

EDO Principal Correspondence Control

FROM: DUE: 01/17/03

EDO CONTROL: G20030009
DOC DT: 01/09/03
FINAL REPLY:

Representative Edward J. Markey

TO:

Chairman Meserve

FOR SIGNATURE OF :

** PRI **

CRC NO: 03-0013

Chairman Meserve

DESC:

ROUTING:

Status of the Commission's Plans to Upgrade
Security Associated with the Transportation,
Handling and Storage of Radioactive Materials
that could be used to make Dirty Bombs

Travers
Paperiello
Kane
Norry
Craig
Burns/Cyr
Virgilio, NMSS

DATE: 01/10/03

ASSIGNED TO:

CONTACT:

NSIR

Zimmerman

SPECIAL INSTRUCTIONS OR REMARKS:

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS
www.house.gov/markey

ENERGY AND COMMERCE COMMITTEE
RANKING MEMBER
SUBCOMMITTEE ON
TELECOMMUNICATIONS AND
THE INTERNET
RESOURCES COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-2107

2108 RAYBURN BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES
5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900
188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

January 9, 2003

The Honorable Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

I am writing to request information on the status of the Commission's plans to upgrade security associated with the transportation, handling and storage of radioactive materials that could be used to make dirty bombs. I am concerned that these regulations are taking far too long to formulate and implement and that U.S. national security may be at risk as a result.

As you know, Al Qaeda operatives have repeatedly indicated that they wish to obtain nuclear materials for use in a dirty bomb or nuclear weapon, and that they also consider U.S. nuclear facilities to be attractive terrorist targets. I have long been concerned about the security of radioactive materials in the U.S. As a result of my extensive correspondence with you¹, I have learned that:

- In the past 5 years, nearly 1500 radioactive sources have been lost or stolen in the U.S., but less than half of them have been found. In 1984, the NRC ceased tracking radioactive sources by serial number.
- Individuals with access to irradiators (which can contain millions of Curies of radiation) are not currently required by NRC to undergo criminal or security background checks, and that NRC does not currently require individuals making deliveries of products to be irradiated to undergo criminal or security background checks.
- Shipments to irradiation/sterilization facilities are not required to be screened to ensure they do not contain hidden amounts of conventional explosives that could be detonated by the truck driver or remotely. Such a detonation could blow a hole in the walls/roof of the facility and disperse radioactive materials over a large area.
- There are currently no regulations requiring U.S. Customs to screen every package entering the U.S. from abroad to ensure that it is not leaking radiation. There is no requirement for radiation detectors to be placed at all ports of entry to the U.S., in vehicles used to deliver packages, or in facilities used to store packages for shipment to or within the U.S.

¹ Please see http://www.house.gov/markey/iss_terrorism_ltr011204.pdf,
http://www.house.gov/markey/iss_terrorism_ltr020116.pdf,
http://www.house.gov/markey/iss_nuclear_ltr020611.pdf.

- Licensees of radioactive materials are only required to self-verify that no radioactive sources have been lost when sources are added to, removed from or moved, or at least every 3 years. However, self-shielded irradiators are only inspected by the NRC or the Agreement State every 3-5 years, and panoramic irradiators are inspected every 1-2 years.

In your correspondence with me, you have indicated several times that security measures for radioactive materials would be upgraded:

- In your February 19, 2002 letter to me (see Attachment 1 for relevant excerpts), you stated that "transportation [of radioactive materials] is one of the elements included in NRC's ongoing post-September 11, 2001, security requirements review. In conducting these reviews and identifying opportunities for improvements, we are coordinating with the Department of Transportation (DOT), U.S. Customs Service, the States, and other responsible agencies."
- In your April 15, 2002 letter to me (see Attachment 2 for relevant excerpts), you stated that "the Commission is conducting a thorough review of security requirements, which will consider all aspects of security for radioactive sources, including more stringent transportation requirements, increased guard forces, alarms, physical barriers, inspections, background checks, and verifications of authorizations."
- In your July 24, 2002 letter to me (see Attachment 3 for relevant excerpts), you stated that "NRC is currently evaluating additional security measures to be implemented by [irradiator] licensees, and that "the Commission will soon be issuing orders to bring these advisories within our normal regulatory framework and later this year will issue a proposed rule that will permanently amend our regulatory framework for transportation of large quantities of byproduct material."

I am concerned that it is taking the Commission far too long to implement these new changes and that the country remains at high risk of a terrorist attack using radioactive materials as a result. Consequently, I ask for your prompt assistance in answering the following questions:

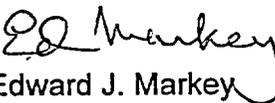
- 1) Has the NRC issued security orders to irradiator licensees, as you stated on July 24 would "soon" occur? If so, please provide copies of these orders. If not, why not? When do you expect to issue these orders?
- 2) Has the NRC proposed a rule to permanently amend the regulatory framework for transportation of large quantities of byproduct material as you stated on July 24 would occur before the end of the year? If so, please provide a copy. If not, why not? When do you expect to issue the proposed rule? How long after the proposed rule is enacted will it take for the rule to become final? How long after the rule becomes final will it take for all licensees to comply?
- 3) Please fully describe the process by which NRC has consulted with other agencies (DOT, US Customs, DOE, etc) as it has prepared to issue the new

security orders or proposed rules promised in your aforementioned letters. Is any other agency required by law to agree to NRC's proposals prior to their issuance? If not, isn't NRC free to adopt those rules which it determines to be necessary and appropriate in carrying out its responsibilities under the Atomic Energy Act?

- 4) If other agencies with responsibilities in this area fail to adopt transportation or other rules of general applicability which would adequately safeguard and secure nuclear materials being imported into the United States or transported through the United States, doesn't the NRC have the legal authority to adopt its own rules to govern such shipments in order to address the need to ensure that such nuclear materials are protected from terrorist threats?

Thank you very much for your attention to this important matter. Please provide your response by Friday January 17, 2003. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey