

October 2, 2007

The Honorable Christopher Shays  
Ranking Member, Subcommittee on National  
Security and Foreign Affairs  
Committee on Oversight and Government Reform  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Shays:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am providing you the NRC's position on the Government Accountability Office's (GAO) unclassified summary report, "Nuclear Security: DOE and NRC Have Different Security Requirements for Protecting Weapons-Grade Material from Terrorist Attacks" (GAO-07-1197R).

Before commenting on recommendations contained in GAO's report, I believe it is necessary to describe the NRC's actions following September 11, 2001, to supplement our Design Basis Threats (DBTs) for commercial nuclear power plants and Category I fuel cycle facilities. The NRC considers the DBTs to be the largest threat against which private sector facilities must be able to defend with high assurance. The DBTs are one component of the overall approach to the protection of public health and safety. In response to the September 11, 2001 terrorist attacks, the NRC supplemented its DBTs to provide additional details regarding specific adversary characteristics against which these facilities need to protect. As described in GAO's March 2006 report,<sup>1</sup> the NRC, in supplementing our DBTs, followed its, "... generally logical and well-defined process in which trained threat assessment staff made recommendations for changes based on an analysis of demonstrated terrorist capabilities." Based on this well-defined process, the NRC evaluated relevant threat assessment information and determined appropriate DBT adversary characteristics to ensure that nuclear power plants and Category I fuel cycle facilities provide adequate protection. The NRC is confident that the agency's process resulted in supplemented DBTs that continue to ensure that our primary mission is accomplished to both protect the public health and safety and common defense and security. The NRC reviews current and relevant threat assessment information on an ongoing basis to determine whether additional changes to the DBTs are necessary.

The NRC response to the recommendations contained in GAO's unclassified report is provided below.

***Recommendation:** The Department of Energy (DOE) and the NRC should develop a common DBT for DOE sites and NRC licensees that store and process Category I special nuclear material.*

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<sup>1</sup> GAO-06-388, Nuclear Power Plants: Efforts made to Upgrade Security, but the Nuclear Regulatory Commission's Design Basis Threat Process Should Be Improved.

While the NRC agrees with GAO that Category I special nuclear materials must be rigorously protected to ensure terrorists will not be able to use these materials in malevolent acts, as indicated in the report, DOE and the NRC do not agree with GAO that we should establish a common DBT for facilities that store and process Category I special nuclear material. There are many different forms of Category I special nuclear materials, each representing different levels of risk and associated attractiveness to adversaries. The NRC believes that it is more important to set protection levels that are appropriate for potential scenarios and associated consequences that involve the malevolent use of nuclear materials stored or handled at a given site. It must be noted that the types of materials, their attractiveness, and their quantities differ between DOE sites and NRC licensees. Given these differences and widely varying site characteristics, a range of protection strategies have evolved at both DOE and NRC-licensed facilities. Both agencies recognized that protection strategies may differ between the sites they oversee based on the type, form, purpose, and quantity of material at their sites. GAO's conclusion that NRC licensees and DOE sites should have similar DBTs oversimplifies the significant differences between these facilities. Of note, both agencies have maintained communication and have kept each other apprised of changes to their respective DBTs.

In another DBT-related issue, the GAO report implies that the 2003 Postulated Threat Document for Department of Defense (DoD) installations is its basis for concluding that the November 2005 DOE DBT is more appropriate for the protection of Category I nuclear materials. The 2003 Postulated Threat Document is a DoD product which does not represent the position of the Intelligence Community at large. The Postulated Threat Document states that, "... it should not be used as the sole consideration to dictate changes to specific security programs." Based on these facts, the NRC maintains that the 2003 Postulated Threat Document should not be used as the primary criterion for determining the appropriateness of the NRC DBT for commercial facilities.

*Recommendation: The NRC should expedite its efforts to ensure that its licensees have the same legal authorities to acquire heavier weaponry and use deadly force as DOE sites currently have to protect such material.*

The Energy Policy Act of 2005 provided the NRC with the Federal authority to permit the use of enhanced weapons at Category I and other facilities. The NRC had sought this enhanced authority prior to the September 11, 2001 terrorist attacks and appreciates the Congressional support received on this issue. The NRC continues to work with the Department of Justice to implement this authority. Given the advanced nature of the NRC rulemakings on security enhancements and the fact that both NRC-licensed Category I facilities have received increased authorities through their State governments, the NRC has chosen to incorporate this authority into those rulemakings.

The NRC agrees with GAO that clarification of the authority of security forces to use deadly force in the protection of Category I material could enhance their protective response. The NRC continues to explore potential avenues to clarify the use of deadly force by private security personnel.

*Recommendation: DOE and NRC should cooperate in establishing computer modeling capabilities and force-on-force performance testing programs to better assess security preparedness and detect vulnerabilities.*

The NRC supports GAO's conclusion that much can be gained by taking advantage of DOE experience in force-on-force exercise programs to enhance the already successful NRC program. The NRC maintains a cooperative working relationship with DOE and DoD regarding force-on-force best practices. Representatives of all three agencies have attended and reviewed one another's exercises within the past 12 months, and all have benefited from the resulting exchange of ideas. The NRC also agrees that vulnerability assessment modeling of the type utilized by DOE would benefit NRC licensees and may lead to more effective security strategies. The NRC intends to continue its cooperative relationships with DOE and DoD in this area, especially as they develop new and better analysis tools. The Commission has recognized the value of these capabilities and directed the NRC staff to explore the possibility of using tools such as the Joint Conflict and Tactical Simulation model in assessing the security of NRC-regulated facilities.

With regard to general sharing of security technology information, the NRC is a member of the Technical Support Working Group of the Counter Terrorism Technology Support Office. In addition, the NRC participates in DOE's National Nuclear Security Administration Security Systems Engineering Team, the DoD Physical Security Action Group, and the multi-agency Nuclear Security Interagency Technology Working Group. Each of these groups is focused on utilizing promising technologies to enhance the protection of nuclear material.

Again, thank you for the opportunity to comment on this report. The NRC looks forward to increased interagency cooperation to ensure the continued protection of the public health and safety.

Sincerely,

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Dale E. Klein

cc: Representative John F. Tierney