

May 13, 2005

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

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) appreciates the concerted efforts of your Committee to craft and support enactment of legislation which would enhance the security of nuclear facilities and materials falling within the jurisdiction of the NRC. The Commission is pleased to provide you the enclosed summary of the efforts that the NRC has made under its own authority that address certain provisions set forth in S. 1043, as reported by your Committee on November 6, 2003. In our view, these efforts obviate the need for several sections of S. 1043. In particular, sections 3 (except for the provisions on fingerprinting), 4, and 6 are unnecessary and have the potential to be counterproductive.

At the same time, the Commission would find most helpful provisions similar to those in S. 1043 that address possession and use of weaponry by security personnel of NRC licensees (section 5), expansion of NRC's regulatory jurisdiction to additional classes of radioactive material to enhance protection of the public from the use of materials in radiological dispersal devices (section 7), unauthorized introduction of dangerous weapons into NRC-regulated facilities (section 8), and sabotage of nuclear facilities or fuel (section 9).

We look forward to continuing to work with the Committee on developing appropriate security legislation.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated

cc: The Honorable James M. Jeffords

Summary of Nuclear Regulatory Commission Efforts Related to Provisions
of S. 1043, as Reported by the Committee on Environment and Public Works

Section 3. Designated Nuclear Facility Security.

This section would add a new section 170C. "Protection of Designated Nuclear Facilities" to the Atomic Energy Act.

Subsection 170C.(c) and (d) would have required the Commission and the Department of Homeland Security (DHS) in consultation with other agencies and State and local governments, as appropriate, to conduct a comprehensive review of the threats that nuclear facilities could face for the purpose of determining whether the NRC should revise the design basis threats (DBTs) that NRC licensees should protect against. Potential threats to be examined were to include: threats comparable to the events of September 11, 2001; cyber threats, chemical threats and biological threats; attacks by multiple coordinated teams; attacks by several persons including persons employed at the facility who have knowledge of facility operations; attacks by individuals willing to commit suicide; intrusions originating from water or from the air; and fires of long duration. Further, this subsection would have required the Commission to develop a system of threat levels, consistent with the Homeland Security Advisory System used to categorize threats pertinent to nuclear facilities.

- Independent of these provisions:

- * The Commission has conducted a thorough review that has considered essentially all of the threats suggested in subsection 170C.(c) and (d). In addition, the Commission continues to conduct reviews, in consultation with DHS, numerous governmental entities, and stakeholders.
- * As a result of its review, the Commission issued orders supplementing the design basis threats licensees must protect against.
- * The NRC staff continues to assess the threat environment and coordinate with intelligence and law enforcement communities, including DHS. The NRC staff formally reports to the Commission semi-annually concerning the threat environment and will continue to review intelligence and threat reporting to recommend any appropriate modifications or supplements to the DBT.
- * During the course of the review, the Commission established and implemented a system of threat levels consistent with the Homeland Security Advisory System.

Subsection 170C.(d) would have required the Commission by regulation to revise the design basis threats, as the Commission deems appropriate, based on the security examination.

- Independent of this provision:

- * The Commission supplemented the DBT by issuing orders to nuclear power plant licensees and certain fuel cycle facilities.
- * The NRC staff is now developing a proposed rule that would revise the DBTs. The proposed rule is scheduled to be submitted to the Commission in June, 2005, for its review.

Subsection 170C.(e) would have required the Commission to establish a system for the determination of threat levels pertinent to nuclear facilities and materials.

- Independent of this provision:

- * The Commission in August 2002 established and implemented a system of threat levels for facilities consistent with the threat level system established by the Homeland Security Council (HSC) and later transferred to DHS.
- * The NRC currently works closely with DHS and the intelligence community to monitor threat levels.

Subsection 170C.(f) would have required the Commission, after revising its design basis threats to require each licensee to revise its security plans, and for the NRC to review those submissions.

- Independent of this provision:

- * The Commission required its licensees subject to the orders to submit revised security plans, after the Commission supplemented the design basis threats.
- * The NRC reviewed and approved the revised security plans and licensees implemented the revised plans on or before October 29, 2004. The NRC is in the process of inspecting actual implementation of the revised plans.

Subsections 170C.(c) and (g) would have required the Commission to examine the adequacy of emergency planning in the event of a terrorist attack and to update emergency planning requirements as needed to address 11 emergency preparedness standards.

- Independent of these provisions:

- * The NRC staff conducted a “top-down” review of emergency planning and in early 2005 made recommendations to the Commission for enhancing emergency preparedness and response in the post September 11, 2001 environment. The Commission recently approved the staff’s recommendations.
- * Current emergency planning requirements in 10 CFR 50.47(b) include 16 planning standards that explicitly address, and go beyond, the standards in subsection 170C.(g). The NRC staff has initiated a further review of the 16 planning standards in an effort to identify any need for further changes.
- * All emergency plans for NPPs are periodically tested through biennial full scope exercises.
- * The NRC staff is also involved in 5 significant interagency activities that will establish national policy on how to respond to a radiological emergency.

Subsection 170C.(g)(6) would have required NRC review of emergency response plans on a schedule to be established by the NRC.

- Independent of this provision:

- * 10 CFR §50.54(t) already requires that all elements of a nuclear power plant emergency preparedness program be reviewed and revised as necessary at least once every two years.

Subsection 170C.(h) would have required the NRC to update access and training standards for licensee employees.

- Independent of this provision:

- * The NRC evaluated these issues as part of its comprehensive security review and issued orders enhancing access authorization and guard force training programs at nuclear power plants.
- * The NRC is initiating rulemaking to incorporate enhanced access authorization requirements and enhanced guard force training requirements into the regulations.

Subsection 170C.(l) would have required the appointment of a Federal Security Coordinator in each NRC regional office.

- * While the regional offices do not assign this job title to the supervisor responsible for overseeing security, NRC's regional offices effectively carry out the responsibilities set forth in this subsection.

Section 4. Office of Nuclear Security and Incident Response.

This section would have added a section 212, "Office of Nuclear Security and Incident Response" to the Energy Reorganization Act of 1974. Subsections 212(b) and (c) would have established an office of Nuclear Security and Incident Response within the NRC with specified functions.

- Independent of these provisions:

- * The NRC established an office with that title and those functions in April 2002.

Subsection 212(d) would have required the NRC to establish a security response evaluation program that included evaluations at licensee facilities at least once every three years.

- Independent of this provision:

- * The NRC has already instituted a security response evaluation program that includes force-on-force exercises at each nuclear power plant at least once every three years.
- * Such evaluations were initially conducted for a number of "pilot" plants. The program is now being fully implemented.

Subsection 212(e) would have required the Commission at least once every two years, in coordination with DHS, and in consultation, as appropriate, with other Federal, State, and local response agencies and stakeholders, to observe and evaluate emergency response exercises to assess the ability of Federal, State, and local emergency response agencies and emergency response personnel of a licensee or certificate holder to respond to an emergency.

- Independent of this provision:

- * 10 CFR Part 50, Appendix E, §IV.F.2 already requires full scale emergency planning exercises evaluated by the NRC and DHS (FEMA) and with the participation of State and local response agencies and personnel at least once every two years at each nuclear power plant.
- * These requirements have been in place since the 1980s and FEMA has promulgated implementing regulations. Both NRC and FEMA have participated in the exercises and evaluations for over 20 years.

Section 6. Sensitive Radioactive Material Security.

This section would have required the Commission, in consultation with DHS, the Department of Energy (DOE), and several other specified agencies, to evaluate the security of sensitive radioactive material against security threats; and recommend administrative and legislative actions to be taken to provide an acceptable level of security against threats. After completing this review, the Commission would have been required to take such actions as are appropriate to revise the system for licensing sensitive radioactive material.

- Independent of this provision:

- * NRC and DOE, in consultation with a number of other agencies, conducted a review and issued a report in early 2003 analyzing which materials are of concern.
- * The international community reached agreement on which materials are of concern. Those are set forth in the International Atomic Energy Agency (IAEA) Code of Conduct For the Safety and Security of Radioactive Sources, which the U.S. Government committed to implement in late 2003, and which was endorsed by the G-8 at the Sea Island summit in 2004.
- * The NRC has approved and will soon be publishing a final rule amending its export and import regulations found in 10 C.F.R. Part 110 to impose more stringent controls over materials covered by the IAEA Code of Conduct.
- * The NRC developed an interim database of materials covered by the IAEA Code and now is developing a National Source Tracking System to track these radioactive materials on a permanent basis. This is being done in partnership with DHS, DOE and numerous other Federal agencies and will involve the public through rulemaking.
- * The NRC has issued security orders to various classes of NRC and Agreement State materials licensees, including independent spent fuel storage installations, certain fuel cycle facilities, large irradiators, and manufacturers and distributors of radioactive material. Orders for NRC and Agreement State materials licensees in the medical and industrial fields (e.g., blood irradiators, gamma knives, radiographers, well loggers, etc.) are currently in final stages of development.
- * The NRC has issued security orders governing the transportation of spent nuclear fuel, and is developing orders governing the transportation of other radioactive materials in quantities of concern.

For the reasons noted, Sections 3 (except for the provisions on fingerprinting found in section 3(b)), 4, and 6 of S.1043, as reported, are unnecessary and potentially counterproductive. If enacted, they would delay action on many of our current security priorities to revisit issues that the Commission believes we have already successfully resolved. We have much more to do in the future on security, particularly a series of rulemakings to update and bring stability to our security requirements going forward, as desired by the Congress, the Commission, and a wide range of stakeholders. We pledge to take these actions and to keep the Congress fully and currently informed of our progress and of any statutory impediments we may uncover.