

August 11, 2014

The Honorable Thomas Carper
Chairman, Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to provide the NRC's response to the U.S. Government Accountability Office (GAO) recommendations in GAO-14-293, "Nuclear Nonproliferation: Additional Actions Needed to Increase the Security of U.S. Industrial Radiological Sources," dated June 12, 2014.

The audit report focuses on the NRC's security requirements regarding certain radioactive material in quantities of concern that were issued to NRC licensees by order in accordance with the NRC's authority under the Atomic Energy Act of 1954, as amended. In addition, 37 Agreement States¹ required their licensees to implement additional security measures similar to those issued by NRC order. However, since March 19, 2014, these material security requirements have been superseded, in large part, by the new rule, Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material." This new rule, which was not considered by GAO since it came into effect subsequent to the audit, not only covers the issues addressed through the security requirements in the orders, but expands upon those requirements and further enhances security requirements for category 1 and 2 quantities of radioactive materials. The new regulations provide a framework that requires licensees to develop security programs with measures specifically tailored to their facilities, to provide reasonable assurance that category 1 and category 2 quantities of radioactive material are adequately protected. Agreement States licensees maintain the current security license amendments until the Agreement States implement compatible requirements for their licensees, which must be in place by March 19, 2016.

The GAO report provided four recommendations, three of which would require specific action by the NRC. The NRC is in general agreement with the recommendations and as stated in its response to the draft GAO report, the NRC is committed to reviewing the effectiveness of the requirements in 10 CFR Part 37 post-implementation to determine whether any additional enhancements are necessary. If additional measures are needed, the NRC will develop appropriate enhancements.

¹ Agreement States are those States that have entered into formal agreements with the NRC, pursuant to Section 274 of the Atomic Energy Act of 1954 (AEA) (Public Law 83-703), to regulate certain quantities of AEA material at facilities located within their borders. Under the Act, NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials.

The four GAO recommendations and the NRC response to each are listed below.

GAO Recommendation 1: The GAO recommends that the NRC obtain the views of key stakeholders, such as licensees, during the development of the Best Practices Guide to ensure that the guide contains the most relevant and useful information on securing the highest risk radiological sources.

NRC Response: The NRC agrees with the GAO's recommendation that the views of key stakeholders, such as licensees, should be included in the guidance document, "Physical Security Best Practices for the Protection of Risk Significant Radioactive Material" (i.e., the Best Practices Guide). Published in May 2014, the Best Practices Guide focuses on areas of concern that licensees indicated to inspectors during the inspection process. The U.S. Department of Energy's National Nuclear Security Administration's (NNSA) Global Threat Reduction Initiative, which is performing voluntary security enhancements and regularly interacts with the NRC and Agreement State licensees, also participated in the development of this Best Practices Guide. As stated in the NRC's response to the draft GAO report, the NRC will assess the effectiveness of this guidance document during the first one to two years following implementation of Part 37 to determine if any revisions to this document are needed, and will make revisions accordingly using our public participation process.

GAO Recommendation 2: The GAO recommends that the NRC reconsider whether the definition of collocation should be revised for well logging facilities that routinely keep radiological sources in a single storage area but secured in separate storage containers.

NRC Response: The NRC acknowledges the GAO's recommendation that the definition of collocation should be reevaluated for well logging facilities that routinely keep radiological sources in a single storage area but secured in separate containers. Inspection of collocated sources indicates that appropriate security is being maintained. NRC plans to conduct a post-implementation review of the effectiveness of the Part 37 requirements to determine whether any additional security measures, guidance documents (including revising NUREG-2155, "Implementation Guidance for 10 CFR Part 37 Physical Protection of Category 1 and 2 Quantities of Material" and the Best Practices Guide), rulemaking changes or licensee outreach efforts are appropriate. The reevaluation of the definition of collocation will be included in this effort.

GAO Recommendation 3: The GAO recommends that the NRC conduct an assessment of the Trustworthiness and Reliability (T&R) process –by which licensees approve employees for unescorted access to category 1 and 2 radioactive material–to determine if it provides reasonable assurance against insider threats, including

- 1) determining why criminal history information concerning convictions for terroristic threats was not provided to a licensee during the T&R process to establish if this represents an isolated case or a systemic weakness in the T&R process; and
- 2) revising, to the extent permitted by law, the T&R process to provide specific guidance to licensees on how to review an employee's background. The

GAO also recommended that NRC consider whether certain criminal convictions or other indicators should disqualify an employee from T&R or trigger a greater role for NRC.

NRC Response: The NRC acknowledges the GAO's recommended assessment of the T&R process to determine if it provides reasonable assurance against an insider threat. The current T&R requirements are in place to ensure that individuals who have unescorted access to category 1 and category 2 quantities of radioactive material are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or security of the radioactive material. Licensees are required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual. The NRC requires licensees to conduct a Federal Bureau of Investigation (FBI) identification and criminal history records check to determine if an individual has a record of criminal activity that indicates that the individual should not have unescorted access to radioactive materials. The description of the conviction for "terroristic threats" in the case referenced in the GAO report is misleading; during a domestic dispute, the individual verbally threatened two other individuals. It was a misdemeanor on a local law enforcement record, twelve years prior to the request for unescorted access, which was not cited on the FBI record. As a result, the information was not available to support the T&R determination for this individual. This situation does not reflect a performance deficiency or a systematic weakness in the licensee's implementation of the NRC requirements. A criminal history record by itself does not provide sufficient information to determine if an individual is trustworthy and reliable. The FBI criminal history check is only one component of a background check. Licensees must use the information provided in the FBI report in conjunction with information on employment history, personal references and education checks in making a T&R determination.

As previously indicated, the NRC published the Best Practices Guide in May 2014, which provides additional guidance to licensees in conducting and evaluating T&R determinations. Nonetheless, the NRC plans to conduct a review of the effectiveness of the T&R requirements in Part 37, over the next year or two to determine whether any additional security measures, guidance documents, rulemaking changes or licensee outreach efforts are appropriate.

GAO Recommendation 4: The GAO recommends that the Administrator of the NNSA, the Chairman of the NRC, and the Secretary of the Department of Homeland Security (DHS) review their existing collaboration mechanism for opportunities to enhance collaboration, especially in the development and implementation of new technologies, to better leverage resources, including expertise, and to address vulnerabilities associated with radiological sources while in transit.

NRC Response: The NRC agrees with this recommendation and will continue to conduct periodic meetings with senior management of these agencies to enhance coordination and collaboration on overarching technical and policy issues related to source security. The NRC routinely collaborates with these agencies on a range of topics including the security of radiation sources. Both the NNSA and the DHS participate along with other agencies and State representatives on the Radiation Source

Protection and Security Task Force, which is chaired by the Chairman of the NRC, consistent with the Energy Policy Act of 2005.

The NRC appreciates the opportunity to comment and to provide a response to the recommendations in the GAO report. If you need any additional information, please contact me or Eugene Dacus, Acting Director of the Office of Congressional Affairs, at (301) 415-1776.

Sincerely,

/RA/ (William C. Ostendorff for)

Allison M. Macfarlane

cc: Senator Tom Coburn

Identical letter sent to:

The Honorable Thomas Carper
Chairman, Committee on Homeland Security
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United States Senate
Washington, DC 20510
cc: Senator Tom Coburn

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
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cc: Representative Elijah Cummings

Mr. David C. Trimble, Director
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