

September 6, 2005

Mr. Eugene E. Aloise
Director, Natural Resources
and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Aloise:

Thank you for the opportunity to review and submit comments on the U.S. Government Accountability Office (GAO) draft report, "Nuclear Security: DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources" (GAO-05-967). The U.S. Nuclear Regulatory Commission (NRC) appreciates the time and effort you and your staff have taken to review this important topic.

Overall, the NRC believes the report to be well written and balanced. One general point I would like to make is that the proposed National Source Tracking System (NSTS) will provide information on sealed sources which the draft report notes is currently lacking (e.g., on page 32 of the draft report, the number of covered sources manufactured and actually possessed by licensees, the distribution of the sources, and their disposal). Knowing this information could permit the U.S. Department of Energy (DOE) to at least approximate the number of sources that DOE potentially may need to recover. On the other hand, requiring the reporting of certain information which the draft report asserts DOE would find useful (e.g., frequency of source use) could be extremely burdensome on licensees and the NRC, and would yield little, if any, practical benefit.

As written, the report does not accurately characterize a number of issues involving category 3 sources. For example, on page 34 of the draft report, the first paragraph states, "In a subsequent 2004 technical document, IAEA suggested that category 3 sources be included in a national registry of sealed radiological sources" and references "IAEA, Strengthening Control Over Radioactive Sources in Authorized Use and Regaining Control Over Orphan Sources: National Strategies, IAEA-TECDOC-1388 (Vienna, Austria: Feb. 2004, p. 5)." This reference does not suggest that category 3 sources must be tracked by a national system. Instead, the reference states that category 3 sources should be part of the national strategy for improving control over sources. The Code of Conduct recommends a minimum of category 1 and 2 sources to be included in a national source registry. On page 5, IAEA-TECDOC-1388 states:

The objective of this report is to provide practical guidance to States on the development of a national strategy for improving control over radioactive sources, particularly dangerous sources (categories 1-3). Part of this process involves the determination of the magnitude of the potential problem with orphan and vulnerable sources and indeed, whether or not a national strategy is needed.

The ultimate objective is that States will use this report to develop and then implement a plan of action that will result in all significant sources being managed in a safe and secure manner.

The NRC regulatory framework addressed all sources regulated by the NRC before the adoption of the International Atomic Energy Agency (IAEA) Code of Conduct, and it continues to do so today. The national strategy being implemented by the NRC is a risk-informed approach that also includes an evaluation of the adequacy of existing regulations to provide appropriate control of sources. Based on this risk-informed approach and regulatory review, the NRC issued orders requiring additional security measures, particularly for the higher risk sources in categories 1 and 2. Where appropriate, these security orders did address aggregation of any sources (category 3 and below) such that the net result could reach the category 2 threshold in a given physical location.

On page 34 of the draft GAO report, it states that the NSTS will only address the IAEA Code of Conduct category 1 and 2 sealed sources. Although this action is consistent with the IAEA Code of Conduct and the Energy Policy Act of 2005, limiting the NSTS to category 1 and 2 sources raises concerns by some individuals who believe that at least category 3 sources should be included as well. For the initial NSTS program, NRC decided not to include category 3 sources, at this time, based on (1) an assessment that category 3 sources represent a limited hazard as a radiological dispersal or exposure device and (2) a potential disproportionate burden of including category 3 sources on both the regulatory bodies and licensees. It is also important to note that, although the NSTS will provide a national tracking system for some sealed sources, licensees are responsible for appropriate tracking of all sources in their possession under their licenses. However, the notice of proposed rulemaking for the NSTS published on July 28, 2005 (70 FR 43646) acknowledged that the aggregation of category 3 sources could present a security concern. For this reason, the notice of proposed rulemaking specifically invites comments on including category 3 sources in the NSTS in the future. The public comment period is still open for this proposed rule. The Commission will evaluate the public comments received on this rulemaking, and will factor in comments from other Federal agencies and our international contacts, before deciding what additional action, if any, may be warranted for category 3 sources and below.

GAO is also concerned because category 3 and below sources account for over 98.5 percent of the total number of sources recovered to date by DOE but would not be covered by the NSTS. The DOE source recovery program includes orphaned sources determined to represent a risk to public health and safety. Focusing solely on the number of sources recovered is not a risk informed approach. The activity level of the sources provides a measure of the greatest risk. The category 1 and 2 sources recovered by the DOE program to date account for approximately 86 percent of the total activity recovered.

I would also like to stress that DOE, through its representatives on NRC working groups and committees developing the proposed NSTS, has had the opportunity to provide input on the design of the system and the potential usefulness of the system to assist it in its source recovery program. DOE and other stakeholders will have an additional opportunity to comment on these and other issues raised in the notice of proposed rulemaking published July 28, 2005 (70 FR 43646).

E. Aloise

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As you are aware, the NRC and GAO staffs have had multiple exchanges regarding the report's contents and context. These exchanges have been very beneficial. The enclosure provides specific comments on the draft report in addition to the matters discussed above. Should you have questions about these additional comments or the issues raised in this letter, please contact Ms. Melinda Malloy at (301) 415-1785, or Mr. Lance Rakovan at (301) 415-2589.

Sincerely,

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosure: Additional NRC Comments on Draft GAO-05-967

As you are aware, the NRC and GAO staffs have had multiple exchanges regarding the report's contents and context. These exchanges have been very beneficial. The enclosure provides specific comments on the draft report in addition to the matters discussed above. Should you have questions about these additional comments or the issues raised in this letter, please contact Ms. Melinda Malloy at (301) 415-1785, or Mr. Lance Rakovan at (301) 415-2589.

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Executive Director
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