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To: <NRCREP@nrc.gov>
Date: Fri, Feb 10, 2006 3:43 PM
Subject: NEI Comments to NRC Source Security Task Force (RSPS-TF)

You will find attached NEI's comments on the formation of the NRC's "Radiation Source Protection and Security Task Force" and the major issues it will be addressing. If you have any questions or would like additional clarification please contact me.

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February 10, 2006

Chief, Rules and Directive Branch
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Mail Stop T6-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

REFERENCE: Request for Comments on: "Radiation Source Protection and Security Task Force", RSPS-TF, 71 *Fed. Reg.* 1776 (January 11, 2006)

Dear Sir:

The Nuclear Energy Institute (NEI)¹ is pleased to comment on the major issues to be considered by the interagency "Radiation Source Protection and Security Task Force," per the Federal Register request. The notice specifically requested comments on four aspects (1) inconsistencies that may be a cause for concern or are perceived to present problems in implementation of the program; (2) perceived gaps or overlaps in the programs; (3) suggestions for modifications to the current programs mentioned in each topic; and (4) regulatory or legislative changes for each topic as appropriate.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

All key federal agencies should work together to assure the security of radioactive sources. There are a number of agencies that have regulatory responsibilities for radioactive sources. This goes from the NRC's regulation of by-products and NARM - with the Energy Act 2005 -, to the Department of Transportation (DOT) who has regulatory authority for all hazardous materials including Class 7 "Radioactive" to the Health and Human Services/Food and Drug Administration (HHS) who has regulatory authority over medical use of radioactive isotopes and devices, and irradiation of food/spices and sterilization of medical and personnel hygiene products. Due to the cross section of federal agencies it is important that they all be involved with developing the federal measures for the protection of radioactive sources. However, the Task Force has omitted one key component, the community of producers and users of these radioactive sources. This can be addressed by working through the Department of Homeland Security's (DHS) Government Coordination Committee for Radioisotopes (GCC). This organization is already in operation and addressing issues of radioactive source security. It interacts with the radioactive source community through the Nuclear Sector Coordinating Committee - Radioisotopes (NSCC-R). Many of the activities identified in the Energy Act of 2005 are already initiated or are planned by agencies that are parties to both the GCC and the Task Force. The NSCC-R has repeatedly emphasized to DHS and the GCC, the need to optimize allocation of limited government and private sector resources to avoid duplicative or conflicting measures mandated by orders, regulations and recommendations of standards-setting organizations. The NRC, GCC, and the Task Force must cooperate to ensure that rulemakings are coordinated and that radioisotope security regulations are consistent and harmonious.

The Task Force must first untangle the web of regulations that cross agencies' regulatory jurisdiction for radioactive sources. The first of these would be for the NRC to return to the DOT the regulation of radioactive materials; other than spent fuel, while in transport. The current arrangement results in the radioactive source community having conflicting regulations for security of hazardous materials where the rules for radioactive sources are contrary to the regulation of the other classes of hazardous materials. It does not require any legislation; it only requires that the NRC and DOT abide by the existing MOU. The next area the Task Force can address is the return of regulation of medical applications to Health and Human Services. The NRC's Part 35 rules imposes requirements on radioactive medical applications that are inconsistent with other similar risk non-radioactive medical applications imposed by HHS. The NRC is just getting into the area of security for medical facilities; however in this attempt the security rules are negatively impacting the medical applications. HHS

should be the agency that establishes the security for radioactive materials in medical facilities to assure they are consistent to those HHS is considering for the control over infectious diseases for the same facilities. Another area for clarification is the NRC, EPA, and DOE need to stop competing for the orphan source recovery program. This activity should be solely the responsibility of DOE and appropriately funded for carrying out this responsibility.

NEI offers the following comments specific on each topic presented in the Federal Register Notice.

Topic No. 1 – The list of radiation sources requiring security based on potential attractiveness of the source to terrorists and the extent of the threat to public health and safety.

The IAEA Code of Conduct (CoC) has established the isotopes and the thresholds for applicability of security measures, specific to the radionuclide and its activity. The CoC is an internationally recognized standard based on the assessment of international experts, which the NRC and DOE participated in the development of. Therefore, the Task Force should not go beyond the CoC and should accept and be consistent with the CoC.

The NRC has already concluded that the so-called quantities of concern should reside within Category 1 and 2. NEI supports Category 3 being considered within the scope of infrastructure protection, if warranted, by voluntary measures that may already be in effect or by site-specific license conditions supplemented by existing regulations. The Task Force should review the regulations imposed by the NRC to determine if they are consistent with the CoC. In conducting this review the Task Force must consider what is being done in other major countries of the world. The US has two large borders and trades extensively with the rest of the world. Regulations designed to protect the American public should not be so restrictive that it isolates the US from the rest of the world. The US imports as well as exports radioactive materials, while it is important to protect the citizens of the US it should not deprive them of the benefits of radioactive materials in the name of security.

NEI questions the inconsistency between the NRC regulations and the CoC. The CoC was focused on sealed sources while the NRC regulations have not restricted the regulations in the same manner. The Task Force needs to review this inconsistency and determine the significance. It will then be able to determine if changes in the regulations are appropriate. There are no gaps or other changes in regulations or legislation needed at this point.

Topic No. 2 – The national system for recovery of lost or stolen radiation sources.

NEI recommends that the requirements for tracking of sources should be limited to Category 1 and 2 sources. If the Task Force considers the need to expand the scope, this should be done with the input of NSCC-R.

NEI also recommends that the DOE in cooperation with the Conference of Radiation Control Program Directors establish a technically competent and responsible recovery system for sources performed by the Off-Site Source Recovery Project (OSRP). This program is a key component of any plan to secure the nuclear sector and should be provided with the necessary funding and staff to ensure effective operation.

Topic No. 3 – Storage of radiation sources that are not used in a safe and secure manner.

Due to the large variety of users of radioactive material in the numerous applications the Task Force should utilize the GCC and the NSCC-R to review and develop any changes to the current regulations for storage of radiation sources when not in use.

Topic No. 4 – The national source tracking system for radiation sources.

The national source tracking system has merit; however, at this point it is only a concept. It is difficult at this point to determine the use or success of such a program. NEI has provided comments to the NRC on its proposal. These consist of limiting the system to Category 1 & 2 sources and to realize that real time tracking is not practical nor is it required. There are a number of implementation issues but until the system is in operation NEI can't comment on its success or shortcomings.

Topic No. 5 – A national system to provide for the proper disposal of radiation sources.

The current set of regulations provides the appropriate level of security for the disposal of radioactive sources. If the Task Force is to consider changes in this area it should work with the NSCC-R in the development of proposed changes

The Task Force should review the nuclear infrastructure, this would include

the national program to provide for the timely, cost effective and responsible disposal of radiation sources including greater than class C waste. The Task Force should consider the security impact if there isn't a disposal option for relative high-risk sources and waste.

Topic No. 6 – Import and export controls on radiation sources to ensure that recipients of radiation sources are able and willing to adequately control radiation sources.

As discussed previously it is important to assure the safety of US citizens and import and export controls help to establish the level of safety. However; terrorist are not likely to use the common modes of import or export of radioactive materials for the purpose of moving illegal quantities of radioactive materials into or out of the country. The current US regulations are the most stringent in the world; the US needs to work with the rest of the world to get all countries to a common level of exchange. The IAEA CoC is intended to establish such a level, however, the rest of the world has not gone to the extremes of the US. This implies that the US regulations may be over conservative. The Task Force needs to review the US regulations and make a determination that the regulations warrant the level of security that is being imposed.

The NRC regulations have not been fully internally consistent. The import export rules have not always been consistent with the regulations for transport security or the requirements for the determination if the documents are to be protected as safeguards information.

Topic No. 7 – Procedures for improving the security and control for use and storage of radiation sources.

The Task Force needs to collaborate with the NSCC-R and the GCC concerning the security of radioactive materials in storage. As discussed previously there is a wide variety of uses and users and to assured that proposed changes for improving security for one area may have unexpected consequences in another area. Duplication of effort between the agencies on the Task Force and those in the GCC needs to be avoided.

Topic No. 8 – Procedures for improving the security of transportation of radiation sources.

The biggest issue in this area is the inconsistency between regulations for the security during transport of radioactive materials and the security of other hazardous materials, which have similar levels of risk. For this reason the

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NRC should return regulation of radioactive materials in transport back to the DOT.

Topic No. 9 – Background checks for individuals with access to radiation sources.

Background checks have minimal value. If the federal government determines that background checks have value it needs to establish uniform requirements for who falls within this category and the background checks need to be consistent across all federal agencies. The Task Force can review the requirements from each of the federal agencies as well as what needs to be included in the background check. As a result of this review the Task Force can make recommendations for uniform background checks across the federal government.

Topic No. 10 – Alternative technologies.

The concept of alternative technology has little merit for the Task Force. The market provides the best means for the development of alternative technologies. Any action taken by the Task Force or the Federal Government in this area needs to be as a result of issues of safety and effectiveness. This should not be as a result of security activity. The CoC provides the appropriate level of security and the US regulations should reflect the required security. Security issues should not drive alternative technologies.

Please contact me with any questions or clarifications the NRC may need on NEI's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Felix M. Killar, Jr.", written in a cursive style.

Felix M. Killar, Jr.