

June 16, 2006

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to the concerns raised in your letter of April 27, 2006, regarding the transport of radiological materials across the Nation's borders. The NRC bases its security and control program for radioactive materials on the principle of allocating attention and resources proportionate to the risk for malevolent use of the sources. Background information on the NRC program for regulating radioactive sources is included in the Enclosure.

In accordance with Section 651 of the Energy Policy Act of 2005, in July 2005 the NRC issued revised import/export regulations consistent with the provisions of the International Atomic Energy Agency (IAEA) Code of Conduct, making the U.S. the first country to do so. These new regulations, which became effective in December 2005, strengthen the import/export regime for radioactive sources.

The NRC, in cooperation with the U.S. Departments of Energy (DOE), Homeland Security (DHS), Transportation, Commerce, and Defense, as well as the Environmental Protection Agency, Federal Bureau of Investigation, and NRC Agreement States, is developing a National Source Tracking System to track risk-significant radioactive sources. In accordance with Section 651 of the Energy Policy Act, the regulations that establish the tracking system will be published as a final rule in August 2006. Until this system becomes operational in 2007, the NRC will continue to maintain an accurate interim database of risk-significant radioactive sources licensed by both the NRC and the Agreement States. In addition, the NRC, in coordination with the Agreement States, has placed all licensees who possess risk-significant radioactive sources under additional security or control requirements. These security and control measures require that licensees confirm the identity of entities that seek to purchase radioactive materials. The NRC and the Agreement States have made great strides in strengthening the security and access control provisions of the regulatory framework.

You specifically mention the U.S. Government Accountability Office's (GAO's) actions in transporting a small amount of radioactive material across our borders at certain locations. The GAO investigation concluded that the amount of radioactive material transported by GAO was sufficient to construct a radiological dispersal device, or "dirty bomb," after consulting with an outside expert. While the material obtained by GAO could be used as part of a bomb, it would only contain an insignificant amount of radioactive material. The Commission strongly disagrees that the material could be used for "weapons of mass disruption," as stated in the report, due to the very low radiological activity of the sources. The GAO finding is inconsistent with the considerable work done by NRC, in partnership with DOE, IAEA, and other parties, to determine appropriate thresholds for radionuclides that pose health and safety or security risks.

The type and quantity of sources used in the GAO investigation are classified as low IAEA Category 5, which is the least significant of the five categories defined in the Code of Conduct. These sources are several orders of magnitude from being risk-significant.

The GAO expressed concern that its personnel were able to purchase three low Category 5 sources by ordering them from a commercial supplier over the telephone for delivery to a Washington, D.C. address without an NRC license and without the supplier exercising due diligence to determine that the buyer had a legitimate use for the material. The three sources ordered by GAO are in the class of material that is exempt from licensing (another example is smoke detectors). Radioactive sources such as these can be purchased by the general public, contain a very small amount of radioactive material, and are exempt from NRC or Agreement State licensing because of the minimal risk they pose from a safety and security perspective. Additional information on radioactive material licensing is presented in the Enclosure.

GAO also expressed concern about the possibility of accumulating larger amounts of material by making multiple purchases from different suppliers. The NRC does not consider it credible that a sufficient number of exempt quantities (e.g., the sources found in smoke detectors) would be purchased to scavenge the sources to accumulate a risk-significant quantity of material. Additionally, the transfer of byproduct material under specific or general licenses requires licensees to verify that the transferee's license authorizes the receipt of the type, form, and quantity of byproduct material to be transferred. The NRC has required some manufacturer and distributor licensees, through security orders, to exercise their responsibility to verify, at a minimum, the legitimacy of an unfamiliar purchasing company. NRC plans to issue an Information Notice in the summer of 2006 to alert licensees of the due diligence that needs to be exercised should they receive an order for material from an entity with which they have previously not done business.

The NRC has instituted additional measures to enhance the regulatory program for the safety and security of the use of radioactive sources by its licensees, as well as those regulated by the Agreement States. As noted above, with regard to risk-significant sources, the NRC has focused its efforts to provide additional security on radioactive material that could be used by a terrorist for malevolent purposes by implementing tracking of sources of concern and imposing additional controls by Order or other legally binding instrument, as well as requiring a specific license for import and export of risk-significant sources. The Commission believes that the issuance of these Orders has significantly reduced, and will continue to reduce, the likelihood of an event involving the malevolent use of risk-significant sources.

Regarding GAO's counterfeiting of NRC documents, the NRC agrees with GAO that their ability to counterfeit an NRC document is a matter that we need to address, and we are working with Customs and Border Protection (CBP) in this regard. Nevertheless, it is important to note that the counterfeited NRC documents used by GAO in their border crossing investigations were not needed to document their authorization to import the sources because the very small amount of radioactive material being transported was covered under a general import license, and therefore did not require a specific import license.

To improve the ability of licensees and others, such as CBP, to determine whether documents authorizing the possession of materials are legitimate, the NRC is committed to working with CBP and other elements of DHS, as well as the Agreement States, to provide CBP easier access on a 24-hour-a-day basis to the information needed to confirm that shipments of risk-significant sources are legitimate. The new import licensing requirements for risk-significant sources should aid this effort. Currently, CBP can contact the NRC Operations Center or appropriate Agreement State to verify that the possession of the materials is legitimate.

In summary, the Commission is acting responsibly to protect the public from the risks of exposure to radioactive material by continually strengthening the system for security and control of sources. We have determined which radioactive materials could result in potentially significant injury to the public and have taken measures to ensure that they are safely and securely handled both here and abroad. We recognize the continuous need to analyze the safety and security systems in place and are improving our 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

Enclosure:
Overview of the NRC Program for
Regulating Radioactive Sources