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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 32

RIN 3150-AI29

[NRC-2008-0200]

Expansion of the National Source Tracking System

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to expand the current National Source Tracking System (NSTS) to include certain additional sealed sources. The proposed amendments would require licensees to report certain transactions involving these sealed sources to the NSTS. These transactions would include the manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. The proposed amendment would also require each licensee to provide its initial inventory of nationally tracked sources to the NSTS and annually verify and reconcile the information in the system with the licensee's actual inventory.

DATES: Submit comments on the proposed rule by June 25, 2008. Submit comments specific to the information collection aspects of this rule by May 12, 2008. Comments received after the above date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on the rule by any one of the following methods. Please include the number RIN 3150-AI29 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety in NRC's Agencywide Document Access and Management System (ADAMS).

Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>, docket # NRC-2008-0200.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (Telephone 301-415-1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael Williamson, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6234, e-mail, mkw1@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion

- A. Rationale for Expanding the NSTS To Include Additional Source Categories
 - B. Enhanced Accountability Provided by These Amendments
 - C. Other Considerations
 - D. General Content of the Proposed Rule
- III. Discussion of Proposed Amendments by Section
- IV. Criminal Penalties
 - V. Agreement State Compatibility
 - VI. Plain Language
 - VII. Voluntary Consensus Standards
 - VIII. Environmental Impact: Categorical Exclusion
 - IX. Paperwork Reduction Act Statement
 - X. Public Protection Notification
 - XI. Regulatory Analysis
 - XII. Regulatory Flexibility Certification
 - XIII. Backfit Analysis

I. Background

After the terrorist attacks in the United States on September 11, 2001, the NRC conducted a comprehensive review of nuclear material security requirements, with particular focus on radioactive material of concern. This radioactive material (which includes Cobalt-60, Cesium-137, Iridium-192, and Americium-241, as well as other radionuclides) has the potential to be used in a radiological dispersal device (RDD) or a radiological exposure device (RED) in the absence of proper security and control measures. The NRC's review took into consideration the changing domestic and international threat environments and related U.S. Government-supported international initiatives in the nuclear security area, particularly activities conducted by the International Atomic Energy Agency (IAEA).

In June 2002, the Secretary of Energy and the NRC Chairman met to discuss the adequate protection of inventories of nuclear materials that could be used in a RDD. At the June meeting, the Secretary of Energy and the NRC Chairman agreed to convene an Interagency Working Group on Radiological Dispersal Devices to address security concerns. In May 2003, the joint U.S. Department of Energy (DOE)/NRC report was issued. The report was entitled, "Radiological Dispersal Devices: An Initial Study to Identify Radioactive Materials of Greatest Concern and Approaches to Their Tracking, Tagging, and Disposition." One of the report's recommendations is development of a national source tracking system to better understand and monitor the location

and movement of sources of interest. The full report contains a list of radionuclides and thresholds above which tracking of the sources is recommended.

The NRC has also supported U.S. Government efforts to establish international guidance for the safety and security of radioactive materials of concern. This effort has resulted in a major revision of the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct). The revised Code of Conduct was approved by the IAEA Board of Governors in September 2003, and is available on the IAEA Web site. In particular, the Code of Conduct contains a recommendation that each IAEA Member State develop a national source registry of radioactive sources that includes at a minimum Category 1 and Category 2 radioactive sources as described in Annex 1 of the Code of Conduct. The source registry recommendation addressed 16 radionuclides.

The work on the DOE/NRC joint report was done in parallel with the work on the Code of Conduct and the development of IAEA TECDOC-1344, "Categorization of Radioactive Sources." The IAEA published this categorization system for radioactive sources in August 2005 in its Safety Series as RS-G-1.9, Categorization of Radioactive Sources. The report, available on the IAEA Web site, provides the underlying methodology for the development of the Code of Conduct thresholds. The categorization system is based on the potential for sources to cause deterministic effects and uses the 'D' values as normalizing factors. The 'D' values are radionuclide-specific activity levels for the purposes of emergency planning and response. The quantities of concern identified in the DOE/NRC report are similar to the Code of Conduct Category 2 threshold values, so to allow alignment between domestic and international efforts to increase the safety and security of radioactive sources, NRC has adopted the Category 2 values. The NRC considers IAEA Category 2 (and higher) to be risk-significant radioactive material that has a potential to result in significant adverse impacts that could reasonably constitute a threat to the public health and safety, the environment, or the common defense and security of the United States.

Subsequently, the NRC published a final rule in the **Federal Register** on November 8, 2006 (71 FR 65686), establishing a national system for source tracking. Under this program, certain licensees who possess IAEA Category 1

and 2 sources are required to report information on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. This information is to be used to support the National Source Tracking System (NSTS) and will provide the NRC with a life cycle account for these sources and, thus, improve accountability and controls over them. The final rule establishing the NSTS reflected the IAEA Code of Conduct recommendations that are consistent with the NRC's responsibilities under the Atomic Energy Act, including the protection of the public health and safety. The implementation date for the NSTS has been extended to January 31, 2009 (72 FR 59162).

The principal purpose of the NSTS is to provide reasonable assurance of timely detection of either the theft or diversion of radioactive materials sufficient to constitute quantities which should be of concern regarding the construction of a radiological dispersion device. This is consistent with one of the objectives of the Code of Conduct which is to prevent unauthorized access or damage to, and loss, theft or unauthorized transfer of, radioactive sources.

In the 2005 proposed rulemaking, the Commission specifically invited comments on whether Category 3 sources should be included in the NSTS. In response to the public comments received, the Commission indicated that it was deferring a final determination on what additional sources should be included in the NSTS to a subsequent rulemaking (71 FR 65692). The Commission is now conducting that subsequent rulemaking.

II. Discussion

In this rulemaking, NRC is proposing to amend its regulations to expand the NSTS to require licensees to report information on the manufacture, transfer, receipt, disassembly, and disposal of additional nationally tracked sources. In determining whether to expand the NSTS to include additional sources, the NRC has considered the need to balance the secure handling and use of the materials without discouraging their beneficial use in academic, medical, and industrial applications. Radioactive materials provide critical capabilities in the oil and gas, electrical power, construction, and food industries; are used to treat millions of patients each year in diagnostic and therapeutic procedures; and are used in technology research and development involving academic, government, and private institutions. These materials are as diverse in

geographical location as they are in functional use.

Expanding the NSTS is part of a comprehensive radioactive source control program for radioactive materials of greatest concern, as discussed SECY-07-0147, "Response to U.S. Government Accountability Office Recommendations and other Recommendations to Address Security Issues in the U.S. NRC Materials Program," dated August 25, 2007. Although neither the currently planned NSTS, nor an expanded NSTS, can ensure the physical protection of sources, the NSTS can provide greater source accountability and, as part of an overall effort, in conjunction with other related activities (e.g., web based licensing, pre-licensing site visits, and increased controls orders), improve the control of radioactive sources and protect public health and safety, as well as common defense and security.

Section II of this preamble discusses the overall rationale for expanding the NSTS to include additional sources (Section II.A); how these amendments can improve accountability of sources (Section II.B); and other considerations (Section II.C). The general content of the proposed rule is discussed in Section II.D.

A. Rationale for Expanding the NSTS To Include Additional Source Categories

A.1 Congressional Concerns/GAO Investigations

Concerns by members of the U.S. Congress, and the Government Accountability Office (GAO), have been expressed regarding the aggregation of lower activity sources whose activity level, if taken together, could exceed the Category 2 threshold. Although a GAO investigation involved obtaining sources lower than Category 3 (i.e., in the low range of Category 4), the concerns expressed by members of Congress and the GAO over security issues associated with the NRC materials program have been considered in this rulemaking. Specifically, as a result of an investigation, GAO stated in its report (GAO Testimony, GAO-07-1038T, "Actions Taken by NRC to Strengthen Its Licensing Process for Sealed Radioactive Sources", July 12, 2007) that NRC should regulate Category 3 sources more stringently (Recommendation B of the report) and that NRC should consider including Category 3 sources in the NSTS (Recommendation B.2).

A.2 Recent NRC Actions

In addition to the issues noted by the GAO, the NRC staff prepared SECY-06-0094, "Tracking or Providing Enhanced Controls for Category 3 Sources," April 24, 2006, for the Commission's review. This paper contained options for tracking and/or providing enhanced controls for Category 3 sources. In response to that paper, the Commission provided direction to the NRC staff in SRM-SECY-06-0094, dated June 9, 2006, regarding enhanced controls for Category 3 sources. Specifically, the SRM noted that the staff should submit a proposed rule for the Commission to consider including Category 3 data in the NSTS.

Subsequently, in response to Recommendations B and B.2 of the GAO report discussed in this preamble, NRC staff provided the Commission with an Action Plan in SECY-07-0147. The Action Plan, entitled "Action Plan to Respond to Recommendations to Address Security Issues in the U.S. NRC Materials Program," included, as Recommendation S-2b, an action that the scope of the NSTS rulemaking be expanded to include sources at a level of $\frac{1}{10}$ of Category 3. The Commission approved the staff's Action Plan on September 18, 2007, in SRM-SECY-07-0147.

A.3. Considerations Regarding the Need for Expanding the NSTS and the Extent to Which the NSTS Should Be Expanded, i.e., What Categories (or Sub-Groups of Categories) of Sources To Be Included

A.3.1 The Five IAEA Categories and the Relative Health and Safety Risk Posed by Sources in Those Categories

The IAEA source categorization scheme includes five categories.¹ These categories are based on the potential for sources to cause deterministic health effects to persons exposed to them. Sources in Category 1 are considered to be the most 'dangerous' because they can pose a very high risk to human health if not managed safely and securely. At the lower end of the categorization system, sources in Category 5 are the least dangerous; however, even these sources could give rise to doses in excess of the dose limits if not properly controlled. Based on analysis of potential health effects, each of the IAEA Categories contain radioactive material in sealed sources in quantities that can be characterized as follows:

Category 1: greater than or equal to the Category 1 threshold (e.g., for Cobalt-60 (Co-60): 810 Curies (Ci)); these sources are typically used in practices such as radiothermal generators, irradiators and radiation therapy.

Category 2: less than the Category 1 threshold but equal to or greater than the Category 2 threshold (which is $\frac{1}{100}$ of Category 1) (e.g., for Co-60: 8.1 Ci); these sources are typically used in practices such as industrial gamma radiography and high and medium dose rate brachytherapy.

Category 3: less than the Category 2 threshold but equal to or greater than the Category 3 threshold ($\frac{1}{10}$ of Category 2) (e.g., for Co-60: 0.81 Ci); these sources are typically used in practices such as fixed industrial gauges involving high activity sources.

Category 4: less than the Category 3 threshold but equal to or greater than the Category 4 threshold ($\frac{1}{100}$ of Category 3) (e.g., for Co-60: 0.0081 Ci);

Category 5: less than the Category 4 threshold down to IAEA exempt quantities.

The scope of IAEA's *Code of Conduct on the Safety and Security of Radioactive Sources* is limited to Categories 1-3, i.e., those having the highest potential to cause permanent injury or death when used in a malevolent manner.

A.3.2 Rationale in the Existing NSTS Rule for Imposing the Requirement To Track Category 1 and 2 Sources

In the rulemaking establishing the NSTS for Category 1 and 2 sources, specific rationale was provided for establishing tracking and inventory requirements for Category 1 and 2 sources. In that rulemaking, as discussed in Section I of this preamble, it was noted that the DOE/NRC analysis of potential health effects from use of sources in a RDD or a RED identified radionuclide "quantities of concern" to be in a range similar to the IAEA Category 2 threshold values. Therefore, to allow alignment between domestic and international efforts to increase safety and security of radioactive sources, NRC adopted the IAEA Category 2 values and used them as a threshold in its rulemaking decision regarding sources requiring tracking and inventorying in a national source tracking system.

A.3.3 Discussion in the Previous NSTS Rulemaking for Including Additional IAEA Categories in the NSTS

In conducting the rulemaking to establish the NSTS, the Commission noted that Category 3 sources could be included in the NSTS in the future,

citing the potential that a licensee possessing a large number of Category 3 sources could present a security concern. Therefore, as part of that rulemaking, the Commission sought comment and information on the issue of including Category 3 sources in the NSTS. These comments are summarized in Section II.C.2. Based on its review of those comments, the Commission, in issuing the final rule to establish the NSTS, noted that it did not have adequate information at that point in time to support inclusion of Category 3 sources in the NSTS, however, it also noted that it was working to develop additional information by conducting a one-time survey of sources at a level of $\frac{1}{10}$ of Category 3. The Commission then noted that, in that rulemaking, it was not making a final determination on what additional sources should be included in the NSTS and that if additional material is added to the NSTS, it would be done through subsequent rulemaking. The Commission is now conducting that subsequent rulemaking.

A.3.4. Rationale for Inclusion of Additional Sources in an Expanded NSTS in This Rulemaking

In preparing this proposed rule, NRC has determined that there is a need to enhance the tracking of lower activity sources to improve accountability for these sources and to provide the ability to detect situations where a licensee's aggregate sources would create larger (more dangerous) quantities. At issue is the extent appropriate for expanding the NSTS beyond Category 2, i.e., should the NSTS be expanded to include IAEA Category 3 sources (as suggested in the June 9th, 2006 SRM) or should it be expanded even further to include sources that are $\frac{1}{10}$ of the Category 3 threshold (as suggested in the August 25, 2007 Action Plan). Consideration was also given to expanding the NSTS to include sources in the low end of Category 4 or in Category 5. The rationales for expanding the NSTS to include Category 3 sources and to include lower category sources are provided in Sub-Sections A.3.4.1 and A.3.4.2, respectively.

A.3.4.1 Inclusion of Category 3 Sources in the NSTS

The Commission believes that it is clear that there is a need to enhance the accountability and control of Category 3 sources (i.e., those that are greater than or equal to the IAEA Category 3 threshold) through improved tracking of these sources. The following are the principal rationale for the Commission's decision regarding Category 3 sources:

¹ RS-C-1.9 "Categorization of Radioactive Sources."

(a) *Category 3 sources are defined as dangerous by IAEA:* The IAEA defines Category 3 sources (as well as the Category 1 and 2 sources) as “dangerous sources”, i.e., a source that could if not under control give rise to exposure sufficient to cause severe deterministic effects, although it left to its individual member States whether it would be necessary to actually set up a tracking system for these sources.

(b) *There is potential for aggregation of Category 3 sources to a Category 2 level:* Category 3 sources could be easily aggregated to Category 2 levels, as part of a concerted effort to do so, as they represent sources with activity levels that range from just below the Category 2 threshold down to $\frac{1}{10}$ of the Category 2 threshold. Thus, sources at the high end of the range of activities in Category 3 can be at levels just below the threshold of a Category 2 source, meaning that it would take only a few sources to aggregate to Category 2. Adding these sources to the NSTS with its inventory and tracking requirements will provide for increased accountability for these sources because there would be a near real-time knowledge of source whereabouts and an ability to confirm an individual licensee’s account of their sources.

(c) *Types of licensees that possess Category 3 sources:* The major categories of licensees who possess Category 3 sources include those with fixed industrial gauges (level gauges, conveyor gauges, thickness gauges, blast furnace gauges, dredger, pipe gauges); those who conduct well-logging operations; medical facilities with brachytherapy machines; and some radiographers with relatively low activity sources. Because these sources are thus relatively widespread in use and relatively broadly used in industry, there would be potential for aggregation of sufficient numbers of them to Category 2 levels.

(d) *Additional burden to comply with these requirements is considered reasonable to incur for the benefit in improved source accountability:* Adding Category 3 sources to the NSTS would result in increased burden to the NRC and to the licensed industry for implementation and maintenance of the expanded NSTS. In the Regulatory Analysis for this rulemaking (summarized in Section XI of this FRN), the Commission analyzed the additional costs and benefits of expanding the NSTS to Category 3 levels. As noted in the Regulatory Analysis, the existing NSTS has approximately 1300 NRC and Agreement State licensees and an expanded NSTS under this proposed rule to include Category 3 sources

would add approximately 1000 licensees. As estimated in the Regulatory Analysis, the resultant overall annual cost to the industry and to the NRC would be approximately doubled as a result of this expansion of the NSTS to Category 3, however the Commission believes that this additional burden would be reasonable to incur given the additional improvement in accountability for these sources.

(e) *Additional sources can be accommodated by the NSTS:* As noted in Section II.C.1 of this preamble, the Commission believes that the existing NSTS system can accommodate these additional licensees and sources based on its expandability and flexibility and that, if NRC applies the appropriate resources, that monitoring of the expanded NSTS would not divert attention from the monitoring of higher-risk Category 1 and 2 sources.

(f) *Consideration of earlier public comment:* In reaching its decision to include Category 3 sources, the Commission considered the comments received regarding inclusion of Category 3 sources during the rulemaking to establish the NSTS for Category 1 and 2 sources. These comments are summarized in Section II.C.2 of this preamble. Briefly stated, a number of commenters supported inclusion of Category 3 sources in the NSTS for some of the same reasons as previously noted, whereas a larger number of commenters opposed the inclusion of Category 3 sources based on the relatively low risk they present compared to the large increased burden of adding these sources to the NSTS. The Commission believes that it has considered the concerns of the commenters, pro and con, and evaluated the additional burdens which the rule would impose, in reaching its decision.

Based on the considerations previously noted, the definition of Category 3 as dangerous, and the potential for aggregation to Category 2, the Commission believes that the same information to be included in the NSTS for Category 1 and Category 2 sources is also needed for Category 3 sources. Expanding the scope of the NSTS will provide for Category 3 sources the same single source of information as collected for Category 1 and 2 sources. Although separate NRC and Agreement State systems contain information on Category 3 source licensees and the maximum amounts of materials they are authorized to possess, those systems do not record actual sources or their movements.

Thus, to address this lack of information on such issues as actual

materials possessed, the NRC is proposing, as part of this proposed rule, to expand the NSTS to include sources greater than or equal to the IAEA Category 3 threshold levels. Expanding the NSTS to Category 3 sources would provide NRC with information regarding purchases/transactions of sufficient numbers of Category 3 sources that could be aggregated into the equivalent of Category 2 sources. Tracking specific transactions of Category 3 sources enhances accountability and would detect situations where a licensee’s aggregate sources would create larger (more dangerous) quantities.

A.3.4.2 Inclusion of Lower Category Sources in the NSTS, in Particular $\frac{1}{10}$ of Category 3

The Commission has also given consideration to expanding the NSTS to sources below the Category 3 threshold. Specifically, the staff considered expanding the NSTS to include a subset of IAEA Category 4 sources that are in the high end of Category 4 (at a level of $\frac{1}{10}$ of the Category 3 threshold). The staff also considered whether to expand the NSTS to include all of Category 4 (the Category 4 threshold is $\frac{1}{100}$ of the Category 3 threshold) and Category 5.

A principal rationale for including sources at the high-end of the Category 4 range of activities (i.e., at $\frac{1}{10}$ of Category 3) is the potential that a sufficient number of these higher-activity Category 4 sources could be obtained and aggregated to create the equivalent of Category 2 sources. These “high-end” Category 4 sources can be at levels just below the threshold of a Category 3 source, which is about $\frac{1}{10}$ of the threshold of a Category 2 source, meaning that it would require about 10–12 of these sources to aggregate to Category 2 quantity. These high-end Category 4 ($\frac{1}{10}$ of Category 3) sources are possessed by the same licensees noted to have Category 3 sources, namely those with fixed industrial gauges, those who conduct well-logging operations, medical facilities with brachytherapy machines, and a few radiographers, and as previously noted, are relatively widespread in use and broadly used in industry, thus allowing for the potential for aggregation of sufficient numbers of them to Category 2 levels. As noted in this preamble for Category 3 sources, the Commission analyzed additional costs and benefits of expanding the NSTS to $\frac{1}{10}$ of Category 3 levels. As noted in the Regulatory Analysis, an expanded NSTS to include $\frac{1}{10}$ of Category 3 sources would add approximately 2500 licensees with a resultant overall annual

cost to the industry and to the NRC that would be approximately doubled again.

The Commission also considered including all of Category 4 sources (and/or Category 5) in the NSTS, however in both cases it was decided that, because of the magnitude of the thresholds of each of these categories and the lower likelihood that sources at the lower range of Category 4 or in Category 5 could be aggregated to the higher category levels, that they would not be included in the expansion of the NSTS.

Based on these considerations of the nature of the sources at $\frac{1}{10}$ of Category 3, their potential to aggregate to Category 2, and the costs to the licensed industry and the NRC, the NRC has decided to also include in the NSTS, sources below the Category 3 threshold, but greater than or equal to a 10th of the Category 3 threshold. This is consistent with the Code of Conduct which encourages countries to give appropriate attention to radioactive sources considered to have the potential to cause unacceptable consequences if employed for malicious purposes and to aggregation of lower activity sources. The Commission believes that the additional costs are reasonable to incur given the additional improvement in accountability for these sources, given their potential to be aggregated to more dangerous quantities. The Commission believes that the existing NSTS can accommodate these additional sources and that the NRC can expend the additional resources to monitor these sources without detracting from the monitoring of Category 1 and 2 sources.

The NRC specifically invites comment on the inclusion of these sources at $\frac{1}{10}$ of Category 3 in the NSTS. The staff is interested in information concerning:

- (1) The number of additional licensees that would be impacted;
- (2) The number of sources between the Category 3 threshold and $\frac{1}{10}$ of the Category 3 threshold that are possessed by licensees and the activity levels of those sources relative to both of those values;
- (3) How often these sources are involved in transactions (manufacture, shipping, receipt, disposal, etc) and the nature of the transaction process, including the ease of obtaining the sources and the cost of the sources.

This information will enable the NRC to make a more informed decision on the inclusion of sources greater than or equal to $\frac{1}{10}$ of Category 3 in the NSTS.

B. Enhanced Accountability Provided by These Amendments

The NSTS, as currently planned for Category 1 and 2 sources, is a web-based system that provides the NRC and

Agreement States with information related to transactions involving nationally tracked sources. This information includes details of transfers of sources between manufacturers and licensees, and disposal sites, for IAEA Category 1 and 2 sources.

Expanding the NSTS to include additional nationally tracked sources would use the same web-based system as for Category 1 and 2 sources, namely providing the NRC with information regarding transactions involving sufficient numbers of these additional sources that could be aggregated into the equivalent of Category 2 source. By tracking specific transactions involving these additional nationally tracked sources, the NRC will be in a better position to track aggregation of these sources and improve accountability for these sources. In addition, with an expanded NSTS, NRC can be alert to discrepancies between transaction reports of manufacturing and distribution licensees and of the persons to whom the shipment of sources is being made. Also, data from the NSTS could be used in conjunction with other data management systems to provide for better source accountability.

C. Other Considerations

C.1 Other Alternative Approaches for Improving Accountability Require Only Inventorying of Additional Categories of Sources

Another alternative approach considered for this rulemaking would be to simply require licensees with sources greater than or equal to either the Category 3 threshold or $\frac{1}{10}$ of the Category 3 threshold to conduct and report inventories of nationally tracked sources. However, this alternative would not provide the necessary near real-time knowledge of source transactions and, in addition, lack of transaction data from other licensees would not tend to lead to a cross-check for accurate reporting of inventories. In addition, there would still be significant costs incurred as a result of such a rule including the costs of setting up an account in the NSTS (including licensee credentialing); of conducting inventories; of marking serial numbers; of inspections; of preparing Agreement State regulations; and of NRC system monitoring, operation, and maintenance.

C.2 Potential Effects on the Existing NSTS for Category 1 and 2 Sources

An important consideration in the NRC's decision to propose expansion of the NSTS is whether the expanded NSTS would divert attention from, or

otherwise compromise the currently planned NSTS. In the SRM for SECY-06-0094, the Commission directed the staff to ensure that the NSTS is capable of being modified to include Category 3 sources, and that an expanded NSTS does not divert attention or resources from oversight of Category 1 and 2 sources.

This is an important consideration because activities to review new data in the NSTS for the lower activity sources that would now be a part of the NSTS should not divert NRC attention from reviewing and monitoring licensee inventorying and tracking of the higher Category 1 and 2 which present a higher risk to human health. It is expected that expansion of the NSTS will not compromise the information technology (IT) aspects of the NSTS due to the capabilities incorporated into the NSTS software. Because the IT design and software is flexible and expandable, it can accommodate the anticipated number of licensees and sources and the corresponding tracking activities under the proposed expansion of the NSTS. Thus, it is anticipated that implementation of the expanded NSTS can begin in the timeframe noted in Section II.D.7 of the preamble. In addition, although it is recognized that additional effort will be needed to monitor an expanded NSTS, NRC should be able to continue to adequately monitor both the Category 1 and 2 sources in the existing NSTS and the additional sources in the expanded NSTS and identify possible concerns with aggregation of sources, if it uses the appropriate additional resources which are discussed in the summary of the Regulatory Analysis, Section XI.

C.3 Previous Comments Received Regarding Inclusion of Category 3 Sources in the NSTS During the Rulemaking To Establish the NSTS for Category 1 and 2 Sources

Another consideration is the public comment received on the proposed rule for establishing the NSTS for IAEA Category 1 and 2 sources. As noted in Section I of this preamble, the proposed rulemaking the Commission issued specifically invited public comment. The public comments received on this subject were discussed in the November 6, 2006 final rule FRN establishing the NSTS.

The discussion in the final FRN noted that six commenters supported inclusion of Category 3 while eighteen commenters opposed it. Reasons given for supporting inclusion included that certain Category 3 sources pose comparable threats to Category 2; that there was concern over threats to

national security from potential aggregation of Category 3 sources; that IAEA defines Category 3 sources as being dangerous and carrying a potential risk of harm warranting inclusion in a tracking system; and that these sources could be tracked with a modest additional investment. These commenters noted that the inclusion of Category 3 sources should not disrupt implementation of the NSTS for Category 1 and 2 sources. Commenters opposing inclusion of Category 3 sources in the NSTS generally cited the increased burden that would be imposed on licensees and the NRC. Most of these commenters did not provide specific numbers but indicated that inclusion of Category 3 sources would cause a significant increase in the number of transaction reports and unduly burden manufacturers and distributors. These commenters also noted that many of the Category 3 sources are lower risk and do not pose a significant threat compared to Category 1 and 2. These commenters were concerned that inclusion of Category 3 sources would bog down the NSTS and suggested that a better approach would be to require inventory reporting rather than source transactions.

In response to all of these commenters, the Commission, in issuing the final rule establishing the NSTS for Category 1 and 2 sources, noted that it did not have adequate information at that point in time to support inclusion of Category 3 sources in the NSTS. The Commission also noted that it was working to develop additional information by conducting a one-time survey of sources at a level of $\frac{1}{10}$ of Category 3. The Commission then noted that, in that rulemaking, it was not making a final determination on what additional sources should be included in the NSTS and that if additional material is added to the NSTS, it would be done through subsequent rulemaking, which is what the Commission is currently conducting. In preparing this proposed rule, the NRC has re-considered the relative concerns over accountability and control of these sources; the relative risk the sources may present; the potential for aggregation of lower activity sources to higher IAEA Category levels; and the flexibility and expandability of the existing NSTS to accommodate additional sources. Based on additional information developed, the NRC has also prepared a detailed regulatory analysis of the number of additional licensees and sources that would be included in an expanded NSTS and the

effect on licensees, the Agreement States and the NRC. Based on its consideration of the comments and of the results of the Regulatory Analysis, the Commission is proceeding with the proposed rule for expansion of the NSTS.

D. General Content of the Proposed Rule

Based on the considerations of Sections II.A—II.C, NRC is proposing to expand the NSTS by requiring licensees with additional nationally tracked sources to report information to the NSTS on the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources. The expanded NSTS would remain consistent with recommendations in the IAEA Code of Conduct for development of a national register of radioactive sources.

This section contains specific information on the content and implementation of this expanded NSTS. The actions required of the additional licensees with sources added to the NSTS are the same as those for licensees currently within the scope of the NSTS. The following discussion is based on supplementary information in the FRN for the final rule establishing the NSTS for IAEA Category 1 and 2 sources (71 FR 65686, November 8, 2006). This section is intended to provide licensees new to the NSTS, i.e., those with Category 3 sources and sources greater than or equal to $\frac{1}{10}$ of Category 3, but less than Category 2, with similar information as was provided in the FRN for the final rule for the establishment of the NSTS for IAEA Category 1 and 2 sources.

D.1 Definition of a Nationally Tracked Source

A sealed source consists of radioactive material that is permanently sealed in a capsule or closely bonded to a non-radioactive substrate designed to prevent leakage or escape of the radioactive material. In either case, it is effectively a solid form of radioactive material which is not exempt from regulatory control. Under this proposed rule, the definition of a nationally tracked source would be revised to include sealed sources containing a quantity of radioactive material equal to or greater than the $\frac{1}{10}$ of Category 3 levels listed in the proposed amended Appendix E to 10 CFR Part 20. A nationally tracked source may be either a Category 1 source, a Category 2 source, a Category 3 source or, a $\frac{1}{10}$ of Category 3 source. For the purpose of this rulemaking, the term nationally tracked source does not include material encapsulated solely for disposal, or

nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Material encapsulated solely for disposal refers to material that without the disposal packaging would not be considered encapsulated. For example, a licensee's bulk material that it plans to send for burial may be placed in a matrix (e.g. mixed in concrete), to meet burial requirements. The placement of the radioactive material in the matrix material may be considered encapsulating. This type of material would not be covered by the rule. However, if a nationally tracked source were to be placed in a matrix material, the sealed source would still be covered by the rule.

The specific radioactive material and activity levels covered by this proposed rule are listed in the proposed revised Appendix E to 10 CFR Part 20. These activity values are $\frac{1}{10}$ of the Category 3 values in Table 1 of the IAEA Code of Conduct. The Code of Conduct recommends that at a minimum the radionuclides and the threshold values for Category 1 and 2 should be included in a national source registry. The U.S. Government has formally adopted these values to align domestic and international efforts to increase the safety and security of certain radioactive sources.

The Terabecquerel (TBq) values listed in Appendix E would be the regulatory standard. The curie (Ci) values specified are obtained by converting the TBq value. The Ci values are provided for reference only and are rounded after conversion. The curie values are not intended to be the regulatory standard.

D.2 Who Would be Affected by This Action

The proposed rule would apply to any person (entity or individual) in possession of a Category 3 source or source greater than or equal to $\frac{1}{10}$ of Category 3. It would apply to—

- Licensees with either NRC licenses or with Agreement State licenses;
- Manufacturers and distributors of Category 3 sources, and sources greater than or equal to $\frac{1}{10}$ of Category 3;
- Medical facilities, radiographers, well-loggers, licensees using fixed gauges, and any other licensees that are the end users of nationally tracked sources;
- Disposal facilities and waste brokers; and
- Owners of a source that is not actively used or in long-term storage.

Nationally tracked sources (as the definition would be expanded by this proposed rule) include sources

possessed by various types of licensees, but primarily by byproduct material licensees, and are used in the oil and gas, electrical power, construction, medical, food industries, and in technology research and development. The definition of nationally tracked sources would be modified by this rulemaking to include Category 3 and sources greater than or equal to $\frac{1}{10}$ of Category 3 based on the activity level of the radioactive material. Category 3 sources or sources greater than or equal to $\frac{1}{10}$ of Category 3 are typically used in devices such as medical brachytherapy units, well-logging, fixed gauges used throughout various industries, and radiography units in which the radioactivity has decreased from higher IAEA Category 2 levels due to radioactive decay.

D.3 How Information Would Be Reported to the NSTS

Licensees have several methods for providing the required information under the existing NSTS (see Section II.D.4 of this preamble for the specific information that would be reported to the NSTS). Under the proposed expanded NSTS, these methods would continue to include on-line, computer-readable format files, paper, fax, and telephone and are described below:

- Reporting information on-line:* For most licensees, the most convenient, least burdensome method will be to report the information on-line. In this method, licensees can log on to the system and enter the required information by filling out a form on-line. To report information on-line, a licensee would need to establish an account with the NSTS. Once an account is established, the licensee would be provided with password information that would allow access to the on-line system. A licensee would have access only to information regarding its own material or facility; a licensee would not have access to information concerning other licensees or facilities. When logged on, the licensee could type the necessary information onto the on-line forms. Once a source is in the system, the licensee would be able to click on the source and report a transfer or other transaction. The identifying information would not need to be typed in a second time because information such as license number, facility name, and address would pop up automatically.
- Computer-readable format:* Many licensees conduct a large number of transactions, especially

manufacturing and distribution licensees. We recognize that most licensees have a system in which information on sources is maintained. The NSTS will be able to accept batch load information using a computer-readable format. This should ease the reporting burden for a licensee with a large number of transactions. The licensee would be able to electronically send a batch load using a computer readable format file that contained all of the transactions that occurred that day. The format could also be used for reporting the initial inventory. NRC and the entity responsible for developing the NSTS will work with licensees to develop the mechanism to accept batch load information so that it is compatible with many of the existing systems in use by licensees.

- Paper submittals by mail, fax, or telephone:* Licensees would also be able to complete a paper version of the National Source Tracking Transaction form and submit the form by either mail or fax. Licensees would also be able to provide transaction information by telephone and then follow-up with a paper copy.

D.4 Specific Information That Licensee Would Report Under the Expanded NSTS

Under the requirements of the NSTS, the additional licensees covered by the NSTS would be required to conduct the following actions:

- Report their initial inventory of sources greater than or equal to $\frac{1}{10}$ of Category 3 nationally tracked sources to NSTS;
- On an annual basis, reconcile and verify the inventory of sources greater than or equal to $\frac{1}{10}$ of Category 3 possessed against the data in the NSTS;
- Complete and submit a National Source Tracking Transaction Report (i.e., NRC Form 748) after each transaction involving a Category 3 or a $\frac{1}{10}$ of Category 3 source;
- Correct any errors in previously filed National Source Tracking Transaction Reports within five business days of the discovery; and
- For licensees who manufacture a Category 3 or $\frac{1}{10}$ of Category 3 nationally tracked source, assign a unique serial number to each source.

How licensees would carry out these requirements is discussed in more detail in the following subsections.

D.4.1 Reporting Initial (Current) Inventory to the NSTS

As noted, licensees would be required to report their initial (i.e., current)

inventory of nationally tracked sources by a specified date. Licensees would be required to report all sources greater than or equal to $\frac{1}{10}$ of Category 3 to the NSTS by July 31, 2009.

To ease the implementation of the reporting process, information already in NRC's One-Time Data Collection would be downloaded to the NSTS. A licensee whose nationally tracked source information was reported to the One-Time Data Collection database would be provided a copy of its information and would need only to either verify the information or provide updated information. NRC staff and the entity that operates the NSTS will work with licensees to make sure the inventory information is correct. A licensee whose information was not reported to the One-Time Data Collection database would need to report the information on its nationally tracked source inventory by specified date above. Disposal facilities would not need to report sources that have already been buried or otherwise disposed.

D.4.2 Annual Reconciliation and Verification of Information in the NSTS

Licensees would be required to reconcile their on-site inventory of nationally tracked sources with the information previously reported to the NSTS. This reconciliation would occur during the month of January of each year. This reconciliation would be necessary to maintain the accuracy and reliability of the National Source Tracking database. The licensee would be able to print a copy of the inventory information from the NSTS. Licensees without on-line access would receive a paper copy of the information in the NSTS. The licensee would compare the information in the system to the actual inventory at the licensee's facility, including a check of the model and serial number of each source. This reconciliation would not require the licensee to conduct an additional physical inventory of its sources. Under current regulations, licensees are currently required to conduct physical inventories annually, semi-annually, or quarterly depending on the type of license. The licensee would be required to reconcile any differences by reporting the appropriate transaction(s) or corrections to the NSTS. The licensee would be required to verify by the end of January of each year that the inventory in the NSTS is correct. The first reconciliation would occur in January 2010.

D.4.3 Reporting Transaction Information to the NSTS

Prompt updating of the NSTS is necessary for it to be useful and accurate. In order to capture information as soon as possible, licensees would be required to report information on nationally tracked source transactions by the close of the next business day after the transaction. To ease the burden on licensees, any of the methods for reporting the information listed in Section E.3 may be used. Specific transaction information that would be required is discussed in the following subsections.

D.4.3.1 Reporting Information on Source Manufacture

Sources Manufactured in the United States: When a nationally tracked source is manufactured in the United States, the source manufacturer licensee would be required to report the source information to the NSTS. The information must be reported by the close of the next business day after manufacture and includes: Manufacturer (make), model number, serial number, radioactive material, activity at manufacture, and manufacture date for each source. The licensee must also provide its license number, facility name, as well as the name of the individual that prepared the report.

Recycled, Reconfigured, and Disassembled Sources: Some sources are recycled, reconfigured, or disassembled. For example, a source that has decayed below its usefulness may be returned to the manufacturer for reconfiguration or disassembly. The decayed source may be placed in a reactor and reactivated, or placed in storage. The source retains its serial number, but now has a new activity. The new activity and creation date of the source must be reported to the NSTS.

Imported Sources: For every nationally tracked source that is imported, the facility obtaining the source would be required to report the information on the manufacture of the source to the NSTS by the close of the next business day after receipt of the imported source at the site. For the purposes of the NSTS, this would be considered the source origin unless the source had been previously possessed in the United States. The licensee would need to report the manufacturer (make), model number, serial number, radioactive material, activity at manufacture or import, and manufacture or import date for each source. The licensee must also provide its license number, facility name,

address, as well as the name of the individual that prepared the report and the date of receipt. The licensee would also need to provide information on the facility (name and address) that sent the source and the import license number if applicable. **Note:** Only Category 1 and Category 2 sources including multiple sources that aggregate to at least a Category 2 level on a per shipment basis, require a specific NRC import license.

The NRC is interested in determining whether specific requirements for tracking should also be included in 10 CFR Part 110 and specifically invites comment on this question.

D.4.3.2 Reporting Information on Source Transfer

Transfers between licensees: Each time a nationally tracked source is transferred to another facility authorized to use or possess the source, the licensee would be required to report the transfer to the NSTS by the close of the next business day. The licensee must report the recipient name (facility the source is being transferred to), address, license number, the shipping date, the estimated arrival date, and the identifying source information (manufacturer, model number, serial number, and radioactive material). The licensee also would need to provide its name, address, and license number, as well as the name of the individual making the report. For nationally tracked sources that are transferred as waste under a Uniform Low-level Radioactive Waste Manifest, the licensee would also have to report the waste manifest number and the container identification number for the container with the nationally tracked source.

Transfers where the source stays within the licensee's possession: Source transfer transactions only cover transfers between different licensees and/or authorized facilities. They do not include transfer to a temporary job site. Transactions in which the nationally tracked source remains in the possession of the licensee would not require a report to the NSTS. For example, a radiographer conducting business would not need to report transfers between temporary job sites, even if the temporary job site is located in another state or if the work is conducted under a reciprocity agreement.

Export of sources: Export of sources would be treated as a transfer. An export is considered a reversible endpoint (e.g., a place of use or storage that is not a temporary job site) because the source can be imported back into the country.

The export license number would be reported as the license number of the receiving facility. **Note:** Only Category 1 and 2 sources, including multiple sources that aggregate to at least a Category 2 level on a per shipment basis, are required to have a specific NRC export license. Most Category 3 and below sources can be exported under a general license in accordance with 10 CFR 110.23.

D.4.3.3 Reporting Information for Receipt of Sources

Receipt of sources: A licensee would be required to report each receipt of a nationally tracked source by the close of the next business day. The licensee must report the identifying source information (manufacturer, model number, serial number, and radioactive material) and the date of receipt. The licensee also must include its facility name and license number and the name of the individual that prepared the report. In addition, the licensee must provide the name and license number of the facility that sent the source because this information is necessary to match the transactions.

Receipt of imported sources: If the source received is an import, the licensee would also need to report the source activity and associated activity date. The import license number would be reported as the license number of the sending facility.

Receipt of sources in a waste shipment: If a licensee receives a nationally tracked source as part of a waste shipment, the licensee must provide the Uniform Low-level Radioactive Waste Manifest number and the container identification for the container that contains the nationally tracked source. A waste broker or disposal facility are examples of licensees that might receive a nationally tracked source as part of a waste shipment. These licensees would not be expected to open the waste container and verify the presence of the nationally tracked source; they may rely on the information from the licensee who shipped the source.

D.4.3.4 Reporting Information on Source Disposal

Licensees sending a source for disposal: Licensees sending a source to a low-level burial ground for disposal would treat the transaction as a transfer (see Section II.D.4.3.2), and would report the types of information to be reported for a transfer, along with the waste manifest number and the container identification number.

Disposal facilities: Disposal of a source would be reported by the

licensee conducting the actual burial in a low-level disposal facility or other authorized disposal mechanism. The disposal facility may rely on the information from the licensee that sent the waste for disposal and is not expected to open the waste container to verify contents. The disposal facility must report to the NSTS the date and method of disposal, the waste manifest number, and the container identification number for the container with the nationally tracked source. The disposal facility must also provide its facility name and license number, as well as the name of the individual that prepared the report. The report must be made by the close of the next business day.

D.4.3.5 Information Regarding Reporting (or Not Reporting) of Other Source Endpoints

Decay of sources: One feature of the NSTS would be that the decay of a source would be automatically calculated so a licensee would not need to report an endpoint of decay. Once a source has decayed below $\frac{1}{10}$ of Category 3 threshold level, it would no longer be considered a nationally tracked source, and the source would automatically be removed from a licensee's active inventory in the NSTS. The licensee would receive a notification that the source has decayed below the tracking level, and that transactions for this source no longer need to be reported. The data on the source, however, will be retained in the system.

Accidental destruction of sources: Licensees currently report accidental destruction of sources to the NRC Operations Center or to the Agreement States. NRC staff would enter the information from the event report into the NSTS. Because sealed sources are designed to be robust, accidental destruction should be and is rare.

Lost or stolen sources or source abandoned in a well: These endpoints would be captured by the NSTS. These events are already reported to either NRC or to the Agreement States. Licensees would not be required to report this information a second time to the NSTS. Agreement State licensees would continue to report to the Agreement State. NRC staff would obtain the information on these events from the event reports or the Nuclear Medical Event Database and enter the information into the NSTS.

D.4.4 Reporting Errors in Transaction Reports

Data integrity for the NSTS is extremely important and necessary to keep the information correct and up-to-

date. Licensees are expected to provide correct information to the NSTS and to double-check the accuracy of information before submission.

However, the NRC recognizes that some transactions may be missed and that errors may creep into the system over time. Typical reasons for discrepancies could be failure to report the receipt of a source, failure to report the transfer of a source to another licensee, finding a source that was missed during the reporting of the initial inventory, selection of the wrong model number, or incorrect typing of the serial number.

Each licensee would be required to correct any errors or missed transactions that it discovers, and to correct any of their inaccurate information in the NSTS, regardless of the origin of the error, within 5 business days of the discovery. Typing errors and errors such as inadvertent selection of the wrong model number need to be corrected in the system so that the information in the NSTS is correct. A licensee would be able to submit a corrected form that contains the correct information online or through any other permitted reporting mechanism at any time.

D.4.5 For Manufacturers, Assigning a Unique Serial Number to Sources

The proposed rule would require manufacturers of nationally tracked sources to use a unique serial number for each source. The combination of manufacturer, model, and serial number will be used in the NSTS to track the history of each source.

D.5 Access to the Information in the NSTS and What Would It be Used For

Information in the NSTS will be considered Official Use Only. This means that the information is to be protected and not disclosed to the general public. A licensee would be able to view its own data, but not data for other licensees. Agreement State staff would be able to view information on the licensees in their State, but would not be able to view information on licensees in other States. The one exception is information related to lost or stolen sources. Agreement State staff would be able to view the information on lost or stolen sources from all licensees. This will enable better coordination of recovery efforts. Other Federal and State agencies would also be able to view the information on lost or stolen sources and other information on a need-to-know basis.

Once fully operational, the expanded NSTS would be used for a variety of purposes. This standardized, centralized information will help NRC and

Agreement States to monitor the location and use of nationally tracked sources; conduct inspections and investigations; communicate nationally tracked source information to other government agencies; verify legitimate ownership and use of nationally tracked sources; and further analyze hazards attributable to the possession and use of these sources.

D.6 Implementation and Enforcement of the Expanded NSTS

Implementation and enforcement activities, whether the licensee population includes those possessing Category 1 and 2 sources only, or those possessing Category 3 sources or sources greater than or equal to $\frac{1}{10}$ of Category 3, would be of a similar nature. The NSTS rule reporting requirements include reporting by licensees of an initial inventory, an annual reconciliation of source inventory, and source transactions. The implementation process would include specific actions to make the affected licensee population aware of the amended requirements in 10 CFR parts 20 and 32 through outreach with licensee groups/organizations, and information on the NRC Web site. In addition, at this time, guidance is in preparation for implementation of the NSTS for Category 1 and 2 licensees; similar guidance will be developed for Category 3 sources and sources greater than or equal to $\frac{1}{10}$ of Category 3 licensees. Regarding enforcement action, in a manner similar to that for Category 1 and 2 licensees, NRC and the Agreement states would first need to identify licensees who had not reported the required inventory and transaction information, based on knowledge of the licensee population of interest, which would be determined by using the Licensee Tracking System and eventually by the Web Based Licensing (WBL), when operational.

D.7 When These Actions Become Effective

The rule would become effective 60 days after the final rule is published in the **Federal Register**. The requirements for sources greater than or equal to $\frac{1}{10}$ of Category 3 nationally tracked sources would be implemented by July 31, 2009. This means that by this date any licensee that possesses a Category 3 or sources greater than or equal to $\frac{1}{10}$ of Category 3 must have reported its initial inventory and report thereafter all transactions involving sources greater than or equal to $\frac{1}{10}$ of Category 3 to the NSTS.

III. Discussion of Proposed Amendments by Section

Section 20.1003 Definitions

An expanded definition of nationally tracked sources to include Category 3 and $\frac{1}{10}$ of Category 3 sources would be added to the regulations.

Section 20.2207 Reports of Transactions Involving Nationally Tracked Sources

A revision to paragraph (h) would require a licensee to report its initial inventory of Category 3 and $\frac{1}{10}$ of Category 3 nationally tracked sources by July 31, 2009.

Appendix E Nationally Tracked Source Thresholds

A revision to Appendix E of 10 CFR Part 20 would be made to revise the thresholds for nationally tracked sources to include Category 3 and $\frac{1}{10}$ of Category 3 levels. The Terabecquerel (TBq) values listed in the revised Appendix E are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for reference only and are rounded after conversion. The curie values are not intended to be the regulatory standard.

Section 32.2 Definitions

An expanded definition of nationally tracked sources to include Category 3 and $\frac{1}{10}$ of Category 3 sources would be added to the regulations.

IV. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), as amended, the Commission is proposing to amend 10 CFR Parts 20 and 32 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), § 20.2207 of the proposed rule is classified as Compatibility Category "B." The NRC program elements in this category are those that apply to activities that have direct and significant transboundary implications. An Agreement State should adopt program elements essentially identical to those of NRC. Agreement State and NRC licensees would report their transactions to the NSTS and the database will be maintained by the NRC.

VI. Plain Language

The Presidential Memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

VII. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would require licensees that possess, manufacture, transfer, receive, or dispose of the nationally tracked sources specified in the proposed rule to report the information relating to such transactions to the National Source Tracking System. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Parts 20 and 32, National Source Tracking of Sealed Sources.

The form number, if applicable: NRC Form 748.

How often the collection is required: Initially, at completion of a transaction, and at inventory reconciliation annually.

Who will be required or asked to report: Licensees that manufacture,

receive, disassemble, transfer, or dispose of nationally tracked sources.

An estimate of the number of annual responses: 20,912 (19,746 responses and 1,166 recordkeepers).

The estimated number of annual respondents: 3500 (NRC 700; Agreement States 2800).

An estimate of the total number of hours needed annually to complete the requirement or request: The total burden increase for this rulemaking is 16,821 hours (10 CFR Part 20: 13,748 hours; 10 CFR Part 32: 600 hours; NRC Form 748: 2,473 hours).

Abstract: The NRC is proposing to amend its regulations to expand the NSTS to include Category 3 and $\frac{1}{10}$ of Category 3 sealed sources. The proposed amendments would require licensees to report certain transactions involving nationally tracked sources to the NSTS. These transactions would include manufacture, transfer, disassembly, receipt, or disposal of the nationally tracked source. The proposed amendment would require each licensee to provide its initial inventory of nationally tracked sources to the NSTS and to annually verify and reconcile the information in the system with the licensee's actual inventory. The proposed rule would also require manufacturers of nationally tracked sources to assign a unique serial number of each source. This information collection is mandatory and will be used to populate the NSTS.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC Worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html> for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections,

including suggestions for reducing the burden and on the above issues, by May 12, 2008 to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV and to the Desk Officer, Nathan Frey, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0001, 3150-0014, 3150-0202), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>, docket # NRC-2008-0200. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also comment by telephone at (202) 395-7345.

X. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Regulatory Analysis considers costs to licensees that would result from the proposed amendments. The largest burden would likely fall on the manufacturers and distributors of nationally tracked sources because they will have the most transactions to report. The NRC believes that by allowing batch loading of information using a computer readable format, the burden on the high transaction licensees will be lessened. The Regulatory Analysis also considers costs to the NRC and to Agreement States, including initial costs of entering licensees into the NSTS, annual costs of maintenance and operation of the expanded NSTS, costs of inspections, and costs to Agreement States of issuing legally binding requirements.

The Commission requests public comment on the draft regulatory analysis. Comments may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room (Adams Accession Number ML080910314), 11555 Rockville Pike, Rockville, MD

20852. Single copies of the draft regulatory analysis are available from Michael Williamson, telephone (301) 415-6284, e-mail mkwt@nrc.gov, of the Office of Federal and State Materials and Environmental Management Programs.

XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would affect about 700 NRC licensees and an additional 2800 Agreement State licensees possessing Category 3 and 1/10 of Category 3 sources. Affected licensees include laboratories, reactors, universities, colleges, medical clinics, hospitals, irradiators, and radiographers, some of which may qualify as small business entities as defined by 10 CFR 2.810. However, the proposed rule is not expected to have a significant economic impact on these licensees.

The total time required by a licensee to complete each National Source Tracking Transaction report depends on the number of sources involved in the transaction and the method of reporting. No research or compilation is necessary as all information is transcribed from bills of lading, in-house records kept for other purposes, sales agreements, etc. Each licensee would also spend time on an annual reconciliation of their inventory with the NSTS. As discussed in Section XI of this preamble, the draft regulatory analysis conducted for this action estimates the one-time and annual costs of the proposed amendments for affected licensees based on estimated burdens for actions to comply with the proposed amendments. The NRC believes that the selected alternative reflected in the proposed amendment is the least burdensome, most flexible alternative that would accomplish the NRC's regulatory objective.

Because of the widely differing conditions under which impacted licensees operate, the NRC is specifically requesting public comment from licensees concerning the impact of the proposed regulation. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation will affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Comments on how the regulation could be modified to

take into account the differing needs of small entities should specifically discuss:

- (1) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;
- (2) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;
- (3) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;
- (4) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and
- (5) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Comments should be submitted as indicated under the **ADDRESSES** heading.

XIII. Backfit Analysis

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Parts 20 and 32.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936,

937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 20.1003, the definition *nationally tracked source* is revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1, Category 2, Category 3, or 1/10 of Category 3 levels of any radioactive material listed in Appendix E of this Part. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the

Category 2 threshold but less than the Category 1 threshold. Category 3 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 3 threshold but less than the Category 2 threshold. The 1/10 of Category 3 nationally tracked sources are those containing radioactive material at a quantity greater than or equal to 1/10 of Category 3 threshold but less than the Category 3 threshold.

* * * * *

3. In § 20.2207, paragraph (h) is revised to read as follows:

§ 20.2207 Reports of transactions involving nationally tracked sources.

* * * * *

(h) Each licensee that possesses Category 1 nationally tracked sources shall report its initial inventory of Category 1 nationally tracked sources to the National Source Tracking System by January 31, 2009. Each licensee that possesses Category 2 nationally tracked sources shall report its initial inventory of Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. Each licensee that possesses Category 3 or 1/10 of Category 3 nationally tracked sources shall report its initial inventory of Category 3 or 1/10 of Category 3 nationally tracked sources to the National Source Tracking System

by July 31, 2009. The information may be submitted by using any of the methods identified by paragraphs (f)(1) through (f)(4) of this section. The initial inventory report must include the following information:

- (1) The name, address, and license number of the reporting licensee;
- (2) The name of the individual preparing the report;
- (3) The manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;
- (4) The radioactive material in the sealed source;
- (5) The initial or current source strength in becquerels (curies); and
- (6) The date for which the source strength is reported.

4. In Part 20, Appendix E is revised to read as follows:

Appendix E to Part 20—Nationally Tracked Source Thresholds

The Terabecquerel (TBq) values are the regulatory standard as promulgated by the International Atomic Energy Agency for Categories 1–3 of its *Code of Conduct on the Safety and Security of Radioactive Sources*, published in January 2004. The curie (Ci) values specified are obtained by converting the TBq value. The curie values are provided for practical usefulness only.

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)	Category 3 (TBq)	Category 3 (Ci)	1/10 of Category 3 (TBq)	1/10 of Category 3 (Ci)
Actinium–227	20	540	0.2	5.4	.02	0.54	0.002	0.054
Americium–241	60	1,600	0.6	16	0.06	1.6	0.006	0.16
Americium–241/Be	60	1,600	0.6	16	0.06	1.6	0.006	0.16
Californium–252	20	540	0.2	5.4	0.02	0.54	0.002	0.054
Cobalt–60	30	810	0.3	8.1	0.03	0.81	0.003	0.081
Curium–244	50	1,400	0.5	14	0.05	1.4	0.005	0.14
Cesium–137	100	2,700	1	27	0.01	2.7	0.001	0.27
Gadolinium–153	1,000	27,000	10	270	1	27	0.1	2.7
Iridium–192	80	2,200	0.8	22	0.08	2.2	0.008	0.22
Plutonium–238	60	1,600	0.6	16	0.06	1.6	0.006	0.16
Plutonium–239/Be	60	1,600	0.6	16	0.06	1.6	0.006	0.16
Polonium–210	60	1,600	0.6	16	0.06	1.6	0.006	0.16
Promethium–147	40,000	1,100,000	400	11,000	40	1100	4	110
Radium–226	40	1,100	0.4	11	0.04	1.1	0.004	0.11
Selenium–75	200	5,400	2	54	0.02	5.4	0.002	0.54
Strontium–90	1,000	27,000	10	270	1	27	0.10	2.7
Thorium–228	20	540	0.2	5.4	0.02	0.54	0.002	0.054
Thorium–229	20	540	0.2	5.4	0.02	0.54	0.002	0.054
Thulium–170	20,000	540,000	200	5,400	20	540	2	54
Ytterbium–169	300	8,100	3	81	0.03	8.1	0.003	0.81

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

5. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C.

2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

6. In § 32.2, the definition *nationally tracked source* is revised to read as follows:

§ 32.2 Definitions.

* * * * *

Nationally tracked source is a sealed source containing a quantity equal to or greater than Category 1, 2, 3, or 1/10 of Category 3 levels of any radioactive material listed in Appendix E to 10 CFR Part 20. In this context a sealed source

is defined as radioactive material that is permanently sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold. Category 3 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 3 threshold but less than the Category 2 threshold. Category 1/10 of Category 3 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the 1/10 of Category 3 threshold but less than the Category 3 threshold.

Dated at Rockville, Maryland, this 7th day of April 2008.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8-7756 Filed 4-10-08; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 820

RIN 1990-AA30

Procedural Rules for DOE Nuclear Activities

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its Procedural Rules for DOE Nuclear Activities to be consistent with section 610 of the Energy Policy Act of 2005, Public Law 109-58 (EPAAct 2005), signed into law by President Bush on August 8, 2005. Section 610 amends provisions in section 234A. of the Atomic Energy Act of 1954 (AEA) concerning civil penalties with respect to certain DOE contractors, subcontractors and suppliers. This proposed rule would revise DOE's regulations to be consistent with the changes made by section 610.

DATES: Public comments on this proposed rule will be accepted until May 27, 2008.

ADDRESSES: You may submit comments, identified by RIN 1990-AA30, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail:

Martha.Thompson@hq.doe.gov.

Mail: Martha Thompson, Deputy Director, (HS-40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 20300 Century Blvd., Germantown, Maryland 20874.

You may obtain copies of comments received by DOE from the Office of Health, Safety and Security Web site: <http://www.hss.energy.gov/Enforce/> or by contacting Martha Thompson of the Office of Enforcement.

FOR FURTHER INFORMATION CONTACT:

Sophia Angelini, Attorney-Advisor (GC-52), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6975; or Martha Thompson, Deputy Director (HS-40), Office of Enforcement, Office of Health, Safety and Security, U.S. Department of Energy, 20300 Century Blvd., Germantown, Maryland 20874, (301) 903-5018 or by e-mail, *martha.thompson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Proposed Rule
- III. Public Comment Procedures
- IV. Regulatory Review

I. Background

In 1988, Congress amended the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2011 *et seq.*) by adding section 234A. (commonly referred to as the Price-Anderson Act) (42 U.S.C. 2282a.) that establishes a system of civil penalties for DOE contractors, subcontractors, and suppliers that are covered by an indemnification agreement under section 170d. of the AEA (42 U.S.C. 2210d.). The civil penalties cover DOE contractors, subcontractors and suppliers that violate, or whose employees violate, any applicable rule, regulation or order related to nuclear safety issued by the Secretary of Energy. Section 234A. specifically exempted seven institutions (and any subcontractors or suppliers thereto) from such civil penalties and directed the Secretary of Energy to determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty. On August 17, 1993, DOE promulgated "Procedural Rules for DOE Nuclear Activities," codified at 10 CFR Part 820 (Part 820), to provide for the

enforcement under section 234A. of the AEA of DOE nuclear safety requirements. Under Part 820, the exemption provision for the seven institutions is set forth in section 820.20(c); the provision for an automatic remission of civil penalties for "nonprofit educational institutions" is in section 820.20(d).

DOE is proposing to amend subpart B of Part 820 to incorporate the changes required by section 610 of EPAAct 2005. Section 610, entitled "Civil Penalties," amended section 234A. of the AEA by:

(1) Repealing the automatic remission of civil penalties by striking the last sentence of subsection 234A.b.(2) which reads: "In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.";

(2) Deleting exemptions provided to seven institutions (including their subcontractors and suppliers) for activities at certain facilities by deleting existing subsection 234A.d. and substituting a new subsection 234A.d.(1) in which the total amount of civil penalties for violations under subsection 234A.a. of the AEA by any not-for-profit contractor, subcontractor, or supplier may not exceed the total amount of fees paid within any 1-year period (as determined by the Secretary) under the contract; and

(3) Adding a new section 234A.d.(2) that defines the term "not-for-profit" to mean that "no part of the net earnings of the contractor, subcontractor, or supplier inures to the benefit of any natural person or for-profit artificial person."

Finally, section 610 of EPAAct 2005 included an effective date provision at subsection 234A.c., specifying that the amendments as to civil penalties under section 234A. shall not apply to any violation of the AEA occurring under a contract entered into before the date of enactment of EPAAct 2005, which was August 8, 2005.

II. Discussion of the Proposed Rule

Today's proposed rule would amend section 820.20 as follows:

(1) It would revise paragraph (c) to limit the exemption for seven institutions (and their subcontractors and suppliers) from the civil penalty provisions of Part 820 to violations occurring under contracts entered into before the date of enactment of EPAAct 2005;

(2) It would revise paragraph (d) to limit the automatic remission of civil penalties for nonprofit educational institutions under Part 820 to violations