensure safety and security of radioactive materials.

*Specific Questions for Agreement States Related to License Verification:*

- In response to question #1: Colorado has 17 licensees authorized to possess Category 1 quantities, 15 licensees authorized to possess Category 2 quantities and 48 licensees authorized to possess Category 3 quantities. These numbers are based on the total possession limits authorized on the licenses and do not reflect actual inventories of sources. Colorado does not maintain and cannot easily access inventory information for sources of below Category 1 and 2 quantities.
- In response to question #2: Colorado uses the NRC's Web Based Licensing (WBL) System and maintains all active licenses in WBL. Therefore, there should be no need for the manual verification process to be used for verification of a Colorado license.
- In response to question #3: Colorado uses WBL for all radioactive materials licensees.
- In response to question #4: Because Colorado uses WBL for all radioactive materials licensees, the only additional regulatory oversight required would be for inspectors to verify that licensees transferring Category 3 quantities performed the proper license verification. While the impact of these additional inspection items is not precisely known, it is expected to be minimal.

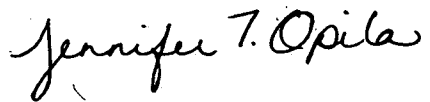
*Specific Question for Agreement States Related to the NSTS:*

- In response to question #1: The NRC does not have authority to require the Agreement States to administer the annual inventory reconciliation process in the manner that NRC has administered the process. Therefore, if the NRC chose to discontinue administration of the annual inventory reconciliation process for Agreement State licensees, Agreement States would get to choose how to administer the process. This could simply be ensuring at inspection that the licensee has conducted the required annual inventory reconciliation. Verifying compliance with this requirement during inspection would require minimal additional regulatory burden. However, continuing the NRC's process for annual inventory reconciliation would demand an additional regulatory burden estimated at 65 hours annually for Colorado Category 1 and 2 licensees and 100 hours annually for Colorado Category 3 licensees.

*Other Questions:*

- In response to question #1: The NRC should not consider expanding physical security requirements to include Category 3 quantities because, as stated in the general comments listed above, there has been no demonstration that the current requirements are not adequate to ensure safety and security of radioactive materials. Additionally, the regulatory burden on the Colorado Agreement State program of such expanded provisions is estimated at one additional full-time technical staff member.
- In response to question #2: If the NRC determines that expansion of source security and accountability requirements are needed for Category 3 quantities, NRC should prohibit such quantities from being possessed under a general license. Additionally, Colorado believes that the general licensing program does not provide for adequate accountability of sources. Colorado would support revision of the program to require sources that pose a higher safety risk to be possessed under a specific license and allow sources that pose a lower safety risk to be exempt from regulation.

If you have any questions regarding this letter, please contact me at 303-692-3403 or [jennifer.opila@state.co.us](mailto:jennifer.opila@state.co.us).

A handwritten signature in black ink that reads "Jennifer T. Opila". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jennifer T. Opila, MPA  
Radiation Program Manager  
Hazardous Materials and Waste Management Division