

March 18, 2003

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515-2107

Dear Congressman Markey:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of January 9, 2003. You express concern with the status of NRC's plan to upgrade security associated with the transportation, handling, and storage of radioactive materials.

NRC's ongoing physical security evaluations include a review of security requirements for the transportation, handling, and storage of radioactive materials. NRC has issued several safeguards advisories regarding the transport of highway route controlled quantities of radioactive material. These advisories primarily affect the rail and truck shipment of Co-60 to and from irradiator facilities. Through the advisories, enhanced security measures have been taken, and both NRC and affected States can closely monitor such shipments. NRC also has been coordinating and continues to coordinate assessments and enhancements of transportation security measures with the Department of Transportation, Department of Energy, Department of Homeland Security, Transportation Security Administration, Agreement States, and other government agencies. As indicated in my earlier correspondence, we had hoped to issue Orders pertaining to the security of large quantity radioactive material shipments last year. We continue to seek a coordinated approach that will further enhance security for large quantity shipments of radioactive material.

With respect to upgrading security activities associated with the handling, storage, and use of radioactive material at irradiator facilities, Orders containing compensatory measures (CMs) enhancing the security at the facilities constituting the greatest risk were approved by the Commission and will be issued soon. In the fall of 2002, the NRC met with irradiator licensees to discuss the proposed CMs in the irradiator facility Orders. At the meeting, irradiator licensees indicated that they had implemented most security measures in the proposed CMs.

Our responses to your specific questions regarding these matters are enclosed. If you have further questions, please contact me.

Sincerely,

/RA/

Richard A. Meserve

Enclosure: Response to Questions

Responses to Congressman Markey Questions - January 9, 2003

Question 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?

Answer:

Orders enhancing the security of irradiators constituting the greatest risk were approved by the Commission and will be issued in the near future. Licensees have already implemented additional measures following the events of September 11, 2001. However, the Commission concluded that those and other measures should be embodied in an Order, consistent with the established regulatory framework. Generally, Orders to the various categories of NRC licensees are being issued in a priority guided by the possible risk to public health and safety.

Question 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?

Answer:

The NRC has not issued a proposed rule for transportation of large quantities of byproduct material. Compensatory measures can be required of licensees in a more timely manner through the use of Orders. During preparation of the Orders, we contacted other government organizations to coordinate efforts. The Department of Transportation (DOT) and the Customs Service (U.S. Customs) have asked that we work together to establish a uniform, risk-informed approach to hazardous material in transport, rather than to promulgate requirements just for radioactive material. We have thus been meeting with DOT, Customs Service, Department of Energy (DOE), and Department of Homeland Security (DHS) to develop a coordinated approach. We are committed to working diligently with our fellow federal agencies to ensure the safety and security of the transportation of large quantities of radioactive material. Following the issuance of orders, a modification of NRC regulations, if necessary, will be pursued.

The time frame for a proposed rule to become final varies depending on the complexity and urgency of the rulemaking. The process includes a public comment period, comment resolution, and interagency coordination. On the average, a rulemaking takes between eight months to one year assuming that no safeguards information is involved. The time frame for licensee compliance depends on the circumstances.

Question 3: Please fully describe the process by which NRC has consulted with other agencies (DOT, U.S. 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?

Answer:

As indicated in the response to Question 2, NRC is working with DOT and other agencies on modifications to transportation requirements. NRC is following the practices established under a Memorandum of Understanding (MOU) between DOT and NRC. The interactions include, but are not limited to, working group meetings, conference calls, and management meetings. NRC has the authority under the Atomic Energy Act to issue Orders and promulgate regulations necessary to carry out its responsibilities unilaterally. However, in order to ensure appropriate security protection and consistency, NRC is coordinating its efforts with other agencies, including DOE, Transportation Safety Administration, DHS, and Agreement States, that could be affected by any modification of the rules on transportation of radioactive materials.

Question 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?

Answer:

The NRC has independent authority to regulate safety in the transport of those radioactive materials that fall within NRC's jurisdiction. Notwithstanding that authority, however, and consistent with the MOU with the DOT, the NRC is working cooperatively with DOT and with other agencies with related responsibilities. In particular, as indicated in the response to Question 2, we are meeting with DOT, U.S. Customs, DOE, and DHS to develop a comprehensive and coordinated approach.