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September 15, 2010

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

7/14/2010
75 FR 40756
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Janet R. Schlueter
DIRECTOR
FUEL & MATERIALS SAFETY
NUCLEAR GENERATION DIVISION

Subject: Request for Extension of Public Comment Period on "Physical Protection of Byproduct Material; Proposed Rule" (75FR33902) and Draft Guidance Document (75FR40756); Docket Number NRC-2008-0120

Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)¹ submits the following request for consideration by the U.S. Nuclear Regulatory Commission (NRC) staff. Specifically, we request an extension of the public comment periods for the subject proposed rule from October 13, 2010 to January 15, 2011 and for the subject draft guide from November 12, 2010 to January 15, 2011. In addition, we request that NRC conduct additional public meetings prior to submittal of the draft final rule to the Commission for approval.

As NRC has acknowledged, the proposed rule is extensive by its very nature and includes new requirements beyond those contained in previously issued and implemented NRC security orders or compatible Agreement State requirements. In addition, while the related draft guidance document provides needed insight on demonstrating rule compliance, it too is extensive. From the nuclear power plants to medical use licensees to radioactive material shippers and carriers, industry needs additional time to ensure it fully comprehends the proposed rule, identify any unintended consequences from its implementation and submit constructive comments to inform the rule and guidance document.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. 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, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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Also, during the insightful discussions at the August 2010 Organization of Agreement States' meeting, several stakeholders including Agreement State personnel expressed concern over various provisions in the proposed rule and its potential impact both to the States and their licensees, e.g., current difficulties regarding local law enforcement coordination. Likewise, during the NRC public workshop held in Austin, Texas on September 1, 2010, it became evident that many licensees were not aware of the proposed rule until the meeting notices were issued, despite efforts by NRC, the Agreement States, and others to distribute this information. Also, the second and last public workshop scheduled for September 20th allows just 23 days for stakeholders to coordinate comments and submit well thought-out comment letters on the proposed rule and guidance document. We do not believe this amount of time is adequate to meet our mission.

In addition, delaying the comment period by three months will not have an adverse impact on safety or security since the byproduct materials subject to the rule are already adequately managed and protected under the NRC security orders and compatible Agreement State requirements in place and inspected against today. Therefore, there is no apparent negative safety or security impact from extending the public comment period on the proposed Part 37 rule and associated draft guide from this fall to January 15, 2011.

Finally, we believe that NRC should consider conducting one or more additional public workshops prior to submitting the draft final rule to the Commission for approval. The purpose would be to explain how the staff addressed and resolved the more major or controversial topics addressed in the public comments received.

Thank you for your prompt consideration of this request. I may be reached at 202-739-8098 or irs@nei.org to discuss this matter.

Sincerely,



Janet R. Schlueter

c: Ms. Merri L. Horn, FSME/DILR/RB-B, NRC
Ms. Josephine M. Piccone, FSME/DILR, NRC