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March 10, 2017

Cindy Bladey
Office of Administration
Mail Stop: 3WFN-06-A44M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Docket ID NRC-2016-0276
Category 3 Source and Accountability

Dear Ms. Bladey:

The New York State Department of Health, Bureau of Environmental Radiation Protection submits the following comments on the above referenced document.

The Bureau agrees with NRC Chairman Kristine Svinicki that the current regulatory requirements for transfer of radioactive sources are adequate for safety and security and there is no need to include Category 3 sources in the same requirements as required for Category 1 and 2 sources.

The NRC has not adequately demonstrated the need for additional security requirements for category 3 sources. From 2007-2009, the Government Accountability Office (GAO) had tested the NRC and Agreement State licensing processes and identified vulnerabilities. In response to the GAO's findings, the NRC and Agreement States developed, and implemented a more robust review of applicants, moved away from the good faith presumption, and the NRC recommend inclusion of Category 3 sources in the National Source Tracking System (NSTS) (proposed rulemaking package). As indicated in the background section of this June 2009, FRN the Commission did not reach a decision on the proposed rulemaking (2-2 split vote), and the final rule was not approved. Some of the Commission votes indicated that **"further expansion of the NSTS should be based upon a vulnerability assessment, built off an interagency risk study for sources, and that the original recommendation lacked a risk-informed foundation for the proposed regulatory action"**. More recently, item 4 of the October 18, 2016, SRM requires the NRC staff to undertake; "A vulnerability assessment which identifies changes in the treat environment between 2009 today that argue in favor or against expansion of the NSTS to include Category 3 sources."

We are unaware that NRC has conducted any such vulnerability assessment. Therefore, we cannot effectively assess what constitutes an acceptable level of burden that would be associated with the inclusion and tracking of Category 3 sources in the NSTS in the absence of a full risk assessment. The acceptable level of burden added should be commensurately offset with the level of risk reduction to be achieved.

NYSDOH comments
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We appreciate the opportunity to provide comments. If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Gavitt".

Stephen Gavitt, Director
Bureau of Environmental Radiation Protection

General Question Related to License verification:

1. No. We consider the current verification of licenses prior to transfer for Category 3 sources to be adequate for safety and security.
2. This would not appear to cause any increase in safety or security. It would have the net effect of defeating someone's efforts to acquiring a quantity of material that exceeds valid license limits (either inadvertently or with malicious intent).
3. No risk based evidence has been presented to warrant verification. However, if such a requirement is being considered, the different types/uses of Category 3 sources should be considered separately. For example – High Dose Rate afterloader sources are effectively accounted for between the end user and distributor.
4. Please conduct a full risk assessment and actively involve the states in that assessment.

General Questions Related to the NSTS.

1. There is insufficient information to make a determination. What reduction in risk would be achieved by requiring the inclusion of Category 3 sources in the NSTS.
2. We do not believe Category 3 sources should be included in NSTS.
3. If such was implemented what dates would NRC track in NSTS? Would it include the shipment date, anticipated arrival date, and actual arrival date. And if so who would monitor this information? There is no basis for such a change.
4. The answer to the question is best answered following a full risk assessment.
5. The answer to the question is best answered following a full risk assessment

Specific Question to Agreement States Related to License Verification.

1. Approximately 100.
2. Although we would encourage the use of any database over manual processes, we understand that the LVS is only as good as the information it contains, i.e., current licenses/amendments. The most accurate means would be manual – contact the licensing authority for the most recent information.
3. The issue of Category 3 source tracking has no bearing or effect on our decision to use or not to use the WBL application. Our program is undergoing efforts to create a single regulatory database that will include radioactive material licensees, x-ray equipment registrants and incident/event tracking. We do not intend to implement the WBL unless it meets our overall program needs.
4. A full risk based analysis is needed before we can comment on the value of source tracking and the verification methods that could be used.

Specific Question for Agreement States Related to the NSTS.

1. The annual reconciliation process is not administered by the NRC on behalf of the Agreement States. Rather, the Agreement States assist the Commission with the annual reconciliation in the specific situation where the license fails to supply the required information by the January 31 deadline. The responsibility for the NSTS rests with individual licensees and the NRC only. We have no plans to adopt an NRC responsibility.

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Other Questions:

1. Absolutely not. However, the compatibility category for Part 37 should be changed to "C" to allow states to expand upon the equivalent of Part 37 requirements, in whole or part. This would allow a state to choose to include Category 3 sources, add requirements for global positioning systems, etc.
2. Yes. NYS DOH has set the threshold for material possessed under a general license for certain devices containing gamma emitters, strontium-90 and transuranic nuclides to below one-millicurie.