



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

May 25, 2006

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-06-0080

TITLE: FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED
SOURCES (RIN 3150-AH48)

The Commission (with all Commissioners agreeing) approved the subject paper as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of May 25, 2006.

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

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

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-06-0080

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	5/1/06
COMR. McGAFFIGAN	X				X	5/18/06
COMR. MERRIFIELD	X				X	5/3/06
COMR. JACZKO	X				X	4/12/06
COMR. LYONS	X				X	5/1/06

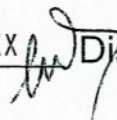
COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation as noted in an Affirmation Session and reflected in the SRM issued on May 25, 2006.

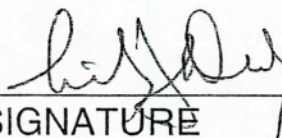
AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN DIAZ
SUBJECT: **SECY-06-0080 - FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED SOURCES (RIN 3150-AH48)**

Approved XX  Disapproved _____ Abstain _____
Not Participating _____

COMMENTS:
See attached comments.



SIGNATURE

5/1 /2006

DATE

Entered on "STARS" Yes No _____

Chairman Diaz's Comments on SECY-06-0080

I approve the staff's recommendations to publish in the Federal Register the notice of final rulemaking for the National Source Tracking System and the change of the basis to public health and safety which will invite public comment for a period of 20 days. I also agree that the staff should certify that this rule, if promulgated, will not have a significant impact on a substantial number of small entities. I would like to commend the staff for the tremendous effort that went into this important rulemaking. The National Source Tracking System (NSTS) is a critical part of the overall strategy to maximize the safe and secure use of radioactive materials in the United States.

As a practical matter, safety and security are somewhat intertwined in the industrial, medical, and academic uses of radioactive materials, and the NRC has always recognized that preventing the loss of control of material promotes both safety and security for the general public. The NSTS will provide for better accountability of the sources and thereby aid licensees in maintaining proper control of radioactive materials of concern. The change in basis will capitalize on the synergisms between safety and security to provide further assurance of adequate protection of public health and safety. Moreover, Agreement States can play a larger and more integrated role in implementing a rule based on public health and safety, consistent with NRC's strategic goals and other recent efforts in applying increased controls on radioactive materials. I also note that if substantive comments are received on the change in basis from common defense and security to public health and safety, the staff will resubmit the final rule package to the Commission for approval.

I agree with the NRC staff determination that more information is necessary before a decision can be made regarding the tracking of Category 3 sources. I believe that the current schedule for the NSTS to track Category 1 and 2 sources is appropriate. The staff should continue to evaluate adding Category 3 sources to the tracking system and keep the Commission apprised of its progress in this regard.

AFFIRMATION ITEM

RESPONSE SHEET

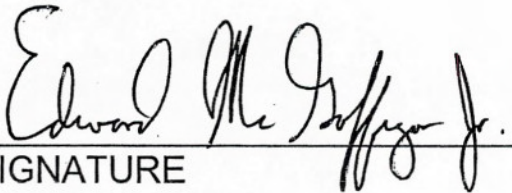
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MCGAFFIGAN
SUBJECT: **SECY-06-0080 - FINAL RULE: NATIONAL SOURCE
TRACKING OF SEALED SOURCES (RIN 3150-AH48)**

Approved X w/comments/edits Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

I approve the common defense and security option (Enclosure 5), subject to the attached comments and edits.



SIGNATURE

May 18, 2006
DATE

Entered on "STARS" Yes X No _____

Commissioner McGaffigan's Comments and Edits on SECY-06-0080

I apologize for my delay in voting. I approve for publication in the *Federal Register* the version of the notice of final rulemaking for which the basis is "common defense and security," and I disapprove publication of the final rulemaking for which the basis is "public health and safety." I am not persuaded by the SafeSource Steering Committee that we should swap horses midstream. While I appreciate the voluntary effort that the Agreement States have put forth in helping us assemble the annual interim inventories, the Commission's intent at the outset of the National Source Tracking System (NSTS) effort was rational and clear. That clarity of purpose continued through the development and publication of the proposed rule in June 2005, which the Commission unanimously approved, and was affirmed by Congress in the Energy Policy Act of 2005 (EPAcT) in August. We stayed on course through January 2006 as staff developed plans to implement the EPAcT provisions. This eleventh hour horse change is an unwelcome foray by the staff, which seems intent on finding every opportunity to hand over our common defense and security responsibilities to the States. We are clearly meant under EPAcT to develop a National tracking system, under NRC's common defense and security authority, that does not have us abdicating oversight of 80% of the nation's risk-significant radiation sources to our 34 State partners.

Notwithstanding my view on this matter, I am not reopening the debate on the Commission's decision during my absence in 2005 to issue "public health and safety" Orders for increased security controls to Groups 1-4 licensees. I would have joined Commissioner Jaczko in opposing that action and in issuing those Orders under NRC's common defense and security authority, but that matter is behind us. However, I believe that action is separable and distinct from what is before us now. I am not persuaded that the delegation of increased security controls authority to the Agreement States should influence our judgment on the basis for a national tracking system, especially if our goal in switching horses is to avoid the "perception" of dual regulation. These two efforts are distinct – no competent licensee would confuse their locks, guards, and sensors, which are compelled by a competent Agreement State authority, with a requirement to accurately and timely report to NRC's NSTS. Some would argue that this is dual regulation – but regulation by two entities over two distinct sets of requirements is complementary, not redundant. Many of these licensees already deal with NRC on export and import of risk-significant sources. They can keep track of when NRC is regulating them on some matters and when the Agreement State is regulating them on other matters.

When staff informed the Commission of this proposal on March 9, we were told that an informal poll of twenty-four States revealed that five States were not supportive of the basis switch. California (which alone regulates 20% of the total national inventory of radioactivity in Category 1 and 2 sources) and New York are among the five who do not support the switch, and neither of these States expressed an interest in an agreement under section 274i of the Atomic Energy Act to assist NRC in carrying out its responsibilities. It should not be lost on anyone that Senator Clinton, who sponsored the EPAcT provisions that directed us to develop the tracking system, is likely to support New York on this matter. Moreover, she and her House colleague, Congressman Edward Markey of Massachusetts, clearly were motivated by security concerns in drafting this legislation. It is untenable that we would relinquish our authority to regulate security of these materials when the intent of Congress is so patently clear. All of this is on the heels of the OIG's February 2006 report and the March 28, 2006, report by the General Accountability Office on its investigation into materials licensing vulnerabilities and border security. We cannot now stand before Congress and say that we have abdicated 80% of our responsibility to reduce the risk of dirty bombs to the 34 Agreement States.

I also strongly disagree with the staff's view that the budget burden of NSTS oversight under a common defense and security basis is too high for NRC. The staff had ample opportunity in several budget cycles to forecast the expansion and indefinite commitment of NRC resources

for oversight of the NSTS. There is just no reason that NRC's oversight activities should not have been foreseen in the FY'07 budget cycle and the staff's failure to budget for the Commission's clear existing policy (not then called to the Commission's attention) should not now be used as an excuse to switch horses. The National Source Tracking Working Group began in November 2003, and was followed soon thereafter by the SafeSource Steering Committee in December 2003, and the Interagency Coordinating Committee in February 2004. Now, in this paper, the staff is resorting to budgetary extremism to bolster its position to switch horses. A reasonable approach to inspections would not have us checking 100% of licensees in the first year, and expending 20 FTE and \$750,000. Rather, a risk-informed sample of perhaps 10% to 20% would more than provide the requisite reasonable assurance that the NSTS requirements are being met. Such an approach would significantly reduce NRC's costs. Moreover, we all know that many States face significant budgetary pressures. More than the five may be slow to embrace an unfunded NRC mandate to conduct inspections at 100% of these licensees during the first year of NSTS implementation. This is not the normal inspection frequency at these sites. The States will likely also resort to smart sampling if they are forced to accept NRC's unfunded mandate.

If a majority of my colleagues choose to approve the "public health and safety" basis, as appears likely, I do not believe that the 20-day comment period for the basis change notice is fair or reasonable to California and New York, and other States, who oppose this approach. The comment period should be extended to at least 30 days, and perhaps 60 days, and we should anticipate receiving substantive comments. Also, since we expect substantive comments, we should not expect OMB to review a draft final rule while we simultaneously issue what is essentially a revised proposed rule for comment. OMB seeks public comment on the paperwork collection burden, and would likely receive the same comments that we will receive. If the Commission again switches back to a common defense and security basis for NSTS, OMB might have to renotice. They may just wait for us to make up our minds after we resolve public comments on the new *Federal Register* notice.

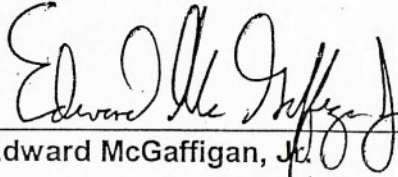
I would urge my colleagues who support switching horses to reconsider their votes. If not, staff should seek Commission approval for the proposed resolution of comments on the change to a public health and safety basis before issuing the final rule. We cannot prejudge this matter at this stage without this whole, very important rulemaking effort becoming vulnerable to a court challenge.

I agree that we should not include Category 3 sources in the NSTS at this time. We simply do not have sufficient information on the number and types of Category 3 sources to include them in the NSTS, partly because some of them are generally-licensed. The staff's proposal to specifically license a subset of Category 3 sources is addressed in SECY-06-0094, which is also before the Commission. That paper and this one provide sufficient information to assure me that no subset of Category 3 is ready for inclusion in the NSTS at this time. I do support inclusion of Category 3 sources in the NSTS in a future rulemaking, but will address that matter more fully in my vote on SECY-06-0094.

I do not support Commissioner Merrifield's proposal to track sources once they decay below Category 2 all the way to final disposition. As a practical matter, his proposal would only affect iridium-192 (¹⁹²Ir) sources, which alone among commonly used IAEA Code of Conduct isotopes has a short half-life (74 days). An ¹⁹²Ir source that drops into Category 3 will fall into Category 4 less than nine months later and into Category 5 about sixteen months after that. Since terrorists will not have access to the NSTS, there is little chance of terrorists taking advantage of this lack of tracking, and the paperwork burden of watching ¹⁹²Ir sources rapidly decay away would not be matched by a commensurate benefit.

Edits to Enclosures - SECY-06-0080

1. Enclosure 5, p. 8, 2nd to last sentence:
"This final rule on National Source Tracking meets the requirements enumerated above ~~which were applicable to source tracking and imposed by the Energy Policy Act of 2005 applicable to source tracking.~~"
2. Enclosure 5, p. 26, 7th sentence under III.
"The overall commenter mix on the proposed rule included federal agencies, states, licensees, industry organizations, and individuals."
3. Enclosure 5, p. 52, Response to Comment I.2.
"There are no direct fees associated with the National Source Tracking System. ~~The cost of the system will be recovered through agency overhead.~~ Beginning in fiscal year 2007, the cost of the National Source Tracking System will be off of the fee base. This means that the cost will not ~~be~~ recovered through annual fees."
4. Enclosure 5, p. 55, Response to Comment J.3.
"NRC agrees with the commenter on the need for training. Because this rule applies to both NRC and Agreement State licensees, there is no compatibility issue. Both NRC and Agreement State licensees will receive information on the ~~National Source Tracking System~~ final rule, including information on how to establish an account, and information on training. . ."
5. Enclosure 6, pp. i, 11, 18 and 20.
The staff should clarify whether the costs presented are in 2005 or 2006 dollars. Table ES-1 and the remainder of the text indicates that the values are in 2006 dollars, but Table 4 states it is 2005 dollars.


Edward McGaffigan, Jr.

5/18/06
(Date)

AFFIRMATION ITEM

RESPONSE SHEET

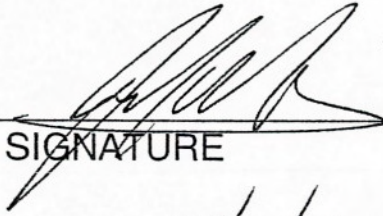
TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER MERRIFIELD
SUBJECT: **SECY-06-0080 - FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED SOURCES (RIN 3150-AH48)**

Approved Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.



SIGNATURE
05/03/06

DATE

Entered on "STARS" Yes No

Comments from Commissioner Merrifield on SECY-06-0080:

I approve as revised in the following paragraphs the staff recommendations in SECY-06-0080 concerning a process for issuance of a final rule to develop a National Source Tracking System. First, I want to recognize that this has been a significant task with a demanding schedule required under the Energy Policy Act. I commend everyone involved including the NRC staff, the Agreement State representatives, and the various stakeholders for providing meaningful effort under a fairly tight schedule. There will be a need to revisit this action in the near future and to make corrections as implementation issues are identified, but the end result will be a good first step. However, as discussed in the following paragraphs, there are some changes that should be made before this first step is taken.

One of the major considerations is should this rule continue to be pursued under our common defense and security authority or should it be now be pursued under our public health and safety authority. After consideration of all the issues involved as well as the views of my fellow Commissioners, I approve proceeding with this rulemaking under our public health and safety authority. This rulemaking solely concerns collecting data, submitting it to a national data base, and ensuring the data is appropriately updated in a timely manner. Issuing this rulemaking under our health and safety authority in absolutely no way diminishes our authority to take appropriate action nor lowers the significance of our actions. I view our public health and safety responsibilities are just as important as our common defense and security responsibilities.

The remainder of my comments apply to specific elements of the Federal Register Notice.

In several instances in the Federal Register Notice it is stated that "It was not NRC's intent to include Category 3 sources in the tracking system at this time." I want to clearly state that one reason I agreed to the proposed rulemaking was that it contained a question on should category 3 sources be included; and I was prepared to include either category 3 sources or a subset of category 3 resources in the final rulemaking. However, due to the tight schedule for this specific rulemaking, staff was not able to adequately study the category 3 issue. Staff did raise enough legitimate concerns that I am not prepared, in this rulemaking, to support a requirement to track all category 3 material. The more accurate statement in the Federal Register would be: "In this rulemaking, the Commission is not making a final determination on what additional material should be included in the National Source Tracking System. This rulemaking addresses material which is either in category 1 or 2 quantities at the date this rule becomes effective. If additional material is added to the National Source Tracking System, it will be done through subsequent rulemaking."

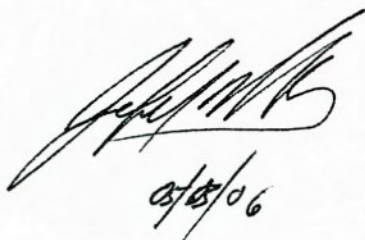
Staff has proposed a plan of action to address category 3 sources in SECY-06-0094. Specific Commission direction will be provided in the Staff Requirements Memorandum associated with that paper.

As proposed by the staff, category 1 and 2 sources are entered into the database along with their source strength and date of manufacturer. The computer will calculate the decay in the source strength. I believe it is a good idea for the computer to calculate the source strength for a variety of reasons, including if the source should somehow reach the public domain in an uncontrolled manner at some future date. However, as proposed by the staff, the moment the source is calculated to be below category 2 values, it will no longer be tracked by the system, regardless of its last status. The old data will remain in the system, but the system will no longer track what happens to this source. Such a system potentially creates public credibility

concerns and can be difficult to defend in a public forum. The effect of sources slightly below the threshold is no different than the effect of sources slightly above the threshold. Additionally, if sources in the tracking system are covertly or accidentally identified to outside groups, they could become a preferred target for terrorists. If it was known that the sources were no longer being tracked as of a certain date, there may be even more of an incentive to attempt to obtain the material, even if the material had decayed to very low levels. All the terrorist knows is that the source was important enough to track and therefore it must be a desirable source to obtain. The most direct approach is to track the source to final disposition once it is in the system. It is far easier to maintain data tracking on these sources once they are in the system than it is to restart data tracking at some undefined point in the future when the Commission finalizes a decision about tracking or inventorying category 3 sources. Therefore, the rule should be changed to state that when a source is entered in the National Source Tracking System (because it initially contains either category 1 or 2 quantities of material), the source transactions will continue to be reported until final disposition, hopefully disposal or recycling. These sources will already be in the database so there should be minimal impact in continuing to report the transactions. I have no objection if the Federal Register Notice indicates that the Commission will revisit this decision when it decides appropriate action to take on category 3 sources.

My next issue concerns the language used both in the rulemaking and the Federal Register Notice concerning the new 10 CFR 20.2207(g). This concern is an incorrect perception that could be inferred from the language. The wording used in the Federal Register Notice and the actual rulemaking language could be incorrectly interpreted to state that discrepancies found in the physical inventory, whenever it is conducted, need only to be entered in the system by January 31, when the annual reconciliation is required. The only time the physical inventory is discussed is when it is directly tied to the annual reconciliation effort. However, a plain reading of the first sentence in §20.2207(g) would state that anytime a discrepancy is discovered (including when a physical inventory is conducted), the system must be corrected within five business days. Staff should clarify the intent of the language. One potential clarification could be to add a new sentence after the first sentence in §20.2207(g) which reads "Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, when each licensee ...".

My last comment is editorial in nature. On page 4 of the Federal Register Notice (Background Section) the last paragraph (starting with "The NRC has also ...") in the fourth sentence (starting with "In particular, ...") add the words "at a minimum" before "Category 1". The Code of Conduct is clear that the minimum National Source Tracking System should include Category 1 and 2 sources but it may include other categories as well.



A handwritten signature in black ink, followed by the date "07/18/06" written below it.

AFFIRMATION ITEM


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: **COMMISSIONER JACZKO**
SUBJECT: **SECY-06-0080 - FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED SOURCES (RIN 3150-AH48)**

Approved **X** Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: **See attached comments.**



SIGNATURE

DATE 4/12/06

Entered on "STARS" Yes **X** No _____

Commissioner Jaczko's Comments on SECY-06-0080
Final Rule: National Source Tracking of Sealed Sources (RIN 3150-AH48)

I approve, as modified below, the staff recommendation to publish the final rule for the National Source Tracking System. I support issuing the final rule for the National Source Tracking System under the Commission's common defense and security authority, and I do not approve of the staff's proposal to change the basis for the final rule to public health and safety. Issuing this final rule represents the continued efforts by the Commission to enhance the security and control of the many high-risk sources that are used in the various medical and industrial operations in the United States. I also appreciate the efforts thus far by the Agreement States in supporting the Nuclear Regulatory Commission (NRC) in getting their licensees to voluntarily report to the interim database the high-risk sources that they possess.

The staff, in SECY-06-0080, presented the Commission with an option to change the basis of the National Source Tracking System (NSTS) from common defense and security to public health and safety. The Commission, however, unanimously approved the NSTS at the proposed rule stage under common defense and security. I continue to believe that the NRC has a responsibility to impose security requirements under its common defense and security authority because of the real security threats that exist. While the NSTS itself does not ensure physical protection of the sealed sources in question, the NSTS is a critical component of our program to secure and control these sources throughout the United States by improving source accountability. More importantly, issuing this rulemaking under our common defense and security authority is the most efficient and effective way for the NRC to ensure that the manufacture, transfer, receipt, disassembly, and disposal of nationally tracked sources is implemented to further protect the public from the potential malevolent use of these radioactive sources. Therefore, I disapprove of the staff recommendation to change the basis of the NSTS rule from common defense and security to public health and safety. The staff should immediately issue the NSTS rule under the Commission common defense and security authority as unanimously approved by the Commission at the proposed rule stage.

Recent events involving the Government Accountability Office (GAO) investigation into nuclear smuggling, further underscores the need to issue this final rule under our common defense and security authority. Although the small amount of cesium-137 carried by the GAO investigators was equivalent to a Code of Conduct Category 5 source and posed no security threat, the report identifies the problem with verifying the authenticity of a license, a security concern.

In light of the GAO investigation I would encourage the staff to continue its efforts on the Interagency Coordinating Committee for the NSTS to ensure that federal agencies, such as Customs and Border Protection (CBP), have access to information in the NSTS. Having access to this information will assist the CBP in understanding where and when high-risk sources are moving into and out of the U.S., providing some information to help verify whether a license is legitimate.

I am concerned about the staff's proposal to ensure information about lost or stolen nationally tracked sources in the Nuclear Materials Event Database (NMED) be transferred by staff to the NSTS. Because there will be a need for Agreement States and other federal agencies to have access to NSTS information, the staff should provide the Commission with an explanation of how they intend to transfer data from NMED to NSTS in a timely manner. Agreement States and other federal agencies with access to the NSTS need timely and up-to-date information regarding these high-risk sources and the staff has not provided an explanation for how this will

be accomplished.

Finally, the Commission, in the Staff Requirements Memorandum (SRM) for SECY-05-0092, directed the staff to solicit public comments on the need to track or provide enhanced controls for Code of Conduct Category 3 sealed sources that when aggregated meet the threshold value of a Category 2 or above source. The staff was also directed to consider soliciting public comment on methods and challenges related to more definitive tracking of sources which could be incorporated into the NSTS in the future.

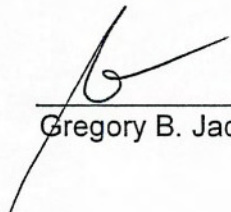
With regard to including Category 3 sources or the aggregation of sources in the National Source Tracking System (NSTS), I agree with the staff that it would not be practical to include the aggregation of Category 3 sources in the NSTS, which is an item level tracking system. I do agree with the staff assessment in the *Federal Register* notice for the proposed rule that the best way to address the concern of aggregation of Category 3 sources is simply to lower the threshold. Comment letters from Agreement States such as Kansas and Oklahoma would consider greater accountability for Category 3 sources in the NSTS. Other commenters were in favor of including Category 3 sources. Also, the Environmental Protection Agency's comment on lower threshold sources indicated that "accumulations of sources other than Categories 1 and 2 could also pose a threat to national security."

A Category 3 sealed source by its definition in the Code of Conduct could cause permanent injury to a person who comes in contact with the source for a few hours. In fact, NRC regulations would continue to require the reporting of the theft or loss of licensed material of a much lower threshold. The thresholds in NRC regulations, for example for a sealed source of cobalt-60, would produce a dose of about 25 rems at one-foot over a 30 day period. This is 800 times less than the activity level of a cobalt-60 Code of Conduct Category 3 source, which could result in permanent injury in a few hours.

The staff also indicated that they would provide the Commission with a paper that would address options for dealing with less than Category 2 sources. I believe that the staff should have provided this information to the Commission prior to submitting the final rule. After having considered the public comments on the issue of including Category 3 sources, along with understanding the dangers these sources in aggregate could pose to the public if unaccounted for, I believe that the threshold for reporting in the NSTS should include Category 3 sealed sources.

Since the staff specifically solicited comments on the inclusion of Category 3 sources in the NSTS I do not believe that the final rule will require republication to address the expansion of the system to include Category 3 sources. In this instance, the Commission requested the views of the public with respect to the extension of the NSTS to Category 3 sources, and indicated that the comments would enable the Commission to make a decision on this issue. Upon my review of the comments, I am satisfied that the public understood that the Commission could potentially expand the NSTS to include Category 3 sources, at this time. Thus, NRC having provided an opportunity for the public to comment on the expansion of the NSTS to include Category 3 sources, I do not believe that a final rule including these sources would require republication by the Commission.

Lastly, the staff did not specifically solicit public comments on the methods and challenges related to more definitive tracking of sources. Staff, however, has assured me that should the technology become available to provide for more definitive tracking that the NSTS could be expanded in the future to accommodate real time tracking. Therefore, I would encourage the staff to keep the Commission fully and currently informed of technological developments and the efforts of other federal agencies involved in tracking radioactive materials on the ability to provide for real time tracking of nationally tracked sources in the future.



Gregory B. Jaczko 4/12/06 Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: **SECY-06-0080 - FINAL RULE: NATIONAL SOURCE TRACKING OF SEALED SOURCES (RIN 3150-AH48)**

Approved X Disapproved _____ Abstain _____
 w/comments

Not Participating _____

COMMENTS:

Peter B. Lyons


SIGNATURE

5/ 01 /06

DATE

Entered on "STARS" Yes X No _____

Commissioner Lyons Comments on SECY-06-0080

First, I would like to compliment the staff on a job well done. I approve the staff recommendation to publish the final rule for the National Source Tracking System. In order to be consistent with the Commission Direction in the framework for increased controls for Groups 1 to 4, I support staff's proposal to change the basis for the final rule to be public health and safety. I believe that Agreement States have demonstrated their ability to adopt timely and adequate legally binding requirements in a manner consistent with Commission direction. I believe the Agreement States will be able to implement the rule efficiently and effectively. Should issues arise during the implementation process that are indicative of any problem in meeting the specified implementation time frame, staff should expeditiously inform the Commission.

I do not support adding category 3 sources to the final rule at this time, and plan to address this issue in my vote on SECY-06-0094.

Peter Lyons
5/1/06