

September 5, 2014

The Honorable Dianne Feinstein
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Feinstein:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to provide you with the NRC's views on the security provisions contained in the Senate Appropriations Committee's Energy and Water Development Subcommittee's draft appropriations legislation. The NRC appreciates the Committee's views in promoting the security of radioactive sources in the United States of America. I want to assure you that the NRC shares your concern about the need for effective regulations to ensure the safe and secure use of radioactive sources. However, the NRC has significant concerns with the draft legislation and respectfully asks that its views be considered.

Our main concern is that the draft legislation could actually lead to *less* effective security for radiation sources, impose unnecessary burdens on legitimate users of these sources, including health care and small businesses, and impose additional burdens on NRC's 37 Agreement States,¹ who regulate the vast majority of the sources, without a commensurate benefit to safety or security. We come to these conclusions after years of outreach with the public, law enforcement, the industry, the medical community, the international community, and other government agencies. These interactions, coupled with the consideration of lessons learned, have led the NRC to achieve a balanced regulatory approach that is protective of public health, safety, and security.

The draft legislation would impose a set of standards and criteria developed by the Department of Energy's National Nuclear Security Administration (NNSA) that were not intended to be binding requirements and, as such, were never subject to notice and comment rulemaking. After substantial review and interagency collaboration, the executive branch concluded that the NNSA approach is an effective voluntary measure that users of radiation sources should consider based on the totality of their site-specific circumstances. The NRC is supportive of this voluntary initiative, which, by its nature, assists users in enhancing security measures beyond what is legally required under existing Federal and State requirements.

¹ Agreement States have entered into agreements with the NRC that give them the authority to license and inspect byproduct, source, or special nuclear materials used or possessed within their borders. The following States have entered into such agreements with the NRC: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

The NRC recently completed an expansive notice and comment rulemaking to enhance the security requirements for risk-significant sources, and is confident that its regulations for radiation sources are comprehensive and effective. These regulations, which became mandatory for NRC licensees in March 2014, are contained in a new Title 10 of the *Code of Federal Regulations* Part 37. Key elements of the regulations include: background checks, including fingerprinting, to help ensure that people with access to risk-significant radioactive sources are trustworthy and reliable; personnel access controls to restrict access to areas where risk-significant sources are used or stored to authorized personnel; security barriers to discourage the theft of portable devices containing risk-significant radioactive sources; security plans or procedures to deter, detect, assess and respond to unauthorized attempts to access risk-significant radioactive sources; coordination and tracking of shipments of risk-significant radioactive sources; and coordination and response planning between licensees and local law enforcement agencies.

The new requirements in Part 37 represent ten years of empirical data that we used to develop the most appropriate levels of protection for radiation sources. In contrast to NNSA's prescriptive standards and criteria, the regulations take into account the wide variety and types of NRC licensees that possess risk-significant radiation sources. The NRC believes that generic application of the NNSA security standards and criteria, without taking into account the types and quantities of materials possessed by a licensee, as well as a licensee's site-specific conditions, would be overly burdensome and potentially ineffective without providing any necessary enhancement in security. In sum, while NNSA's voluntary approach has proved useful both domestically and internationally the NRC believes, based on the existing threat environment and following rigorous analysis, that it has established requirements that achieve the appropriate level of security for risk-significant sources. The NRC's regulations comprise a balance of prescriptive and performance-based security requirements that obligate licensees to employ measures appropriate to their site-specific conditions. The NRC continuously monitors the threat environment and the adequacy of its regulations, and, if needed, will require additional security measures.

The NRC's rulemaking addressed specific concerns associated with increased security requirements, including the potential to restrict access to and the availability of the beneficial uses of nuclear materials in areas such as cancer treatments, the irradiation of blood supplies, and the sterilization of medical equipment. Our understanding is that imposing NNSA security standards on medical licensees could cause these licensees to curtail services or pass the additional costs onto patients. This could increase overall health care costs or reduce patient accessibility to medical care without providing any necessary enhancement in security. Additionally, this legislation could adversely impact small businesses. Many small businesses, such as well loggers and radiography licensees, may not be able to afford the costs associated with the implementation and maintenance of security measures that would meet the NNSA standards and criteria.

Of particular concern to the NRC, the proposed legislation would undermine the NRC's regulatory independence. Requiring the NRC to adopt and enforce NNSA security standards and criteria, without allowing the NRC and our Agreement State regulatory partners to make an independent assessment of the need for those standards and to choose whether or not to adopt them, in whole or in part, would weaken the NRC's effectiveness as an independent regulator. The proposed legislation also creates the potential for dual regulation of NRC licensees. Although NNSA is not a regulatory body, it would, in effect, be setting security standards for

civilian nuclear facilities without the benefits associated with the public notice and comment rulemaking process. While DOE/NNSA may have a complementary mission to the NRC, under the Atomic Energy Act of 1954, as amended, the NRC retains regulatory authority over these radioactive sources.

Finally, since 2005, the NRC has led the Congressionally-established Radiation Source Protection and Security Task Force to address the security of risk-significant radioactive sources in the United States. The Task Force's reports in 2006, 2010, and 2014, endorsed by the NNSA, the Department of Homeland Security, the Department of Justice, the Central Intelligence Agency, and ten other Federal agencies, identified no significant gaps in domestic source security

The NRC appreciates the opportunity to comment on the Committee's draft appropriations legislation and looks forward to working with you to address the Committee's concerns regarding the adequacy of radioactive source security. 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/

Allison M. Macfarlane

cc: Senator Lamar Alexander