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Ms. Annette L. Vietti-Cook  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**ATTENTION:** Rulemakings and Adjudications Staff

**REFERENCE:** Request for Comments on "Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies" RIN 3150-AH44, Proposed Rule, 69 Fed. Reg. 55785 (September 16, 2004)

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)<sup>1</sup> is submitting the following comments on Proposed Rule: "Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies" RIN 3150-AH44, 69 Fed. Reg. 55785. The proposed rule is seeking to amend the regulations governing the import and export of radioactive materials that are beyond a thresh-hold activity value. The stated basis of the need for the rule evolves from the terrorist attacks in the United States on September 11, 2001 and the IAEA revisions of Code of Conduct on the Safety and Security of Radioactive Sources. NEI supports the NRC's efforts to enhance the security of radioactive materials and generally supports the proposed rule. However, we do envision some implementation issues which are outlined below:

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<sup>1</sup> 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.

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SECY-02

§110.27 General License for Import

(f) Individual import shipments of radioactive material must be less than the amounts in Category 2 of Appendix P to this Part.

*This provision can cause some confusion as the IAEA Code of Conduct was directed towards "sources" which is defined as seal sources, however the NRC proposed rule does not differentiate. The United States needs to make it clear to the international community that its regulations go beyond sealed sources.*

§110.32 Information required in an application for a specific license/NRC Form 7.

(g) For proposed exports of material listed in Appendix P to this part, pertinent documentation that the recipient of the material has the necessary authorization under the laws and regulations of the importing country to import, receive, and possess the material.

*As written, compliance with these rules would be extremely burdensome for the licensee as well as the regulator. For example, a licensee who is exporting Co-60 teletherapy sources, classified as Category 1 source, would have to include in the specific license application a list of recipients and documentation that the recipients are authorized to possess the sources. In order to fulfill this requirement, the US licensee would either have to have a specific export list well in advance of manufacturing and exporting teletherapy sources or would have to amend the specific export/import license with each new order received. The latter being the most likely scenario. This would result in unnecessary delay in supplying a foreign customer with a teletherapy source in addition to the costs associated with amending the license each time a new foreign customer is added. The requirement to have specific customers stated on an Import/Export license is unnecessary since the NRC will be specifically reviewing and approving each qualifying export shipment. In a changing market or a new business just entering this market the license amendment process to list and de-list customers would be a never ending administrative process without any real contribution towards safety or security. Additionally, in the highly competitive market having the customers names listed on licenses, that are publicly available would provide foreign suppliers and domestic competition company confidential information. It would also serve as an aid to terrorist in locating potential targets.*

§110.42 Exporting licensing criteria.

(e) In making its findings under paragraphs (a)(8) and (c) of this section for proposed exports of radioactive materials listed in Appendix P to this Part, the NRC shall consider whether:

*The NRC considerations should be focused on Category 1 materials and allow the United States exporter to make the determination for Category 2 material, which would be documented and on file at the licensee's site for NRC review.*

(1) The receiving country has the appropriate technical and administrative capability, resources and regulatory structure to manage the material in a secure manner: and

*The NRC needs to work with the international community to define the appropriate technical and administrative capability, resources and regulatory structure to manage the material in a secure manner. This needs to be adopted on a recognized international level so all countries are working to the same standard.*

(2) The foreign recipient is authorized to receive and possess the materials; or

(3) In exceptional circumstances, that an alternative arrangement has been made to manage the material in a safe and secure manner.

*The NRC needs to work with the international community to define what an exceptional circumstance is, and what the acceptance criteria will be for alternate arrangements.*

(f) For proposed exports of Category 1 amounts of radioactive material listed in Appendix P to this Part, the receiving country consents to the import of the material.

*A table listing foreign governments that meet the requirement of §110.42(e)(1) should be included in the rule. This determination could be made by the Commission well in advance. This information would be useful to the licensees. Exports to countries not on the list could be approved by the Commission on a case-by-case basis.*

#### §110.50 Terms

(4) A licensee authorized to export or import ...

*The NRC should establish only one point of contact for notifications of imports or exports. Multiple locations can lead to confusion and missed directed notifications.*

*The NRC should revise the notification lead time from 10 days to 7 days to be consistent with the international guidance.*

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#### General Comment

*During the public meeting there was speculation that while this rule is applicable to licensees in possession of materials above the threshold for quantities of concern, this may be only the first step to similar requirements for other materials licensees. It would be good if the NRC would confirm the contrary or be more forthcoming about additional requirements in terms of applicability and rulemaking timeline.*

We would be pleased to discuss these comments and respond to any questions the NRC may have.

Sincerely,



Felix M. Killar, Jr.

bc: Radionuclide and Radiopharmaceutical Committee

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**To:** <SECY@nrc.gov>  
**Date:** Tue, Nov 30, 2004 4:18 PM  
**Subject:** RIN 3150-AH44 Comments on Export/Import Proposed Rule

Attached is NEI's comments on the proposed rule. I will send a copy through the rulemaking web site as well.

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