June 27, 2006

The Honorable Daniel K. Akaka
United States Senate
Washington, D.C. 20510

Dear Senator Akaka:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to the concerns raised in your letter of April 19, 2006, regarding efforts to control and regulate sealed radioactive sources. You specifically mention the implementation of additional security and tracking measures, as NRC agreed to in its response to an August 2003 Government Accounting Office (GAO) report titled, "Nuclear Security: Federal and State Action Needed to Improve Security of Sealed Radioactive Sources" (GAO-03-804). NRC's responses to your specific questions are provided in Enclosure 1.

The NRC bases its security and control program for radioactive materials on the principle of allocating attention and resources proportionate to the risk of malevolent use of the sources. Since September 11, 2001, the NRC has thoroughly reevaluated its safeguards and security programs and worked aggressively to enhance the security of risk-significant radioactive sources. It will continue to do so. The Commission believes that significant achievements have been made in regulating the security of radioactive materials, not only in the United States, but worldwide, through the International Atomic Energy Agency (IAEA). Background information on the NRC program for regulating radioactive sources is provided in Enclosure 2. Enclosure 3 is a timeline showing actions on management and control of radioactive sources, and Enclosure 4 explains some of these actions in more detail. The Energy Policy Act of 2005 requires the NRC and other organizations to take a number of actions regarding the security of risk-significant sources. These actions are listed in Enclosure 4, Information Box 3. The NRC is taking steps to implement all of these actions.

Regarding GAO-03-208, the NRC staff carefully considered the recommendations in the report, has taken extensive measures to improve the security of sealed sources since September 11, 2001, and has made considerable progress in responding to the GAO recommendations. Specifically, NRC has worked closely with the Agreement States to identify the radioactive sources of greatest concern; developed additional security requirements, which have been issued to all licensees who possess risk-significant sources, through Orders or other legally binding instruments; worked to determine the costs and benefits of additional regulation of generally licensed sources and the appropriate delineation between general licenses and specific licenses; taken steps through the licensing process and other means to verify the trustworthiness of recipients of high-risk radioactive sources; and developed program review criteria and performance measures to evaluate the effectiveness of NRC's and the Agreement States' oversight of the implementation of additional security measures. Enclosure 5 is a copy of NRC's initial response to the recommendations of GAO-03-804. Enclosure 6 provides the most recent update on the status of recommendations that remained open as of the end of 2005. The NRC has completed actions for all recommendations in GAO-03-804 except recommendation 2, which suggests that the NRC and Agreement States determine the costs and benefits of requiring owners of devices that are now generally licensed to apply for specific

licenses. In June 2006, as part of the process of addressing recommendation 2, the NRC decided to perform a one-time data collection and analysis of radioactive sources with quantities down to 1/10th of the Category 3 threshold in the IAEA Code of Conduct. The NRC will examine this data as part of its consideration of changing the delineation between general licensing and specific licensing for byproduct materials.

The Commission firmly believes that we have acted responsibly to protect the public from the risks of exposure to radioactive material by strengthening the system for security and control of sources. As part of these actions, the NRC has implemented, or is in the course of implementing, the additional security and tracking measures identified in GAO-03-804 to which you refer in your letter. The NRC has taken measures to ensure that radioactive materials that could result in potentially significant injury to the public are safely and securely handled both here and abroad. The Commission recognizes the need to analyze continuously the safety and security systems in place and is improving its ability to analyze threats and mitigate them. Our approach is informed by the level of potential hazards to the public, recognizing the different levels of risk of different radioactive sources, and applying appropriate measures and resources.

Sincerely,

/RA/

Nils J. Diaz

Enclosures:
1. Response to Questions from Senator Daniel K. Akaka's letter dated 4/19/06
2. Overview of NRC Program for Regulating Radioactive Sources
3. Timeline on Management and Control of Radioactive Sources
4. Information Boxes
5. Letter to Rep. Davis, et al., dated 2/4/04
6. Letter to Sen. Voinovich, et al., dated 4/12/06, with Excerpts on GAO-03-804

Response to Questions from Senator Daniel K. Akaka's letter dated April 19, 2006

Question 1: What improvements have been made in the NRC's ability to authenticate the credentials of those requesting general and specific licenses?

Response: General licenses are authorizations that do not require applications nor issuances of licensing documents but, in some instances, do require registration with NRC. A specific license is necessary for certain types of radioactive material which require conditions to ensure the safe use of the material. The issue of fraudulent application for, or use of, a specific license is addressed in NRC's licensing and inspection programs. For a specific license that authorizes the use of risk-significant[1] sources, NRC's regulatory process for approving the use is comprehensive. It includes a thorough licensing review (supplemented in some cases by licensing site visits to verify the legitimacy of applicants and licensees), inspections that address control of sources from both safety and security standpoints, incident investigations and follow-up, and enforcement actions. NRC has also developed pre-licensing guidance with the goal of ensuring that all NRC and Agreement State regulators use a consistent review process to identify risk-significant quantities of certain radioactive materials and are reasonably assured that the materials will be used as intended. The guidance provides a mechanism, in the post-September 11, 2001 environment, for resolving concerns about issues with applicants that warrant additional security evaluations. In addition, NRC has been given new regulatory authority to require that certain licensees conduct background and criminal history checks. NRC has issued Orders imposing additional security measures to licensees with risk-significant sources and is currently initiating the rulemaking process to revise its regulations to codify these Orders.

Question 2: What improvements have been made to prevent counterfeiting of NRC documents?

Response: NRC is taking steps to address the counterfeiting issue.

NRC, in coordination with the Agreement States, has placed all licensees that possess risk-significant radioactive sources under additional security requirements. These security measures require that licensees confirm the identity of entities that seek to purchase radioactive materials and verify their authorizations.

It is important to note that shippers and carriers of radioactive material are not required to carry NRC licenses with shipments as proof of authorization to possess the material. The transfer of byproduct material between licensees is

[1] As used herein, the term, "risk-significant source," refers to a sealed source that contains an amount of radioactive material that corresponds to a Category 1 or Category 2 source as defined by the International Atomic Energy Agency in its Code of Conduct for the Safety and Security of Radioactive Sources.

authorized by 10 CFR 30.41 of the NRC's regulations. Licensees are required to verify that transferee licenses authorize the receipt of the type, form, and quantity of byproduct materials to be transferred. NRC has required some manufacturer and distributor licensees, through security orders, to exercise their responsibilities to verify, at a minimum, the legitimacy of unfamiliar purchasing companies. NRC plans to issue an Information Notice to alert licensees to the due diligence that needs to be exercised should they receive orders for material from entities with which they have not previously done business.

Question 3: What progress has been made regarding the implementation of a national source tracking system? When will such a system be operational? How accurate and effective are present interim tracking systems?

Response: The National Source Tracking System (NSTS), which will focus on Category 1 and Category 2 sources initially, is under development. The first phase, with full functionality, is scheduled to be in operation by June 2007. A second phase, with additional automated features, is scheduled for deployment in June 2008. Additionally, the Commission has directed the staff to develop a proposed rule to include Category 3 sources in the NSTS.

Until the NSTS becomes operational, NRC maintains an accurate Interim Inventory of risk-significant radioactive sources (Category 1 and Category 2) licensed by NRC and the Agreement States. NRC has confidence that the inventory is complete and accurate based on 3 years of reporting experience and internal verification of the data. It has also been used to issue advisories and orders for licensee enhanced control measures. It has been used to inform the Federal Bureau of Investigation and other Federal agencies of instances where there were concerns about control of risk-significant sources, (e.g., during some law enforcement activities, or during some followup actions in the wake of Hurricanes Katrina and Rita).

Question 4: What is being done to determine precise sealed source inventories, and the total number of sources?

Response: As noted above, NRC has confidence that the Interim Inventory is complete and accurate with respect to Category 1 and Category 2 sources. In June 2006, as part of the process of addressing recommendation 2 in GAO report GAO-03-804, the NRC decided to perform a one-time data collection and analysis of radioactive sources with quantities down to 1/10th of the Category 3 threshold in the IAEA Code of Conduct. The NRC will examine this data as part of its consideration of changing the delineation between general licensing and specific licensing for byproduct materials.

NRC will issue a rule in the summer of 2006 requiring licensees to report to the NSTS when it goes into operation. This rule, and corresponding Agreement State Orders and rules, will allow NRC and the States to inspect licensees to verify numbers and possession of Category 1 and Category 2 sources.

Overview of the Nuclear Regulatory Commission Program for Regulating Radioactive Sources

Licenses to possess and use radioactive materials are issued, and safety and security controls are applied, using a graded, risk-informed approach. Certain radioactive materials are exempt from possession and use licensing. Exempt quantities of radioactive materials are manufactured in accordance with a U.S. Nuclear Regulatory Commission (NRC) or Agreement State license. An Agreement State is a State that has signed an agreement with the NRC, as provided by the Atomic Energy Act, allowing the State to regulate specified non-Federal use of radioactive material within that State. Use of these materials is exempt from licensing due to the extremely small quantity of radioactive material contained (e.g., smoke detectors). General licenses for somewhat larger quantities of radioactive material are authorizations that do not require an application or issuance of a licensing document but, in some cases, do require an annual registration of sources with NRC. These generally licensed devices are designed and manufactured so that even in accident scenarios, there is no unacceptable risk to public health and safety. Specific licenses for even larger quantities of radioactive material contain specific conditions to ensure the safe use of the material and are issued as individual documents. The NRC administers approximately 4,350 specific radioactive materials licenses, and thirty-four Agreement States administer approximately 17,450 specific radioactive materials licenses.

NRC has considered the full range of radioactive materials within NRC and Agreement State regulatory jurisdiction and has implemented the U.S. Government's position regarding the IAEA Code of Conduct by applying additional controls to, and by maintaining a national registry or inventory of, the Category 1 and Category 2 sources. These sources were identified in the U.S. Department of Energy (DOE)/NRC joint study and in the International Atomic Energy Agency (IAEA) Code of Conduct because they present the greatest risk for potential use in a radiological dispersal device. NRC and the Agreement States have issued orders for enhanced security measures and increased controls to licensees with Category 1 and Category 2 materials. The enclosed charts and table illustrate the NRC's risk-informed approach to security of risk-significant sources. As indicated in these enclosures, NRC took early action after the IAEA Code of Conduct was finalized in 2003 to place Category 1 and Category 2 sources under additional controls. The NRC has also developed an Interim Inventory to identify the NRC and Agreement State licensees with Category 1 and Category 2 sources and is developing a National Source Tracking System (NSTS) to more closely monitor these sources. Additionally, as part of the NSTS rulemaking, the Commission has directed the staff to develop a proposed rule to include Category 3 sources in the NSTS, and to complete expansion of the NSTS within three years. Finally, the NRC is evaluating its existing programs as they apply to sources below Category 2 quantities to identify areas where increased licensee accountability or access control requirements may be warranted.

Import or export of Category 1 and Category 2 radioactive material requires a specific import or export license from NRC before the sources are transported into or out of the country. Note that import and/or export licenses are separate and distinct from the possession and use licenses discussed above, and there is no exempt quantity threshold for imports and exports. Importers and exporters, or shippers, are not required to carry import or export licenses, or licenses for possession of radioactive sources with shipments; however, NRC now receives prior notification of imports of Category 1 and Category 2 radioactive material. NRC's NSTS, when implemented, will capture information on all Category 1 and Category 2 sources, including those being imported or exported. Imports and exports of sources below Category 2 are covered under a general license.

Categories of Cesium-137 Sources Defined in the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources

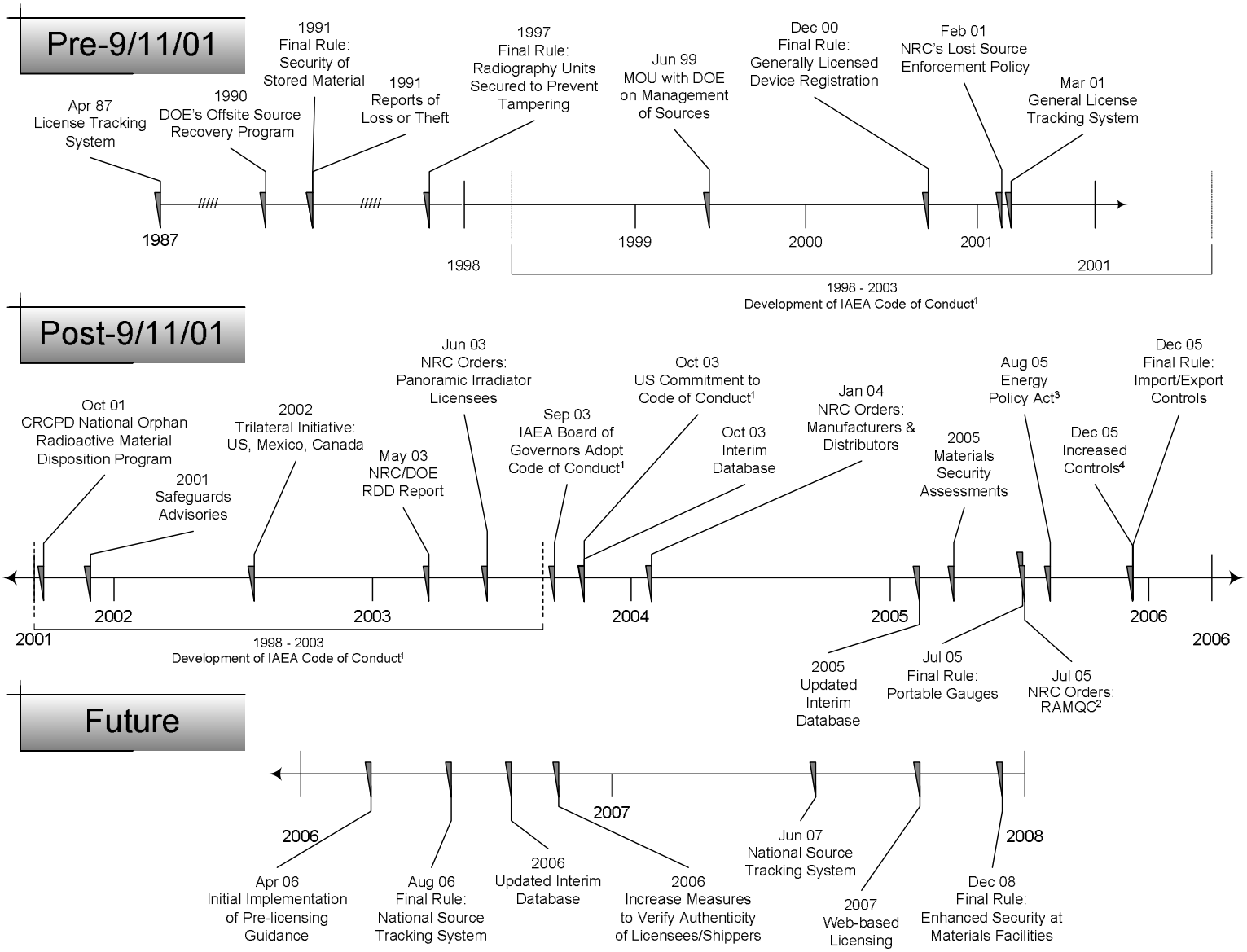
IAEA Category	Threshold Quantities of Cesium-137 (curies)	Examples of Use
Category 1	2,700.0	Food Irradiators
Category 2 [1]	27.0	Brachytherapy (medical)
Category 3	2.7	Well logging
Category 4	0.027	Moisture gauges
Category 5	< 0.027	
Examples of NRC regulatory limits within Category 5:		
Quantity above which NRC's general license tracking system applies to generally-licensed devices containing cesium-137	$ 0.010	Thickness gauges
Exempt quantity	0.00001 [2]	One radiation detector check source purchased by GAO (GAO used 15 such sources during its border investigation)[3]

[1] Import of sources containing cesium-137 (or any of 15 other radionuclides) in Category 1 or 2 quantities requires a specific import license.

[2] This is a quantity below which persons are exempt from NRC licensing requirements. It is 2,700,000 times less than the Category 2 threshold for risk-significant sources, above which NRC has issued Orders for enhanced safety and security of radioactive sources, and for which NRC is developing a National Source Tracking System to track risk-significant sources, as recommended by the IAEA Code of Conduct. However, many devices containing cesium-137 sources above this 0.00001 curie threshold are generally licensed pursuant to 10 CFR 31.5(a). Generally licensed devices containing cesium-137 sources above 0.01 curies are subject to annual registration under NRC's general license tracking system (10 CFR 31.5(b)(13)).

[3] GAO holds a specific license from NRC to possess multiple sources that may each contain slightly more than an exempt quantity.

Timeline on Management and Control of Radioactive Sources



[1, 2, 3, 4] Superscripts noted on the timeline refer to Information Boxes in Enclosure 4.

Information Boxes

BOX 1: IAEA Code of Conduct

- Achieve and maintain a high level of safety and security of radioactive sources
- Prevent unauthorized access or damage to, and loss, theft or unauthorized transfer of, radioactive sources, so as to reduce the likelihood of accidental harmful exposure to such sources or the malicious use of such sources to cause harm to individuals, society, or the environment
- Mitigate or minimize the radiological consequences of any accident or malicious act involving a radioactive source

Two general principles of the Code of Conduct are member states should:

- Establish a national register of radioactive sources
- Take appropriate steps to ensure that the import/export of sources is consistent with the provisions of the Code of Conduct

BOX 2: NRC Orders -- Radioactive Materials Quantities of Concern (RAMQC)

Additional security measures include:

- Licensee verification
- Background investigations
- Preplanning and coordination
- Notifications
- Communications
- Drivers and accompanying individuals
- Procedures, training, and control of information

BOX 3: Energy Policy Act of 2005

The Energy Policy Act requires NRC to:

- Issue regulations restricting the import, export, and sale or transfer of radiation sources
- Issue regulations establishing a mandatory tracking system for radiation sources
- Arrange with the National Academy of Sciences to conduct a study of industrial, research, and commercial uses for radiation sources
- Establish an interagency Task Force on Radiation Source Protection and Security
- Assume regulatory authority over certain naturally occurring radioactive materials
- Conduct fingerprinting and criminal history checks for persons licensed in activity subject to NRC regulation
- Ensure that materials covered by NRC-designated classes of import or export licenses are accompanied by a shipping manifest and that individuals accompanying or receiving the transfer are subject to background checks

BOX 4: Increased Controls

- Control access to risk-significant sources and limit access to only approved individuals
- Monitor and immediately detect, assess, and respond to unauthorized access
- Ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments
- For portable devices, have two independent physical controls that form tangible barriers to secure unauthorized removal; for mobile devices moved outside a facility, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal ; and for mobile devices moved inside a facility, have an independent physical control that forms a tangible barrier to secure the material from unauthorized movement or removal
- Retain documentation for three years
- Protect sensitive information that describes the physical protection of the risk-significant sources from unauthorized disclosure

February 4, 2004

The Honorable Thomas Davis
Chairman, Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to 31 U.S.C. 720, I am pleased to provide, on behalf of the U.S. Nuclear Regulatory Commission (NRC), a written statement of the actions taken by NRC on the recommendations made by the General Accounting Office (GAO) in its report entitled "NUCLEAR SECURITY: Federal and State Actions Needed to Improve Security of Sealed Radioactive Sources" (GAO-03-804). GAO released this report to the public in September 2003.

We have carefully reviewed GAO-03-804 and agree with several of GAO's recommendations. We have already taken steps to implement those recommendations (in several cases implementation occurred before the GAO performed its review) as improvements in our regulatory programs. Enclosure 1 to this letter provides our responses to the specific recommendations in GAO-03-804.

As stated in our June 26, 2003 comments on the draft report (Enclosure 2), however, we believe the final report does not fully present either the current status of our efforts to improve the security of high-risk radioactive sources or the large effort we devoted to this issue prior to GAO publishing this report. This report also perpetuates one of the main weaknesses of an earlier GAO report entitled "NUCLEAR NONPROLIFERATION: U.S. and International Assistance Efforts to Control Sealed Radioactive Sources Need Strengthening," dated May 2003 (GAO-03-638), by failing to focus on high-risk radioactive sources, which are of greatest concern for malevolent use by a terrorist. We continue to believe that the level of health risk posed by the various sources should be the determining factor for application of security measures. Other factors such as psychological, social, and economic costs can vary from region to region and over time and, thus, provide a less stable measure for establishing necessary security measures.

If you have any questions or comments on our written statement, please contact me.

Sincerely,

/RA/

Nils J. Diaz

Enclosures:
1. Actions and comments on GAO-03-804 Recommendations
2. Letter to GAO dated June 26, 2003

cc: Senator Joseph I. Lieberman
D. Walker, GAO
R. Coles, GAO

Identical letter sent to:

The Honorable Thomas Davis
Chairman, Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515
cc: Representative Henry A. Waxman
D. Walker, GAO
R. Coles, GAO

The Honorable Susan M. Collins
Chair, Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Joseph I. Lieberman
D. Walker, GAO
R. Coles, GAO

ACTIONS AND COMMENTS ON REPORT RECOMMENDATIONS
GAO-03-804

1. The report recommended that to determine the sealed sources of greatest concern, the Chairman of the NRC collaborate with the Agreement States to identify the types, amounts, and availability of the highest risk sealed sources and the associated health and economic consequences of their malicious use. In addition, it recommended that NRC and the Agreement States determine how to effectively mitigate the psychological effects of their use in a terrorist attack.

   Response: NRC agrees with the benefits of working in collaboration with the Agreement States. The NRC has been working more closely with the States to enhance security of radioactive sources since October 2002. In March 2003, prompt and effective coordination between NRC and the States was essential in supporting U.S. efforts to secure the Nation against potential retaliatory attacks associated with the commencement of the liberation of Iraq (Operation Liberty Shield). In July 2003, the NRC, Organization of Agreement States (OAS), and the Conference of Radiation Control Program Directors (CRCPD) commenced the Materials Security Working Group (MSWG) and Materials Security Steering Committee (MSSC). These efforts have been productive in achieving a common understanding of the types, amounts, availability, vulnerabilities, and security enhancements for high-risk radioactive sources. As we indicated in our June 26, 2003 comments on the draft report, the Commission, together with the U.S. Department of Energy (DOE), designated the radionuclides of concern and action levels for those isotopes. We have also sought to reconcile the DOE/NRC designation of high-risk radioactive sources with the designation developed by the International Atomic Energy Agency (IAEA) in its revised "Code of Conduct on the Safety and Security of Radioactive Sources," which was adopted. The MSWG ensures close coordination in the development of additional security measures for those licensees possessing Category 1 or 2 quantities of radionuclides of concern as defined in the revised Code of Conduct (a slight variation from the DOE/NRC action levels) and other materials security issues. The Commission met with the leadership of the OAS and CRCPD on June 6, 2003, to encourage a collaborative approach.

   With respect to the second part of the recommendation, it is important to recognize the NRC's mission to regulate the nation's civilian use of byproduct, source, and special nuclear material. We perform our mission through scientific and engineering evaluations of licensed activities that use radioactive materials in order to protect public health and the environment, and to promote common defense and security. As a part of our mission, we perform incident response planning and preparation, which includes anticipated communications with the public which accurately characterize any incident and its potential significance. We can best address the mitigation of the psychological effects potentially caused by malevolent use of radioactive materials by communicating openly and accurately and by continuing to address inaccurate information which finds its way into the public domain.

2. The report concluded that accountability over generally licensed devices needs to be improved and gaps in the current licensing process need to be addressed. Because new efforts will involve additional licensing and inspection of potentially thousands of licensees and devices, the report recommended the Chairman of the NRC:

- determine, in consultation with the Agreement States, the costs and benefits of requiring owners of devices that are now generally licensed to apply for specific licenses, and whether the costs are commensurate with the risks these devices present, and

- modify NRC's process of issuing specific licenses to ensure that sealed sources cannot be purchased before NRC's verification - through inspection or other means - that the materials will be used as intended.

Response: "Prior to focusing on generally licensed devices, the NRC believes that it needs to focus its efforts on cradle-to-grave controls, including export and import controls, for high-risk radioactive sources, as defined by the revised IAEA Code of Conduct. We are currently conducting an initial national inventory of over 2,500 NRC and Agreement State licensees that may possess high-risk sources to determine the number and nature of the sources in their possession. In addition, NRC is developing a system to track the roughly 200 to 250 imports and exports per year of such sources.

It should be clear that not all types of radioactive material are of concern from an RDD perspective. Most generally licensed sources contain radioactive material that either 1) does not involve radionuclides of concern, such as tritium in exit signs, or 2) is orders of magnitude below the IAEA thresholds of concern. The NRC currently requires the registration of some generally licensed devices. For example, a device is registered if its sources contain 10 millicuries of cesium-137, 0.1 millicurie of strontium-90, 1 millicurie of cobalt-60 or 1 millicurie of americium-241 or any other transuranics (10 CFR 31.5(c)(13)). These levels are, respectively, a factor of 3000; 3,000,000; 8,000; and 20,000 below the Code of Conduct thresholds for these radionuclides. At the lower end of the spectrum, these registered, generally licensed devices would pose little threat of even modest disruption, if used malevolently. There may be some limited number of registered generally licensed devices that deserve to be brought under a specific license regime. We agree with the GAO recommendation that it is worth considering the specific licensing of this limited number of generally licensed devices and that cost/benefit analysis will be useful in making a judgment on that. But this will not involve as stated in the report, "potentially thousands of licensees and devices." A very simple analysis can eliminate all but a very small number of currently generally licensed devices from consideration for the additional burden of specific licensing. We will coordinate any effort to expand specific licensing of sources involving radionuclides of concern, or to expand the registration of generally licensed sources, with the States through the MSWG.

NRC agrees with the objective of the recommendation to modify the specific license process and is establishing measures to verify trustworthiness of licensees prior to authorizing receipt of high-risk radioactive sources and other measures. These measures are being coordinated with the States through the MSWG.

3. The report concluded that to ensure the Federal and State governments' efforts to provide additional security to sealed sources are adequately integrated, the Chairman of NRC should:

   - determine how officials in Agreement and non-Agreement States can participate in the development and implementation of additional security measures, and

   - include criteria and performance measures of NRC's and the Agreement States' implementation of additional security measures in NRC's periodic evaluations of its and Agreement States' effectiveness.

   Response: As we indicated in our June 26, 2003, comments on the draft report and the response to Recommendation 1 above, the Commission has established an MSWG and MSSC involving both the OAS and the CRCPD to ensure close coordination in the development of additional security orders.

   Since June 2003, the MSWG has diligently worked to develop additional security measures and guidance for high-risk groups of materials licensees. The NRC also coordinated these security measures with the Agreement States at the annual meeting of the OAS in October 2003. Copies of the draft security measures have been provided to the States and the licensees for comment. NRC has also conducted a series of licensee workshops to receive comments. Orders implementing additional security measures were issued in January 2004. We are now addressing the next category of high-risk radioactive materials.

   NRC is implementing the additional security measures and guidance in Agreement and non-Agreement States using NRC's common defense and security authority under the Atomic Energy Act of 1954, as amended (AEA). NRC has developed a draft agreement under the provisions of section 274i of the AEA (274i Agreement) and associated temporary instruction (TI) to provide for inspections of Agreement State materials licensees, in order to verify licensee compliance with NRC orders. The draft 274i Agreement and associated TI outline how the NRC and the State will cooperate and will apply to those Agreement States desiring to participate in the inspection of these additional security measures. NRC will conduct inspections in non-Agreement States and in those Agreement States electing not to enter into a 274i Agreement. Focused security training will be provided to both NRC and State inspectors and inspection effectiveness will be maintained through NRC oversight.

   Response: We agree with the recommendation to include criteria on performance measures in our periodic evaluations of Agreement State effectiveness. The NRC staff is considering a range of alternatives for how best to ensure the effectiveness of NRC and State efforts to enhance the security of radioactive sources under NRC's common defense and security authority. The NRC will initiate an evaluation program of the additional security measure implementations for the oversight of the NRC Regions and the Agreement States who choose to participate under a 274i Agreement. Work on the criteria and performance measures for performing this evaluation has started and will be coordinated with the Agreement States through the MSWG in early 2004.

April 12, 2006

The Honorable George V. Voinovich
Chairman, Subcommittee on Clean Air,
Climate Change, and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to provide a summary of actions taken by the NRC in response to recommendations contained in various United States Government Accountability Office (GAO) reports that address NRC activities. The enclosed summary, which is required by Section 236 of Public Law 91-510, the "Legislative Reorganization Act of 1970," describes the progress made in addressing recommendations remaining open as of, or not included in, our last summary report of April 27, 2005.

Sincerely,

/RA/

Nils J. Diaz

Enclosure:
Summary of NRC Actions

cc: Senator Thomas R. Carper

Identical letter sent to:

The Honorable George V. Voinovich
Chairman, Subcommittee on Clean Air,
Climate Change, and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator Thomas R. Carper

The Honorable James M. Inhofe
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510
cc: Senator James M. Jeffords

The Honorable Ralph M. Hall
Chairman, Subcommittee on Energy
and Air Quality
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Rick Boucher

The Honorable Joe Barton
Chairman, Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative John D. Dingell

The Honorable David L. Hobson
Chairman, Subcommittee on Energy and Water
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515
cc: Representative Peter J. Visclosky

The Honorable Pete V. Domenici
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510
cc: Senator Harry Reid

The Honorable Susan M. Collins
Chair, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, D.C. 20510
cc: Senator Joseph I. Lieberman

The Honorable Tom Davis
Chairman, Committee on Government Reform
United States House of Representatives
Washington, D.C. 20515
cc: Representative Henry A. Waxman

The Honorable David M. Walker
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

The Honorable Joshua B. Bolten
Director, Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

SUMMARY OF NRC ACTIONS

RESPONSE TO GAO REPORTS

Enclosure

GAO Report - Nuclear Security: Federal and State Action
Needed to Improve Security of Sealed Radioactive Sources
August 2003
(GAO-03-804)

The U.S. Government Accountability Office (GAO), in its report "Nuclear Security: Federal and State Action Needed to Improve Security of Sealed Radioactive Sources," made specific recommendations to strengthen NRC's security inspection program. The recommendations that remained open at the end of calendar year 2004, the NRC's responses, and report of progress during 2005 are provided below.

Recommendation 2

Determine, in consultation with the Agreement States, the costs and benefits of requiring owners of devices that are now generally licensed to apply for specific licenses and whether the costs are commensurate with the risks these devices present.

NRC Response and Status:

Using a risk-informed, graded approach, the NRC and Agreement States have regulated sources and devices in accordance with the Atomic Energy Act of 1954, as amended, by issuing specific licenses, providing provisions in its regulations for general licenses, and providing provisions in its regulations for exemption from licensing (e.g., smoke detectors). Recently, the NRC and Agreement States have identified and cataloged the sources of greatest concern; i.e., high-risk sources defined by the International Atomic Energy Agency's (IAEA's) Code of Conduct as Category 1 and Category 2. While generally licensed devices may include radionuclides defined in the Code of Conduct, the quantities are typically orders of magnitude less than the Category 1 and Category 2 threshold quantities.

In a December 2000 rulemaking regarding registration of generally licensed devices (10 CFR Parts 30, 31, and 32), the NRC decided not to convert certain general licensees to a new category of specific licensees. Instead, the revisions that were made in the rule were designed to improve control and accountability of generally licensed devices, especially for certain devices that are required to be registered. The devices are designed to be inherently safe to use so that a license application process to evaluate the prospective licensee would not be necessary. Making all general licensees become specifically licensed would be a major change in the requirements for this group of licensees and would require the significant expenditure of resources by both the NRC and the licensees. The safety and security risks posed by most generally licensed devices would not warrant such an expenditure of resources.

However, NRC is planning to initiate a rulemaking in FY 2006. This rulemaking will examine the delineation between general licensing and specific licensing for byproduct materials. As part of the rulemaking, NRC will determine the appropriateness of the criteria under which the NRC approves devices to be distributed under a general license, including better assurance that larger source quantities will not be approved for generally licensed devices. The rulemaking process would include consultation with stakeholders, including Agreement States.

After 9/11 and the issuance of the Code of Conduct, the NRC performed a review of its Sealed Source and Device (SSD) Registry and determined that all IAEA Category 1 sources are already specifically licensed by the NRC and Agreement States. Additionally, with the

exception of one type of generally licensed device, all Category 2 source devices are also specifically licensed. NRC is working with the Agreement States to identify any of these devices currently in use under a general license. On a case-by-case basis, the security of these devices will be evaluated and controlled. As the rulemaking discussed above proceeds, NRC will work with the owners of these devices and the owner of the SSD certificate to bring them into alignment with the planned rule.

The NRC regulations also require a specific license for all distributors of generally licensed devices. Additionally, NRC regulations under 10 CFR 31.5 require that any person who acquires, receives, possesses, uses, or transfers a generally licensed device must maintain the records of compliance with these requirements; notify the manufacturer and the NRC or Agreement State of any device failure, damage, loss, or theft; not abandon or export the device; and transfer the device only in accordance with specific restriction. The NRC continues to work with the Agreement States to identify sources of concern, including generally licensed devices.

This GAO recommendation remains open.

Recommendation 3

Modify NRC's process of issuing specific licenses to ensure that sealed sources cannot be purchased before NRC's verification -- through inspection or other means -- that the materials will be used as intended.

NRC Response and Status:

NRC agrees with the objective of this recommendation. An NRC-Agreement State working group has developed a process to ensure that high-risk radioactive sources cannot be obtained before verification -- through inspection or other means -- that the materials will be used as intended. The working group delivered a recommended approach to NRC senior management in December 2005. In 2006, the approach will be utilized by NRC and Agreement States during initial implementation. This approach includes a three-step process: (1) identification of radioactive materials and quantities requested, (2) screening criteria that the license reviewer must complete, and (3) notification of NRC headquarters if additional action is required. The working group is expected to resolve any issues and appropriately revise the process as needed.

NRC considers this recommendation to be closed.

Recommendation 5

Include criteria and performance measures of the NRC's and the Agreement States' implementation of additional security measures in NRC's periodic evaluations of its and Agreement States' effectiveness.

NRC Response and Status:

The NRC has made considerable progress in enhancing oversight of materials security activities required of radioactive materials licensees authorized to possess radioactive materials in quantities of concern. The quantities and amounts of concern are based on the International Atomic Energy Agency's Categorization of Sources and, thus, are supported by the international community and approved by the Commission.

NRC has worked expeditiously to ensure enhanced oversight for the implementation of the increased controls over radioactive sources imposed following the events of 9/11 through the Integrated Materials Performance Evaluation Program (IMPEP) process. NRC staff has developed program review criteria and performance measures to evaluate the effectiveness of NRC's and the Agreement States' oversight of the implementation of the increased controls. NRC staff developed a temporary procedure to incorporate increased controls into the review of NRC Regional and Agreement State materials programs. In addition, a temporary instruction for IMPEP team members was developed to provide further guidance to reviewers for performing IMPEP reviews. The approach used in these two documents incorporated evaluation of the NRC Regional and Agreement State materials programs' oversight of the implementation of increased controls into existing IMPEP performance indicators that were developed on a health and safety basis. The draft temporary procedure and temporary instruction were used by the NRC and Agreement States as interim guidance, and lessons learned during the interim use were incorporated into the final versions of the temporary procedure and temporary instruction, which were finalized in March 2006. These documents will be used during the initial implementation and inspection phases of the increased controls. Following the initial implementation and inspection phases of the increased controls, the guidance in the procedure and instruction will be incorporated into existing NRC Office of State and Tribal Programs (STP) and IMPEP procedures.

NRC considers this GAO recommendation to be closed.