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March 17, 2017

Irene Wu  
Office of Nuclear Materials Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, DC 20555

RE: OPPORTUNITY TO COMMENT ON THE DETERMINATION TO REVISE  
PROCESSES GOVERNING CATEGORY 3 SOURCE PROTECTION AND  
ACCOUNTABILITY DRAFT RISK-SIGNIFICANT RADIOACTIVE MATERIAL  
CHECKLIST AND GUIDANCE (DOCKET NO. NRC-2016-0276)

Dear Ms. Wu:

Thank you for providing the Organization of Agreement States (OAS) with the opportunity to comment on the Nuclear Regulatory Commission's (NRC) effort to determine if it is necessary to revise the processes governing Category 3 source protection and accountability (Docket No. NRC-2016-0276). The OAS concurs with the Conference of Radiation Control Program Directors (CRCPD) and does not support adding Category 3 materials to the License Verification System (LVS), the National Source Tracking System (NSTS), or require increased security pursuant to 10 CFR 37.

The OAS agrees with NRC Chairman Svinicki and Commissioner Burns that the current NRC regulations for transfers of radioactive sources are adequate to protect public health and safety, commensurate with the associated risk. The NRC provides no other evidence that there is a problem with transferring or authorizing possession of Category 3 materials other than the General Accounting Office (GAO) report where one individual, who did not follow procedures, allowed an illegitimate acquisition of Category 3 material. By altering the license, the GAO would have been able to acquire enough Category 3 material to exceed the threshold of Risk Significant Radioactive Materials. By adding Category 3 materials to LVS and NSTS, the NRC hopes that this contrived scenario can be avoided. This is an admirable goal, however, the OAS submits that it will not deter someone from obtaining materials below the Category 3 quantities (perhaps the GAO again) and altering the license to obtain more material until eventually quantities of concern may be possessed. Therefore this "fix" may eventually be proven inadequate and we may find ourselves faced with this same issue for all radioactive

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*Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin*

materials. This would clearly be impractical and counter-productive to ensuring quantities of concern are under adequate security. OAS believes that adding Category 3 materials to LVS and NSTS is unnecessary and over-burdensome. Agreement States do not have any evidence to share that there is a problem with the transfer or security of Category 3 sources.

Please see the enclosure for responses to questions for the Agreement States. The OAS looks forward to continue to work with the NRC on ensuring that appropriate security measures are risk-informed. We appreciate the chance to comment on this subject, and stand ready to answer any questions you may have.

Sincerely,



Matthew W. McKinley  
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Radiation Health Program Administrator  
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Enclosure

## ENCLOSURE

### General Questions Related to LVS

1. No. There is no evidence that in the current terrorist threat environment that the distribution of these sources is not already well controlled. The Agreement State consensus is that current regulations are adequate to ensure transfers occur safely. Changing the regulations to prescribe license verification for Category 3 sources would significantly impact radioactive material and radioactive waste transfers and transportation without any evidence to suggest current regulations are inadequate.
2. There is no evidence that there is a security or safety issue with current Category 3 quantity radioactive source transfer practices. Additional requirements may result in delaying or impeding the completion of a transfer, thus possibly affecting patient health.
3. As stated by the CRCPD, OAS believes that license verification is important for all entities transferring radioactive sources, however, for Category 3 quantities or lower, requiring LVS is not justified. If NRC choses to proceed with this requirement, the OAS believes that licensees transferring Category 3 quantities to manufacturers and distributors be excepted.
4. The NRC should supply more evidence that the current system is not adequate regarding the security of Category 3 sources and then perform a cost benefit analysis to support their position that the regulations should be revised.

### General Questions Related to NSTS

1. OAS does not believe that Category 3 sources should be included in the NSTS. The NRC has not provided supporting evidence of data that the existing regulatory approach to Category 3 source security is inadequate. Including Category 3 quantity sources in NSTS will be a burden on licensees and Agreement States and it is questionable that it would add to the safety and security, considering that Inspectors regularly check that inventories are within the licensing limits. The NRC estimates that there are 30,000-40,000 Category 3 sources in use or storage. The added burden to all involved is not justified by the rationale that the NRC presented.
2. No.
3. No. Existing reporting requirements are adequate. Adding additional reporting requirements for NSTS will add significantly to the regulatory burden on licensees. OAS does not believe that a possible missing source would be investigated any sooner considering normal delays in the realization of a problem and communications.
4. No. The OAS has no evidence or data to answer this question. Just as the NRC has no evidence or data to justify requiring Category 3 sources be included in NSTS. OAS believes that errors in deliveries would still occur and that common carriers do an adequate job of tracking. NSTS cannot prevent packaging errors.
5. See #4 under LVS questions. The extra cost of maintaining the larger database, and the introduction of additional errors with additional data entry are additional reasons for not including Category 3 sources in NSTS..

### **Specific Questions for Agreement States for NSTS**

1. The fact that the NRC is asking this question makes it clear that there would be an unbearable burden if Category 3 sources were included in NSTS. The OAS agrees with Colorado and other Agreement States, that if NRC discontinued the annual inventory reconciliation, Agreement States would most likely perform the reconciliation through their inspection program. The OAS agrees with North Carolina that the purpose of NSTS is to provide a national database. The NRC is the single point of contact in maintaining the database and should remain so since it is more efficient and cost-effective.

### **Other Questions**

1. No. Part 37 requirements for physical security would be problematic for fixed gauges and for HDR licensees.
2. OAS supports the re-evaluation of the NRC's General License Program. OAS believes that Category 3 sources should be specifically licensed. General licensees are usually unaware of the applicable regulations.