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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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RADIATION SOURCE PROTECTION AND SECURITY

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PUBLIC BRIEFING

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THURSDAY, JULY 17, 2014

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The Commission met in the Commissioners' Hearing Room, One White Flint North, Rockville, Maryland, at 9:00 a.m., Allison M. Macfarlane, Chairman, presiding.

PRESENT:

ALLISON M. MACFARLANE, Chairman

KRISTINE L. SVINICKI, Commissioner

WILLIAM D. MAGWOOD, IV, Commissioner

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PARTICIPANTS:

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MARK SATORIUS, EDO

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BRIAN HOLIAN, FSME

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MIKE WELLING, OAS Chair

6

ADELAIDE GIANTELLI, FSME

7

RANDY RAGLAND, Region I

## P-R-O-C-E-E-D-I-N-G-S

8:58 a.m.

CHAIRMAN MACFARLANE: So good morning. The Commission meets today in public session this morning to hear from staff on recent enhancements to security and protection of radiation sources, the staff's anticipated path forward on source security and development of the 2014 Radiation Source Protection and Security Task Force, and development of the quadrennial report to the President and Congress.

After the public session, the Commission staff and selected members of the Radiation Source Protection and Security Task Force will meet for a closed session to discuss finalization of the task force report.

I want to note, while the second session is closed, the Task Force report will be made publicly available once it's finalized and sent to the President and Congress. I anticipate that the report will be completed some time in early August.

The events of 9/11 put an emphasis on security of risk-significant radioactive sources in the United States from potential terrorist threats, including acts of sabotage, theft or use of radiation sources in radiological dispersal devices or radioactive exposure devices, better known as dirty bombs.

The Radiation Source Protection and Security Task Force was formed to evaluate and provide recommendations relating to the security of radiation sources in the United States to the U.S. President and Congress on a quadrennial basis.

1                   As the chair of that task force, I appreciate all the hard  
2 work that the staff has put into working through the interagency  
3 process, to draft and consolidate comments on the 2014 task force  
4 report.

5                   I'd also like to thank the agencies that have  
6 participated in the task force. Your efforts are greatly appreciated and  
7 have resulted in many key accomplishments in the area of source  
8 security since the task force was established by the Energy Policy Act  
9 of 2005.

10                  So we're going to begin this meeting with a session of  
11 presentations from the panel. We have about 35 minutes, I think, for  
12 the presentations. Would either of my fellow Commissioners have any  
13 comments now?

14                  (No response.)

15                  CHAIRMAN MACFARLANE: All right, then. I will  
16 turn it over to Mark Satorius, our Executive Director for Operations.

17                  MR. SARTORIUS: Good morning Chairman, good  
18 morning Commissioners. This morning you're going to hear from the  
19 staff and the Organization of Agreement States on their perspective  
20 regarding the agency's more recent activities in the area of source  
21 projection and security.

22                  With me today are Brian Holian, the acting director of  
23 the Office of Federal and State Materials and Environmental  
24 Management Programs; Mike Welling, the chair of the Organization of  
25 Agreement States, and the director of the Commonwealth of Virginia's  
26 Radioactive Materials Program; Adelaide Giantelli, chief of the Source

1 Management and Protection Branch in FSME; and Randy Ragland,  
2 senior inspector in Region I and also the team lead of Region I's Part 37  
3 team.

4 Today the staff will highlight topics such as the rollout  
5 and implementation of the new Part 37 that was added to the Code of  
6 Federal Regulations; finalize the third report to the President and  
7 Congress from the Radiation Source Protection and Security Task  
8 Force; and efforts to address the recent reports from the Government  
9 Accounting Office.

10 But before we jump on those topics, I'd like to take just  
11 a little time to briefly summarize the history of source security over the  
12 last decade, and highlight some of the NRC's accomplishments in these  
13 areas. Can I have the second slide, please?

14 Following 9/11, NRC worked internally and with other  
15 state agencies to identify priority actions for enhancing the security of  
16 risk-significant radioactive materials and facilities. In 2003, NRC  
17 began issuing security orders using a graded approach, starting with  
18 large irradiator licensees, manufacturers and distributors, and  
19 licensees who ship large quantities of radioactive materials.

20 Finally, NRC worked with the Agreement States to  
21 develop the increased controls requirements. In 2007, NRC and  
22 Agreement States issued the last set of orders to approximately 2800  
23 licensees. Since then, we've continued inspecting licensees for  
24 compliance, with security requirements and began our public process  
25 to establish security rules in the federal regulations that would replace  
26 the orders.

1                   In March 2012, the Commission approved a final  
2 proposed rule that incorporated requirements from the orders and  
3 included lessons learned from our implementation of those orders. In  
4 March 2013, 10 C.F.R. Part 37 was issued, with a compliance date for  
5 NRC licensees of March 2014.

6                   While we've made great strides in improving the  
7 security of radioactive materials, we've also worked diligently to  
8 improve the tracking and management of radioactive materials in the  
9 United States.

10                   In 2008, the agency deployed the National Source  
11 Tracking System, and began shaping what is now the Integrated  
12 Source Management Portfolio. We've done that by adding web-based  
13 licensing and the License Verification System.

14                   These source management tools, combined with  
15 NRC's security requirements, create an integrated and comprehensive  
16 program for the management and control of radioactive sources in the  
17 United States. Could I have Slide 3, please?

18                   NRC inspectors have extensive experience evaluating  
19 the security orders, and have recently been inspecting against 10  
20 C.F.R. Part 37. Staff plans to gather two years of operational  
21 experience, such as NRC inspection findings and Agreement State  
22 implementation experiences, to continue to identify ways to improve  
23 source security in 10 C.F.R. Part 37.

24                   I will now turn to Brian Holian, the acting director of  
25 FSME, to begin the remainder of the presentation. Thanks.

26                   MR. HOLIAN: Good. Thank you, Mark, and good

1 morning, Chairman. Good morning, Commissioners. Before I dive a  
2 little bit more into source security, I'd just like to say a few more things  
3 about the people at the table and people that aren't at the table today.

4 You know, first I wanted to highlight the work of  
5 Nuclear Security and Incident Response. Really, we work hand in  
6 hand with that office on the security aspects of sources, and today  
7 they're represented by Brian McDermott, the deputy office director. I  
8 also want to highlight a visitor today, and that is Sergeant Mark Teitler in  
9 the audience. He's with the New York Police Department, their  
10 Counterterrorism Bureau, and as the Commission knows, New York  
11 City works very closely with the federal agencies on source security,  
12 and in particular with the National Nuclear Security Administration. So  
13 we welcome Mark here today.

14 Adelaide Giantelli, to my right, the branch chief on  
15 source security, spent seven years in NSIR. So it's good that we have  
16 folks that have moved back and forth, just like Brian McDermott has,  
17 between the organizations, and that helps really with our  
18 communications and business actions across our business line.

19 Randy Ragland, he's here representing all materials  
20 inspectors in the nation, and one small item: a few months ago, he went  
21 out, Mike Weber went out with Randy on an inspection right prior to  
22 when Part 37 was implemented, and Randy highlighted a document  
23 that was regionally produced, that the Region had done to look at the  
24 delta between the old orders and the new Part 37.

25 There are some additional items that are in there, and  
26 Randy was able to highlight that to Mike Weber, and was really good

1 initiative by the Region.

2 And finally, Mike Welling. I've come to know Mike in  
3 the last couple of years on source security. This is for Commissioner  
4 Ostendorff really, but it's a little known fact that Mike and I both started  
5 our source security work in the Navy on the same ship, the South  
6 Carolina, a nuclear cruiser many years ago. For me, many more years  
7 ago than Mike, so let that be known.

8 Next slide, please. Well Mark Sartorius provided an  
9 overview really over the last decade-plus since 9/11, and on this slide, I  
10 just want to highlight a little bit more recent action, and that is the  
11 codification of the orders, the seven sets of orders, that were recently  
12 codified into Part 37.

13 For the record, Part 37's title is Physical Protection of  
14 Category 1 and Category 2 Quantities of Materials. So once again, we  
15 look at the quantities, not just the individual sources, as we come up  
16 with these risk-informed actions.

17 It is a significant collaborative effort between the NRC,  
18 other federal agencies and really the Agreement States in particular  
19 have worked on this Part 37. A reminder, that significant parts of the  
20 rule, they control or has regulations for access to material, the transfer  
21 of material, the use of the material and transportation of the material.

22 You know, in drafting the Part 37, we not only looked at  
23 the lessons learned during implementation of the orders over numerous  
24 years, but also the experiences that we've seen with the voluntary  
25 security enhancements, and you'll hear a little bit more about those  
26 primarily through NNSA's work.



1                   So we looked at those lessons learned, and also  
2 feedback from a variety of stakeholders. The rulemaking process was  
3 used well in this manner to get feedback from, in particular, materials  
4 licensees. The rule is risk-informed. It does look at a graded  
5 approach, based on the quantity of the radioactive material, and it is  
6 performance-based.

7                   One example in particular, I'll tell you about the  
8 performance-based aspect of the rule is the requirement on a security  
9 plan. It has to be reviewed annually.

10                  It's updated whenever more material is added to a  
11 license or a licensee, especially where it might change from a Category  
12 1 to a Category 2 quantity, and Part 37.43, you know, calls out that  
13 security measures have to work in total, meaning that you have a  
14 variety of methods for the security of the sources, from delay tactics to  
15 alarms, to then locking mechanisms.

16                  I'm going to show you some pictures in a few slides  
17 that are snapshots out of GAO reports, and the danger of taking a  
18 snapshot picture of a security measure is that you miss the en-total  
19 security regime that's called out by a security plan. So I'll touch on  
20 those when I show those pictures.

21                  Several stakeholders really on source security have  
22 raised the question of whether we should be doing more on source  
23 security. That's been out in the news and has been raised, and I just  
24 want to highlight here that the issue's not new. We've wrestled with  
25 that within the Part 37. We've wrestled with it during the orders that  
26 preceded that.

1                   How prescriptive do you get? Remind the  
2 Commission and the public that the types of materials that this order,  
3 the orders and the rule covers is of wide, wide variety, and you run the  
4 danger that if you're too prescriptive, you can over-prescribe security  
5 regulations. So I wanted to highlight that.

6                   Next slide, please. Really there's just two items I want  
7 to highlight on this slide. It's got some information. The first point I  
8 want to highlight is what I call the three-legged stool of our Integrated  
9 Source Management Portfolio. It is up and running. As you can see  
10 from the dates at the bottom of the columns, its final, License  
11 Verification System was deployed in 2013.

12                   So just to start, so the acronyms below it, if you can see  
13 are the National Source Tracking System, Web-based licensing and  
14 our License Verification System. The second item I'll cover, after I go  
15 through a little more detail on that, I'm going to play off of what you see  
16 in the first column, 80,000 Category 1 and 2 sources nationwide, and I  
17 want to highlight what's often in the news about lost sources. So I'll  
18 give the Commission some numbers related to that.

19                   Just as background on these systems. In 2003, the  
20 NRC committed that we would develop a tracking system for sources.  
21 We started it in 2006, kind of full gore and deployed it in 2008. An  
22 important aspect that you see there is we do an annual verification of  
23 the sources, where each licensee for Category 1 and 2, that's over  
24 1,400 of them, have to report to the NRC annually, yes, we physically  
25 verified our inventory of sources. That's in addition to what Randy and  
26 his inspection corps do by inspecting them on a one or two year

1 frequency on Category 1 and 2 sources.

2 In 2007, as I'm sure the Commission is aware, GAO  
3 conducted an investigation at that time of NRC's licensing process of  
4 sources, and they found a vulnerability, a couple of vulnerabilities.

5 But the most significant one was the ability for an  
6 individual to falsify the content of a license in the licensing process.  
7 The NRC took immediate actions at that time, requiring pre-licensing  
8 verifications. That's worked well, and these systems, particularly  
9 web-based licensing now, have built off of that and now have licenses  
10 electronically on our system, so that nobody can alter them.

11 There's been significant investment by the agency in  
12 these systems, really \$30 million over a ten-year contract to develop the  
13 system. So there's been a lot of work by a lot of agencies, I mean a lot  
14 of divisions in the NRC to get those up and running. OIS has helped  
15 us quite a bit.

16 Recent feedback from the states now. The states are  
17 required to be involved with these systems. Web-based licensing they  
18 could do on their own, as it had the same aspects that we have. The  
19 state of Colorado just recently went to our web-based licensing system,  
20 and during the recent Integrated Materials Performance Evaluation  
21 Program report, our IMPEP report, they commented very favorably on  
22 the NRC system.

23 As the Commission may know, we patterned our  
24 system after what Ohio was doing. So it's been a good work between  
25 us and the states. Finally, as I mentioned, I'd like to play up those  
26 80,000 sources. That's the total number. It's over 1,400 licensees,

1 and I look back at the data for lost sources, because that gets a lot of  
2 publicity.

3 If you look over the four fiscal years, fiscal year '10 to  
4 '13, there were 15, only 15 reported cases of lost sources, Category 1  
5 or 2. Fourteen of those were recovered. So it's important to know  
6 they were lost for a period, fall off a truck and recovered.

7 The one source that was not recovered was stolen. It  
8 was stolen with a variety of items off of the truck that was carrying it.  
9 The truck did not have all the security in place, the alarm system. It  
10 was sitting in a parking lot. It was in the state of Texas. The state of  
11 Texas did a very good evaluation of that lost source, and that was back  
12 in fiscal year '11, when that source was lost.

13 It's important to note that that one Category 2 source  
14 did decay to Category 3 levels within about eight weeks. So that's a  
15 significant item to note. You might also wonder about Category 3  
16 sources. I'll just highlight those numbers. Category 3 sources add  
17 another 1,000 licensees, and only about 5200 sources.

18 But if I were to look at Category 3 lost sources, there  
19 were only 32 cases reported, and 29 of those were recovered. So you  
20 still get the same recovery, even if you delve down into Category 3  
21 sources.

22 Next slide, please. You know, there are numerous  
23 opportunities that the NRC interacts on source security. I'm going to  
24 highlight regular meetings that we have with some of these agencies  
25 that are highlighted on the slide. But first I just wanted to highlight, you  
26 know, work that Brian McDermott and the Office of Nuclear Security

1 Incident Response do on a daily or weekly basis.

2 The Commission sees the security issues that are  
3 highlighted through our reporting system, through the Operations  
4 Center that's staffed 24 hours a day, seven days a week. When you  
5 read those event reports, you see also the interactions with the other  
6 federal agencies and state agencies that take part on a daily basis. So  
7 I just wanted to highlight that first off.

8 As the Chairman mentioned, you know, we're here to  
9 talk a little bit about the Radiation Source Task Force that has proven to  
10 be an effective forum for discussing potential concerns. We meet on  
11 the average three to four times a year. Really, that's weighted towards  
12 the last year or two, when we're doing the report writing.

13 The Act calls, as the Chairman mentioned, for a  
14 publicly available report to be written every four years, and as the  
15 Commission I'm sure can understand, you know, writing a report like  
16 that it's many SRMs= work of effort page-wise to get that, with 13 or 14  
17 agencies. But we're proud of the report that will be out this August.

18 The current report does close 17 recommendations  
19 from previous, the two previous reports, and it adds three new  
20 recommendations, and as the Chairman mentioned, we'll talk more  
21 about the draft report in the closed portion.

22 I'd just again highlight here that besides that, the NRC  
23 does meet regularly with our security partners and federal partners.  
24 There's routine trilateral meetings between the NRC, DOE and DHS.  
25 Immediately, FBI joined into those trilateral, so it's more than a trilateral  
26 meeting. It's up to four or five reps that meet routinely, and NSIR takes

1 a lead role in that, with our office also participating.

2 We also continue to support DOE's National Nuclear  
3 Security Administration and the Global Threat Reduction Initiative. We  
4 deal with them on their voluntary security enhancements that you hear  
5 a lot about in the press, that go up and above the NRC's orders, and we  
6 ensure that the proper communications between NNSA and our  
7 Agreement State licensees are held.

8 As a matter of fact, you know, the OAS meeting is  
9 coming up in August, and we're glad a couple of Commissioners are  
10 coming out to Chicago in August for that. There's a whole half day on  
11 security during that three and a half day Organization of Agreement  
12 State meeting, and NNSA will be there to discuss their disused sources  
13 working report that they authored a year ago.

14 A couple of other things from DHS just to highlight is  
15 the Government Coordination Council, and their Critical Infrastructure  
16 Protection Advisory Council meetings that are also held routinely with  
17 our other federal agencies.

18 Next slide, please. On my last slide, as I mentioned  
19 earlier, I just wanted to highlight some pictures and talk about them.  
20 You know, they say that pictures tell 1,000 words and they do, and I'm  
21 here to highlight that oftentimes, as I mentioned earlier, you need to  
22 take in the whole security plan when you look at these pictures.

23 The top left -- the left side of the pictures are from the  
24 2012 GAO report, the right side from the 2014 report. The 2012 report  
25 dealt with medical sources and facilities. At the right, 2014 pictures  
26 are taken out of the report that followed on with industrial radiological

1 sources.

2 I just want to mention that out of all these pictures, the  
3 only one that could be a violation of NRC requirements is when you see  
4 what could be a combination written on the door jamb for a lock there on  
5 the lower left-hand side. You know, the Agreement State tried to  
6 follow up on that after the GAO report, and wasn't able to verify it was  
7 an actual combination. But if it was, that would be a violation of NRC  
8 requirements.

9 I highlight that, because the issue that's often in the  
10 press is pictures like these, although they may show some  
11 vulnerabilities, are not violations, and they also don't show the security  
12 plan, as I mentioned earlier. On the top left, it highlighted in the report  
13 that there was a bank of windows that are not secured near the blood  
14 irradiator that's on the left.

15 Well that's okay, you know, from the NRC  
16 requirements. We have a 24/7 facility that's guarded, you know. You  
17 have alarms and you have locking devices. So, you know, the fact that  
18 you have some windows nearby can be akin to having, you know, a  
19 door further down the hallway.

20 However, it is an item that's on the edge of our security  
21 envelope, so it is worth looking at. Skipping to the pictures on the right,  
22 I just once again note there neither of those are a violation.

23 You see unsecured skylights. Randy Ragland, when  
24 he was talking about that, said, you know, below the locking, the  
25 sources are still secured in two methods, two fashions below the  
26 skylights, and that would be akin to the front door of a hospital if you

1 wanted to look at it that way.

2 Yes, it might be better to secure it in some ways. But  
3 clearly our NRC requirements are met, and the bottom right, you see a  
4 barrier not extending to the ceiling. That's the issue pointed out by the  
5 GAO, but once again, it's our understanding within and behind that  
6 barrier you have two locking mechanisms that secure our sources.

7 I want to close by, you know, just saying that the staff  
8 welcomes what I call looking at the borders or the envelope, or the  
9 edges of the envelope of source security. The IG, our NRC IG looked  
10 at it several years ago. The GAO has looked at it, and the Radiation  
11 Task Force, security task force, looks at our security.

12 Is it robust enough? Is there any ways we can  
13 improve it, and the NRC staff in particular looks at it. We look at, is the  
14 envelope thick enough? Are our requirements enough, you know,  
15 robust enough, and then also should we extend at any time, the NRC  
16 staff ourselves critically look at that for continuous improvement.

17 With that, I'll turn it over to Mike Welling for an  
18 Agreement State perspective.

19 MR. WELLING: Thank you, Brian. Good morning,  
20 Commissioners. I'd like to first begin by thanking you for inviting OAS  
21 to participate in this presentation. Next slide, please.

22 As the first bullet shows, since 2003, the Organization  
23 of Agreement States members have been involved in over 20 working  
24 groups with the NRC. We thank the NRC for this partnership, and we  
25 look forward to continuing this with regards to Part 37. The Agreement  
26 States have until March 19, 2016 to place compatible regulations or



1 license conditions in place for Part 37.

2 As of today, one Agreement State has a license  
3 condition approved in place, and three have submitted regulations for  
4 review and approval by the NRC. Security culture at our licensed  
5 facilities ensures that adversaries are met with stringent levels of  
6 security, to help prevent a theft, and maximize the response to the theft  
7 of radioactive materials. Thus, we believe it's critical for our public  
8 health mission for security to be in place.

9 Currently, the 37 Agreement States inspect over 1400  
10 IC licensees. This number seems the same or equivalent to NRC=s,  
11 but we also have licensees who have sources less than Category 2 that  
12 are co-located, so that's why the numbers are different, and our poll of  
13 all 37 Agreement States, we have 250 staff members that are qualified  
14 to perform IC inspections.

15 Some of the staff members also do licensing, so their  
16 time is of the essence to ensure that the licensing is done and  
17 inspections are performed.

18 Next slide, please. As of today, there has been no  
19 incident of stolen radioactive material used in a malicious event.  
20 There have been two instances where Category 2 sources were stolen,  
21 but that was not due to an insider threat. That was due to external  
22 sources, and we believe not looking for the sources themselves.

23 When Part 37 is implemented properly and followed, it  
24 provides the necessary security protection in our belief. Any  
25 enhancements to Part 37 should be done at a cost-benefit analysis that  
26 should be fully enveloped and documented before anything is put in

1 place.

2 Security inspections require personnel knowledge and  
3 expertise with regard to acceptable methods, as Randy will touch on  
4 that later. But the Organization of Agreement States is very happy and  
5 acceptable as to the one class that the NRC has put in place.

6 We've also asked and recommend we put in place  
7 further development of online classes or repetitive quarterly or  
8 something meetings, either online webinars or conference calls to  
9 discuss further enhancements in regards to inspections for security.

10 As Brian touched on, another good avenue we do is  
11 the OAS annual meeting. We definitely thank the Chairman for  
12 accepting our invitation to speak at that, and there will be, as Brian said,  
13 many topics discussing security this year on Part 37.

14 Next slide, please. I have two pictures I'd like to  
15 describe to you. The one on the left is actually the enhancements that  
16 a licensee has put in place all unto himself. The box contains a  
17 radiography camera which is locked into itself, that is also locked by the  
18 wooden-encased enclosure you see there.

19 The facility is alarmed by the door. Also has motion  
20 sensors inside the room, and that wire mesh you see on the wood  
21 actually is electrical cables that if cut, will also send a separate signal.  
22 This licensee has decided to implement this all on his own, didn't ask  
23 any help. He told the licensee -- the licensee told the regulators,  
24 showed them what he did, and obviously they thanked them for this  
25 enhancement.

26 The picture on the right is actually the GTRI

1 enhancement that is performed and installed free of charge to  
2 licensees. This system, yes, while free of charge, there is a caveat to  
3 the contract signed -- the first three years are free of warranty and  
4 service for the parts. After that, the licensee is required to maintain the  
5 components, and after five years, the remote monitoring system, the  
6 RMS as you see in this picture, that service warranty charge is to be  
7 maintained by the licensees.

8 So while there are enhancements out there, there also  
9 is the possibility of cost inclusions to the licensees. So that's one thing  
10 that you look at when we're looking at enhancements to security. I  
11 thank you and will answer any questions later.

12 MS. GIANELLI: Good morning, Chairman and  
13 Commissioners. I'm here today to briefly discuss the implementation  
14 of the Part 37 rule. Next slide, please.

15 As Brian mentioned earlier, the Part 37 rule represents  
16 a significant collaborative effort between the NRC and Agreement  
17 States to develop a rule that applies to a very broad set of licensees.  
18 In general, the physical protection requirements didn't change  
19 significantly from the orders to the rule.

20 Similar to the orders, the rule includes requirements for  
21 background checks to ensure individuals with unescorted access to  
22 Category 1 and 2 materials are deemed trustworthy and reliable;  
23 controlling personnel access to areas where Category 1 and 2  
24 materials are stored and used; security programs to detect, assess and  
25 respond to actual or attempted unauthorized access to the material;  
26 coordination and response planning between the licensee and local law

1 enforcement; coordination and tracking of Category 1 and 2 materials  
2 involved in shipment; and also security barriers to discourage the theft  
3 of portable and mobile devices for Cat 2 materials.

4           However, there are some differences between the rule  
5 and the orders. A couple of areas that the rule goes further than the  
6 orders are that licensees must conduct training to ensure that  
7 individuals implementing the security program understand their  
8 responsibilities to that program. Also licensees must implement an  
9 annual testing and maintenance program on the physical protection  
10 equipment. These all go beyond the orders. Next slide, please.

11           Back in November 2012, FSME created a Part 37  
12 implementation working group. This group includes approximately 20  
13 representatives from across NRC and the Organization of Agreement  
14 States, and it meets routinely to discuss implementation issues  
15 associated with Part 37.

16           When special expertise is needed, we do invite  
17 individuals on an ad hoc basis to participate in the working group. In  
18 April of this year, Brian signed the rescission of orders against  
19 licensees under FSME's purview. The photo of a shopping cart up  
20 there looks a little odd, but that's actually a pretty significant event.

21           That shopping cart contained 1,000 rescissions issued  
22 to about 500 NRC licensees. The order rescission is still in progress,  
23 and as the states implement compatible regulations, we'll rescind the  
24 orders that NRC issued to Agreement State licensees.

25           Switching to training, the 40-hour material security  
26 training class was significantly revised, and it now addresses Part 37.

1 Randy will speak more on training in his presentation later. In the area  
2 of guidance, we issued two significant guidance documents to support  
3 implementation of Part 37.

4 First, we have NUREG-2155. It's a very large  
5 guidance document, about 300 pages, but it's actually surprisingly easy  
6 to use. It's set up where you have the regulatory citation, a plain  
7 language description of the intent of the citation and then a Q&A of  
8 frequently asked questions, to help licensees interpret the requirement.

9 The other guidance document we issued more recently  
10 is our physical best security practices. This is a primer for licensees.  
11 It describes -- it gives a way for licensees for how to develop a security  
12 program, how to develop their physical protection program and how to  
13 document it in the security plan. This also meets one of our  
14 commitments to the GAO after the 2012 medical audit.

15 For outreach, we have updated the public website to  
16 include information about Part 37, and we've also issued a generic  
17 communication of licensees highlighting the differences between Part  
18 37 and the orders. For inspections, we have added one inspection  
19 procedure to manual chapter 2800 to address Part 37, and in the area  
20 of enforcement, we have developed an enforcement guide and  
21 memorandum to address large components at reactor sites.

22 Next slide, please. Looking forward, there is still  
23 plenty of work for us to do. We continue to identify areas where  
24 additional guidance or clarifications are needed for consistent  
25 implementation of Part 37. We're converting the increased controls  
26 toolbox to a materials security toolbox. This is a secure online

1 information-sharing tool between us and the Agreement States, so we  
2 can discuss issues about source security.

3 In the international arena, we work together with Office  
4 of International Programs and NSIR, and continue to participate in  
5 international initiatives on source security. In the area of inspection  
6 enforcement, FSME, NSIR, the Regions, OE and OGC: we're working  
7 together to ensure consistent identification and disposition of Part 37  
8 inspection findings.

9 Finally as Brian mentioned, we are continuously  
10 evaluating our programs to ensure that we're in the right place from a  
11 security standpoint. So for over the next two years, our  
12 implementation working group will review the results from  
13 post-implementation to determine whether any additional  
14 enhancements are necessary.

15 Although the concerns raised by the Government  
16 Accountability Office in their 2012 and 2014 audits were thoroughly  
17 considered during development of the rule, we're going to look at those  
18 concerns again. After this evaluation, if revisions to Part 37 are  
19 warranted, the staff will appropriately provide recommendations to the  
20 Commission. Thank you.

21 MR. RAGLAND: Hi. My name is Randy Ragland.  
22 I'm an inspector in the Region I office and I have been for 21 years, and  
23 I've worked in reactor health physics inspections, materials inspections  
24 and the implementation of the increased controls.

25 Next slide. Here's some examples of some Category  
26 1 quantities that we inspect. Panoramic irradiator could have a couple

1 of million curies of cobalt-60, a gamma knife, 6600 curies of cobalt-60,  
2 and if a self-shielded irradiator exceeded 2700 curies of cesium-137,  
3 that would be a Category 1 quantity.

4 Next slide. Here's some examples of Category 2  
5 quantities that we inspect. At top left, a radiography camera could  
6 contain over 100 curies of iridium-192. I think we have 27 licensees in  
7 our region, and NRC has overall about 77 radiography licensees. Top  
8 middle, self-shielded irradiators could have a couple of hundred curies  
9 of cesium-137, calibrator, millicuries to multiple curies, and then some  
10 licensees possess greater than a Category 2 quantity, but because they  
11 don't aggregate or co-locate those, they don't have to implement Part  
12 37 requirements.

13 Examples would be like a lot of well loggers or high  
14 dose rate remote afterloader licensees or fixed gauges, and in those  
15 cases, we'll verify that the licensee has adequate procedures in place to  
16 prevent the co-location or aggregation.

17 Next slide. We make sure our materials inspectors  
18 are properly qualified before doing a security inspection. Typically, it's  
19 a safety inspector doing it, and a new security inspector would receive  
20 the Materials Controls Security Systems and Principles course that was  
21 recently developed and implemented by the Technical Training Center  
22 and was well-received.

23 Then the regions developed gap training. That's the  
24 gap and knowledge between security inspections performed under the  
25 orders, and those performed under Part 37. Then the branch chief  
26 would either observe an individual performing an inspection or have an

1 inspector observe, or then the branch chief makes a final decision,  
2 whether the person is qualified.

3 Next slide. Our materials inspections are  
4 unannounced. The frequency is based on risk, and it's the same as  
5 the safety inspection. Our Agreement State partners may do that a  
6 little differently.

7 We try to perform a performance-based review of the  
8 physical security plan. We look at the access authorization,  
9 monitoring, detection, assessment and response, and that gives us the  
10 best overall impression of the adequacy of the licensee's security  
11 program.

12 Next slide or no, this slide. The bottom left-hand  
13 corner is radiography in a trench on a pipeline, and that radiographer  
14 would have to maintain constant surveillance during use. When it's  
15 locked up they would have to have two tangible barriers to prevent  
16 unauthorized removal, an alarm system and they'd have to be able to  
17 respond to an alarm.

18 The middle picture is recovery of a source  
19 unaccounted for in a coal field in West Virginia. They had multiple  
20 owners and they lost track of a source, and Region I was instrumental in  
21 recovery of that source. Bottom right is the removal of sources for a  
22 self-shielded irradiator that occurred in Puerto Rico a couple of months  
23 ago.

24 Next slide. Overall, our initial Part 37 findings.  
25 We've had good performance, and that's because the licensees have  
26 had existing security programs in place that were required by the



1 orders. Now we have had some challenges. Part 37 requires formal  
2 access, authorization procedures, a formal security plan, formal  
3 implementing procedures, and some of our materials licensees are not  
4 as proficient at developing procedures as let's say a reactor licensee.

5 But overall, those violations have a minor to low  
6 security significance. Now we still continue to occasionally encounter  
7 a gauge user who doesn't properly secure a gauge on the back of a  
8 truck, and it falls off a truck, or a security shipment that's not properly  
9 coordinated, and something is left -- a package is left in a loading dock.

10 Or let's say a magnetic switch on a door for an alarm is  
11 placed on the outside of the door, where it could be tampered with,  
12 versus the inside. Or a, let's say an escort not filling their functions to  
13 provide constant surveillance, either due to lack of training or lack of  
14 sensitivity.

15 But overall, our inspections show the licensee are  
16 meeting the security requirements mandated by NRC, and that's it.

17 MR. SARTORIUS: And with that, we are ready to  
18 answer any questions that you may have Chairman and  
19 Commissioners.

20 CHAIRMAN MACFARLANE: Okay, thank you.  
21 We're start off with Commissioner Magwood.

22 COMMISSIONER MAGWOOD: Thank you,  
23 Chairman, and I thank all of you for your presentations today. You  
24 know, when Part 37 was being evaluated by the Commission, there  
25 was a great deal of discussion about every aspect of the rule really. It  
26 was certainly recognized that implementing a rule in place to codify the

1 orders was certainly a significant advance in source security.

2 And a lot of people worked very hard on that. I  
3 particularly appreciate what FSME has done in this area. I actually  
4 haven't met Adelaide before, so I appreciate that. I know you had a lot  
5 to do with this as well, as well as NSIR. NSIR was very much involved,  
6 and it was actually fortuitous, I think, that Brian went back to NSIR when  
7 he did, because his experience in working with the states I think was  
8 probably very helpful in pulling all this together.

9 Obviously as you pointed out in your presentation, this  
10 is not just an NRC effort. This is very widespread effort. So I  
11 appreciate having representatives from Virginia and also New York  
12 City. I appreciate that you were able to come and join us today. As I  
13 talk to our state partners in particular, you know, these types of issues  
14 affect them more than a lot of the other things that the agency does, and  
15 they have to respond to some very complex programs, and it's a lot of  
16 work involved in that.

17 One thing that Mark, in your presentation, you  
18 mentioned that we're going to take a two-year period, gain some  
19 operating experience and then, as I think, Adelaide pointed out, we're  
20 going to look and see if they're some changes to be made and, you  
21 know, make those recommendations to the Commission.

22 There were some aspects to the rule that licensees in  
23 some states had particular concerns with, and as I recall, one that stood  
24 out quite prominently was the requirement for background checks for  
25 unescorted access.

26 While it's not been fully implemented, I suspect that

1 maybe there is already some information about how well that's gone.  
2 Do you have any information to share with the Commission as to how  
3 that's been implemented so far?

4 MR. SARTORIUS: For our NRC licensees, I think that  
5 that's been very successful. I know that the states are still working.  
6 They have a longer period of time, I think it's three years to be able to  
7 become -- put their rules in place that will be compatible with Part 37.  
8 So they're still working through that.

9 But I think from our perspective that the background  
10 checks is a useful piece of information that the decision-makers that  
11 grant access can use very favorably to make those decisions.  
12 Adelaide, you want to add anything to that?

13 MS. GIANTELLI: Yes. Our guidance does provide  
14 some book guidance documents. The two that I held up include  
15 guidance to licensees on how to conduct a background investigation,  
16 and what things to look at, and what things to consider when they're  
17 deeming somebody trustworthy and reliable.

18 So what we're finding is licensees, and Randy can  
19 correct me if I'm wrong on this one, licensees are conducting the  
20 background checks. What tends to happen is once in a while they  
21 miss the fact that they have to actually write a statement of why  
22 someone is trustworthy and reliable.

23 They do conduct all the pieces of it, and they  
24 understand that they cannot grant access unless all the pieces of that  
25 background check are complete, and they have -- they've completed  
26 the final statement that says trustworthiness and reliability. So I think

1 it's actually overall going well.

2 MR. RAGLAND: I think some of our licensees were  
3 pleased that we removed the financial background check, because they  
4 said that that didn't relate to whether they were going to, you know, they  
5 were trustworthy and reliability.

6 COMMISSIONER MAGWOOD: Okay. So with that,  
7 with that part removed, the licensees have had a lot less trouble in  
8 implementing this?

9 MR. RAGLAND: A lot less trouble, but you know, we  
10 went from like three years to seven years, and that's going to require  
11 some to go back even further.

12 COMMISSIONER MAGWOOD: All right. So we'll be  
13 watching that over the next couple of years, I guess, to see how well  
14 this is implemented. One thing I also meant to mention, and I think  
15 Mike mentioned this in his presentation, the Global Threat Reduction  
16 Initiative.

17 I don't know that -- it isn't -- obviously, it's not the sort of  
18 thing that gets publicized a great deal, but as I travel both around the  
19 country and actually around the world, and go to blood banks and other  
20 facilities, their footprint is actually pretty impressive.

21 They've done, you know, it's often I think perceived that  
22 sometimes government, you know, produces a lot of paper but doesn't  
23 get a lot done. This is a case of a government program which I think  
24 has just done an amazing amount of work and very valuable work  
25 substantively at many, many facilities across the country and across the  
26 world, and it doesn't get enough recognition. When you see the before

1 and afters of how they've taken action, it's actually quite impressive.

2 MR. SATORIUS: I was just going to mention, in my  
3 opinion, I think that the work that they do overseas, where the  
4 regulatory body may not be as robust as what we have here in the  
5 United States, it's probably helping out there more than it is here,  
6 because as you know, we still believe that compliance with our  
7 regulations provides adequate protection for the public, and that the  
8 installations from the GTRI initiatives are enhancements.

9 COMMISSIONER MAGWOOD: Yeah. I agree with  
10 that. Was there --

11 MR. HOLIAN: No. I would just add -- a police  
12 sergeant from New York City, before the meeting started, just  
13 complimented them also, not only for the security enhancements that  
14 they put in, but just coordinating, kind of the educational aspect for them  
15 with the local law enforcement. So they do quite a bit there, and the  
16 communities are very thankful for that.

17 COMMISSIONER MAGWOOD: Just to sort of  
18 elaborate a little bit on Mark's comment about overseas, I won't say  
19 which country this was in, but I was in a country with a large blood bank  
20 that had a large blood irradiator that was behind a door that may or may  
21 not have been locked all the time.

22 It was about 30 yards from a loading dock. So you  
23 could just imagine someone just coming and pushing it into the back of  
24 a truck and taking off with it, and GTRI came in and made a lot of the  
25 security enhancements which were -- you know which, when you see  
26 them, they give you a lot of comfort that would not happen in the future.

1                   And it's not just the physical hardware, but I think, as  
2 you said, the education that goes along with that, because it sensitizes  
3 users to the need to have those security enhancements.

4                   Now while we've talked a lot about how well we've all  
5 gotten along within the federal family, there still was GAO testimony last  
6 month that did call out concerns that we are not effectively  
7 collaborating. I wanted to see if you had some response to that, and  
8 whether there are areas that -- and obviously the Task Force report has  
9 some things in it. But are there areas where we need to go further?

10                  MR. HOLIAN: Well, just to touch on that, you know,  
11 that's why I showed some of those pictures, and they go a long way in  
12 highlighting what appear to be vulnerabilities but may not be.

13                  I think those pictures from GAO were influenced with  
14 the fact that they do see out in the field, they do see NNSA's voluntary  
15 enhancements at some sites, and they go to other sites that don't have  
16 them yet or haven't, you know, gotten in the queue to get those.

17                  It raises a question in their mind. Gee, you know,  
18 some have it, some don't. Why don't we have more? So I think that's  
19 their viewpoint. Mark stated well that, you know, there has to be a  
20 minimum level of security that's appropriate for licensees. We  
21 continue to look at that. We're glad and the inspectors are glad for  
22 added enhancements that are either done by the licensees themselves  
23 or by an organization like that.

24                  I think there are items that we can look at, the  
25 co-location issue in particular. You know, that's always a fair thing to  
26 look at. We have to make a cut somewhere on the risk of the

1 radioactive material that we have the highest security controls on.

2 So when GAO or other people see, or even licensees  
3 now will, you know, maybe produce a source below the Category 2  
4 threshold, and is that because they're figuring out that it's more efficient  
5 to do that, or is it to get out of those security controls. So that's  
6 something that we continue to look at.

7 MR. SARTORIUS: The phrase that a picture is better  
8 than a thousand words, a picture without context can produce a  
9 thousand different impressions, and I think that that's what you see in  
10 some of these pictures, because I think, as Brian had pointed out, the  
11 skylight.

12 But yet if you pan down, you would see the storage  
13 facility for the sources, with the two lock systems, so that they meet our  
14 requirements and we're confident that those are safe.

15 COMMISSIONER MAGWOOD: Excellent. Well,  
16 thank you again for your presentations this morning, and thank you  
17 Chairman.

18 CHAIRMAN MACFARLANE: Okay, thanks. So I  
19 want to pick up on those questions, and Commissioner Magwood's  
20 questions, in particular the optimized mix of performance-based versus  
21 prescriptive requirements. I had a discussion with a Senator last  
22 week, where he was in particular talking about the trustworthiness  
23 aspect that was brought up by this GAO report, and wanted more  
24 prescriptive requirements, you know.

25 So I want to understand, and I want you guys to have  
26 the opportunity to explain why we have the balance that we have, and

1 why it works. So I don't know. Who wants to --

2 MS. GIANTELLI: It's a balance because we do have  
3 a broad set of licensees, and we're putting -- we're trying to put down  
4 the applicable requirements across that whole set of broad licensees.  
5 So, one size doesn't fit all. What's going to work, in terms of the  
6 physical protection, what actual detection equipment and things like  
7 that. What will work for a radiographer is not going to work at a blood  
8 bank.

9 So you have to look at what is the security zone, what  
10 is the material you're trying to protect, and how do you ensure that you  
11 don't -- that an adversary doesn't get their hands on that material. So  
12 the performance-based requirement is it's a simple requirement. It  
13 says you must be able to detect unauthorized removal of material, or  
14 you must be able to detect, assess and respond to any attempts to take  
15 the material.

16 How the licensee accomplishes that is really up to the  
17 licensee. So they have to look at the material, look at what they -- how  
18 it's stored, how it's housed in the facility, and figure out how are they  
19 going to achieve those requirements in terms of be able to detect that  
20 somebody's removing it, be able to detect, assess and respond to any  
21 unauthorized access to that material. So those are the pieces that go  
22 together.

23 CHAIRMAN MACFARLANE: Should we be more  
24 prescriptive with our trustworthiness, you know, in terms of doing  
25 background checks? Should we require more specific qualifications?

26 MS. GIANTELLI: In background checks -- in



1 background checks we -- the example given in the GAO report is  
2 someone with a terroristic threat on their record. That, you know, that  
3 is a reason that someone could be disqualified and deemed to be not  
4 trustworthy and reliable.

5 What we've written in guidance is we've asked them to  
6 look at the event, and they have to consider some different factors  
7 associated with that event. The age of the event, maturity level of the  
8 person at the event, what exactly were the circumstances around the  
9 event. So there's a lot of items that also can be considered.

10 It's basically the idea that a person can be given a  
11 second chance. They've made a mistake years before, and does that  
12 mean that they're no longer trustworthy and reliable? Maybe not. But  
13 it is just one factor in the whole thing, and we do have licensees, they  
14 have to look at the background check. They have to do employment  
15 verification, education verifications. These are all the things that they  
16 have to check off, and they have to do a character and reputation  
17 reference check.

18 We also require them to do a developed reference,  
19 where the licensee has to ask one of the references for another person  
20 to provide a reference on that person, along with this FBI check. So  
21 and we do have some issues with what the GAO didn't mention in their  
22 report, in terms of the background check that was conducted on that  
23 individual with that background.

24 The FBI record, the way it was written, implied that all  
25 those -- all those charges were on the gentleman's -- on the person's  
26 FBI record. It was actually some of these were from years before and

1 on a local record that never actually made it to the licensee. So they  
2 were very old charges.

3 So in this case, we did look at that particular example,  
4 to see do we have a programmatic problem. Do we need to start  
5 putting out more requirements? Do we need to get something different  
6 in place? In that case, we found it was not a programmatic problem; it  
7 was the licensee used the information -- they followed the requirements  
8 using information they had and made a decision.

9 CHAIRMAN MACFARLANE: Okay.

10 MS. GIANTELLI: I don't know if anyone else wants to  
11 answer.

12 MR. HOLIAN: The only thing I'd add Chairman is we  
13 want to be consistently, continually learning, and we have the ability,  
14 through NSIR, to put out orders, if we saw a weakness that had come  
15 up that was really risk-significant in a case like that, and require other  
16 things.

17 So we look at that on an ongoing basis. The only  
18 other thing I want to mention is that's why I made a point about the  
19 number of sources lost. When you really realize the denominator and  
20 that our program, you know, just based on those, you know, hard data,  
21 appears to be working very well.

22 Now we still want to get ahead of what might be out  
23 there. So we spend quite a bit of time in also assessing what we could  
24 do better.

25 CHAIRMAN MACFARLANE: Okay.

26 MS. GIANTELLI: I should just add, this is one of the

1 areas we are going to look through for these next two years, in terms of  
2 do we need to put -- do we need to readdress trustworthiness and  
3 reliability determinations.

4 CHAIRMAN MACFARLANE: Okay, good, good. So  
5 let's talk about the Integrated Source Management Portfolio a little bit  
6 that you brought up. You mentioned that in terms of -- because there  
7 was a discussion of should we include Category 3 sources, Category 4  
8 sources. That happened a little while ago when you and I had that  
9 discussion. So you mentioned there were 5,200 Category 3 sources?

10 MR. HOLIAN: Yes.

11 CHAIRMAN MACFARLANE: You know, there's a  
12 since in which if you have 80,000, what's 5,200? Tack them on.

13 MR. HOLIAN: That's one view, and I -- I'll just quickly  
14 comment in response to that Chairman. That's right, you and I have  
15 discussed that, and it is a smaller number of sources data on. And  
16 however, it's a larger number of licensees. So we have like 1,400  
17 licensees for 80,000. You all of the sudden add on a lot of the smaller  
18 and they call them mom and pop shops, 1,000 licensees for those  
19 5,200 sources.

20 That being said, the staff did recommend to include  
21 Category 3 a few years ago. So some of the reasons for not, I think at  
22 that time, were we were matching the IAEA Category 1 and 2 security.  
23 I think that was part of the reason the Commission looked at that and  
24 said let's do that first.

25 Even now, we've talked to NSIR, FSME has, with  
26 Nuclear Security and Incident Response, and we want to be able to

1 continue to judge that decision point, you know. Are there things,  
2 maybe we don't require tracking, under the National Source Tracking of  
3 those, but maybe there are some security enhancements that we can  
4 do still at Category 3 sources that are cost effective. So that's  
5 something the staff, both between us and NSIR, will continue to look at.

6 CHAIRMAN MACFARLANE: Okay, and how many  
7 Agreement States participate in the Integrated Source Management  
8 Portfolio?

9 MR. HOLIAN: Oh good. Let me have Adelaide  
10 cover that.

11 MS. GIANELLI: Well, all the Agreement States, they  
12 participate in National Source Tracking System. They also have  
13 provided all their Category 1 and 2 licenses to web-based licensing.  
14 So therefore when license verification is done by the licensee, the  
15 license is there.

16 I should take that back, I'm sorry. All but two  
17 Agreements. We're still working together with them. They have  
18 committed to us to provide their licenses for web-based licensing, and  
19 once we complete that step, we'll have everybody on board.

20 CHAIRMAN MACFARLANE: Do we have an end  
21 date on that or --

22 MS. GIANELLI: We don't have an end date on  
23 those, on the two states.

24 CHAIRMAN MACFARLANE: Okay. Is there some  
25 special challenge that we could be working on, to help these guys?  
26 Maybe Mike has a view.

1 MR. WELLING: Well, we brought that conversation  
2 up, Adelaide brought it to my attention. So I have reached out to those  
3 states and started the conversation. That's the reason why it's taken  
4 so long to get.

5 CHAIRMAN MACFARLANE: We can have a session  
6 at the end of August at the meeting, a special intervention.

7 MR. WELLING: On top of that, so I know Colorado  
8 actually has the current version. They're actually doing the online  
9 version. So the records are being maintained by the NRC. Ohio,  
10 where the system is based, has their own version, and North Carolina  
11 also, I think -- I don't know if they've made a decision final, but North  
12 Carolina has implemented that.

13 The rest of the states, we have discussed this at depth.  
14 Each state has a unique perspective of whether or not they can use a  
15 federal based program, whether it can be tracked outside their purview.  
16 Some states have stated their laws don't allow that. That's questions  
17 we're looking into, whether or not that is true or not, if they can follow  
18 through on that how --

19 CHAIRMAN MACFARLANE: There's a greater good  
20 here.

21 MR. WELLING: Yes, yes ma'am. So that is one of  
22 the conversations, and at the annual meeting there is a presentation on  
23 web-based licensing. Between Jennifer Opila from Colorado and NRC  
24 staff that will be brought to everybody's attention.

25 CHAIRMAN MACFARLANE: Okay, thanks. And my  
26 last minute. Randy, you mentioned that some Agreement States may

1 inspect at a different frequency. Are there frequencies that are  
2 unacceptable to the NRC?

3 MR. RAGLAND: When I was --

4 CHAIRMAN MACFARLANE: Is your microphone on?

5 MR. RAGLAND: When I was preparing, Mr. Welling  
6 pointed out that like they do sometimes a different frequency. I'm not  
7 aware. That's a Category B for commonality. So they have to  
8 implement essentially what we implement. But do you know of --

9 MR. WELLING: Actually some states do more  
10 frequent. Instead of Category 5, it's a Category 3.

11 CHAIRMAN MACFARLANE: Right.

12 MR. WELLING: And there has been talk about  
13 security inspections being held at Category 2 for all licensees. So  
14 some states have talked about that, doing that, instead of with the  
15 public health safety audits of five or three years, it would be every two  
16 for security.

17 CHAIRMAN MACFARLANE: Okay great. Thank  
18 you. We'll turn it over to Commissioner Svinicki.

19 COMMISSIONER SVINICKI: Well thank you all for  
20 your presentations today. I will build upon the questions and  
21 comments of my colleagues. Maybe I'll begin with a little bit of a  
22 commentary of my own.

23 I appreciate all of the discussion that we've had about  
24 performance-based versus more prescriptive regulations, and I think to  
25 the extent that there is apparent maybe lack of understanding of why  
26 the NRC values the performance-based approach, I think that that's

1 very unfortunate, that that perhaps persists out there I think today.

2 We've tried once again to communicate what we see  
3 as both the necessity and value of a more performance-based  
4 approach. I think one need look no further than the photos that many  
5 of you showed today, as demonstrations of the diversity of kinds of  
6 facilities and installations where we find these things.

7 I'll only depart -- one of you, was it Brian, said that with  
8 prescriptive regulations, you might over-prescribe. I actually believe  
9 that with prescriptive-based regulations, you may as frequently as not,  
10 under-prescribe what is needed.

11 I think the strength of NRC's approach on  
12 performance-based is that in the review of the security plans, we have  
13 the full authority and latitude then to look at a case-specific source in  
14 some circumstance, whether it be a skylight or anything else you  
15 showed, and we can say you're not meeting the performance-based  
16 criterion, based on the situation where you find yourself.

17 So I mentioned in a meeting our Commission had on  
18 Tuesday that there is an art form to writing law and regulation, and it's  
19 very, very difficult to write an adequate regulation that would be  
20 prescriptive and I think would provide the same level of security that we  
21 provide now in all instances.

22 I think in some cases, you might have some kind of  
23 unanticipated circumstance and you'd have a gap, and I think that  
24 that would translate into licensing experts here at NRC and inspectors'  
25 hands being tied, and they would have the inability to require things that  
26 in a performance-based standard we do have the ability to require.

1                   So I read the GAO findings and reports, and I find it  
2                   unfortunate that this isn't understood, because I actually believe that we  
3                   have the superior approach to that. That sounded like a very  
4                   judgmental term. But I think there's real strengths from the way -- you  
5                   know, I didn't understand it well when I came to NRC.

6                   But the time here has allowed me to understand that  
7                   that is -- gives us the muscle to do what we need, and I would really be  
8                   troubled if we moved towards mandated prescriptive requirements that  
9                   I think would likely fail us in certain circumstances. So you can see I  
10                  have a real strong view on this one.

11                  Commissioner Magwood mentioned the background  
12                  checks and the commentary that we had received previously. If I  
13                  remember correctly, some of the feedback we got has to do with the  
14                  fact that some of our Agreement State partners do not have the legal  
15                  authority to collect fingerprints, or they simply, under existing state law  
16                  and their mandates within their individual states, there were some  
17                  challenges there that reminds me of the traditional challenges in timing  
18                  sometimes for our Agreement State partners to be able to codify  
19                  requirements.

20                  Some may hear that they have three years and thinks  
21                  that's excessive. Many of our Agreement State partners are actually  
22                  really challenged to meet that three year period. Their legislatures  
23                  don't always meet as frequently. So that can be a difficulty.

24                  Mike, I wondered if you had just any general  
25                  commentary to make about the persistent challenges for our  
26                  Agreement State partners sometimes, in being able to codify these



1 requirements?

2 MR. WELLING: Yes ma'am, that was one of our OAS  
3 Board comments to Part 37, in regards to the background checks.  
4 Several states did bring to our attention in their laws, and they had their  
5 Attorney Generals back them up, that fingerprinting in the states being  
6 required to do that would be excessive, would not be allowable.

7 Even though we signed the agreement with the NRC to  
8 take over regulation of radioactive material --

9 COMMISSIONER SVINICKI: You still have to  
10 operate within your authorities at the state level.

11 MR. WELLING: Exactly ma'am. So that's one of our  
12 comments and we're -- states are happy that that's not there.  
13 Obviously, it's enhancement, but we also look at it as the licensees  
14 responsibility. So we'd rather see everything fall onto the licensee, you  
15 know, for the whole trustworthy and reliability.

16 Their decision on who should be T&R. Not every  
17 person needs to be given unescorted access. They can be a  
18 radiographer who's not unescorted. He can be escorted by another  
19 radiographer, by somebody else. So the GAO report's finding that one  
20 person had that, he didn't have to be unescorted.

21 He could have been a radiographer performing work,  
22 and been escorted by another radiographer. There are ways around it  
23 with the rules, and still including the T&R, to make sure that material is  
24 safely used by people who are trustworthy and reliable.

25 Another thing, the credit history reports, the states  
26 have a problem. Some states had that in their laws, that they could not

1 be bound against a credit report. That would be discriminatory against  
2 some people, especially with the economic times. So there are certain  
3 things the states have legalized, to minimize what we can and cannot  
4 do.

5 COMMISSIONER SVINICKI: I appreciate that, and  
6 again I just wanted you to have a chance to get into the record of this  
7 meeting, a clear discussion of some of the very practical realities that  
8 are confronted by our Agreement State partners. So there are  
9 additional steps you have to go through. As your answer reveals,  
10 there are often ways to kind of proceed in the interim, and there are -- I  
11 don't like the term "work-arounds," but there's ways to just take kind of  
12 incremental steps towards where it is that you need eventually to be.

13 So I just wanted to be certain that we were clear about  
14 that. It's not that states aren't motivated and full partners; it's just that  
15 they have to take these additional legislative steps frequently in their  
16 own state systems.

17 We have shone a bit of a spotlight on coordination with  
18 local law enforcement, by having one of our key law enforcement  
19 partners here in the audience today, as has been mentioned. I was  
20 going to ask you, Randy, we do have the provisions in Part 37.45,  
21 mandating coordination with local law enforcement.

22 Can you describe briefly how we would inspect to  
23 those? Do we contact local law enforcement, to make sure that the  
24 kind of mutual aid and notification is enshrined, or would we do more of  
25 a documentation review of those provisions, to make certain that they're  
26 complied with?

1 MR. RAGLAND: First I'll just mention that I think there  
2 was -- the enhancement with Part 37 for an annual reach-out to local  
3 law enforcement was a good addition, because we found in the past  
4 that licensees would transmit their security plan to the local law  
5 enforcement, and then it would sit on a shelf or it would get archived, or  
6 the responsible individual would retire or move on.

7 Then we'd go there to local law enforcement, and they  
8 wouldn't really have any idea of what we're talking about. But we try to  
9 go out to the local law enforcement agency, and take a look at the  
10 agreement or the information that was provided by the licensee, and  
11 see if we can find the local law enforcement who's knowledgeable, a  
12 representative who's assigned and knowledgeable.

13 So for the majority of the inspections we do that. Now  
14 prior to Part 37, sometimes if a licensee had an agreement, and we saw  
15 that it was transmitted and we'd been to local law enforcement, we may  
16 not go back the next time.

17 But in general, we try to go every time, just stop by  
18 local law enforcement and ask them if they're aware of the facility, if  
19 they've received information, if they would respond in a timely manner.

20 COMMISSIONER SVINICKI: I appreciate that  
21 answer, and I think that's a very solid example of the rigor of -- and the  
22 fact that we don't allow these things to get stale. I mean we're  
23 constantly looking at whether or not our initial determination of the  
24 adequacy of a security plan is in its implementation and against the  
25 current status of the facility, if we still assess it to be adequate.

26 So I think that that's an important part of our discussion

1 today, and with that Chairman, thank you.

2 CHAIRMAN MACFARLANE: Any further questions?

3 No. All right. Well then I will close this portion of the meeting today.

4 This is the public portion. We will meet at 10:35 in the SCIF, those who

5 are going to the closed portion. But this is the end of the public portion.

6 (Whereupon, the above-entitled matter went off the  
7 record at 10:04 a.m.)

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