

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON  
MATERIAL CONTROL OF GENERALLY LICENSED DEVICES

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PUBLIC MEETING

Nuclear Regulatory Commission  
Commissioners' Hearing Room  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland

Friday, April 16, 1999

The Commission met in open session, pursuant to notice, at 9:09 a.m., the Honorable SHIRLEY A. JACKSON, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, Chairman of the Commission
- NILS J. DIAZ, Member of the Commission
- EDWARD McGAFFIGAN, JR., Member of the Commission
- GRETA J. DICUS, Member of the Commission
- JEFFREY S. MERRIFIELD, Member of the Commission

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STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

- ANNETTE L. VIETTI-COOK, Assistant Secretary
- WILLIAM TRAVERS, Executive Director for Operations
- CARL PAPERIELLO, NMSS
- DONALD COOL, NMSS
- JOHN LUBINSKI, NMSS
- PETER HERNANDEZ, Vice President, American Iron and Steel Institute
- THOMAS A. DANJCZEK, President, Steel Manufacturers Association
- MICHAEL PETERS, Vice President, Environment Structural Metals, Inc.
- ROLAND FLETCHER, Radiological Health Program, Organization of Agreement States
- JILL LIPOTI, Conference of Radiation Control Program Directors, Inc.
- JAMES TURDICI, OCF0/DAF, NRC Staff

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P R O C E E D I N G S

[9:09 a.m.]

CHAIRMAN JACKSON: Good morning, ladies and gentlemen. Today the NRC Staff, the American Iron and Steel Institute, the Steel Manufacturers Association, the Organization of Agreement States, and the Conference of Radiation Control Program Directors will provide the Commission with their views on the draft requirements

9 proposed by the Staff for certain generally licensed  
10 industrial devices containing byproduct material.

11 The Commission has been concerned for a number of  
12 years about occurrences where generally-licensed devices  
13 have not been handled or disposed of properly.

14 Recent events overseas involving lost sources and  
15 large exposures to members of the public have heightened the  
16 attention of the Commission to the potential for lost  
17 sources in the U.S., and I would like to say parenthetically  
18 that Commission Dicus particularly brought a lot of focus to  
19 this area.

20 In July, 1995 with assistance from the  
21 Organization of Agreement States NRC formed a working group  
22 to evaluate the issues related to the loss of control of  
23 licensed sources of radioactivity. In April 1998 the  
24 Commission directed the Staff to develop by rulemaking a  
25 registration and follow-up program for generally licensed

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1 sources and devices identified by the working group to  
2 assess fees to these general licensees and to incorporate  
3 requirements for the permanent labelling of the sources.

4 The Staff now has drafted the requirements to  
5 improve the accountability of certain generally licensed  
6 devices for the Commission's consideration in SECY-99-108.  
7 This Commission paper, which recently was made publicly  
8 available, is now before the Commission. Because of the  
9 various interests associated with this action the Commission  
10 has requested the stakeholder presentations we will hear  
11 this morning. The NRC Staff will open with an overview of  
12 the proposed rulemaking. This will be followed by the other  
13 presentations that will focus on points of agreement and  
14 disagreement with the Staff's proposal and related issues.

15 I will thank all of you in advance for your  
16 participation in this meeting. In an effort to keep the  
17 meeting on schedule, the Commission only will interrupt the  
18 presents from time to time --

19 [Laughter.]

20 CHAIRMAN JACKSON: -- to ask very pertinent  
21 questions, and I will try to control myself. I am usually  
22 the culprit -- and then at the close of each presentation I  
23 will open the discussion to additional questions from the  
24 Commission.

25 I understand that copies of the viewgraph and the

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1 SECY paper are available at entrances to the meeting room,  
2 and unless my colleagues have anything to add, Dr. Travers,  
3 please proceed.

4 MR. TRAVERS: Good morning, Chairman and  
5 Commissioners. Chairman, as you have indicated, we did  
6 provide to the Commission earlier this month a proposed rule  
7 on generally licensed devices, and today we are here to  
8 summarize the proposals that we have made for your  
9 consideration.

10 Joining me at the table are Carl Paperiello,  
11 Director of the Office of Nuclear Material Safety and  
12 Safeguards; Don Cool is the Director of the Division of  
13 Industrial and Medical Nuclear Safety, NMSS; and John  
14 Lubinski, who has been the Project Manager on the  
15 development of this rule.

16 With that, let me jump right into the presentation  
17 and turn it over to Don Cool.

18 DR. COOL: Good morning, Madam Chairman and

19 Commissioners. Today -- and if I can go right ahead to  
20 Slide Number 2 -- I want to briefly outline for you the  
21 proposed rule changes that you have in front of you that  
22 were in the SECY paper that discussed the options that we  
23 looked at in terms of collecting fees from general  
24 licensees -- that also is part of the paper that was  
25 provided for you -- and then to briefly update you on the

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1 status of the rest of the project, because this is in fact  
2 more than a single rule. There are a whole series of  
3 related and coordinated activities in order for us to  
4 actually be able to implement this program of which this  
5 rule is only one particular piece.

6 Slide 3 gives you just a quick outline. I'll  
7 spend a couple minutes on the first rule, which actually  
8 formed the legal basis, spend the majority of the time with  
9 the rulemaking that you have in front of you and the fees,  
10 and then to briefly discuss how we have gone about in terms  
11 of participating with our industry groups and the Agreement  
12 States to try and make sure that this was moving towards a  
13 national program.

14 By way of background, and this is Slide 4, Madam  
15 Chairman, as you have pointed out, we have been looking at  
16 this and concerned about this for a large number of years.  
17 The genesis of this activity actually comes from the results  
18 of the NRC and Agreement State working group that looked at  
19 accountability devices and made a number of specific  
20 recommendations. Those recommendations were incorporated in  
21 the rulemaking that we have in front of us today.

22 This particular action along with a number of  
23 related actions result from the January briefing of last  
24 year and the April 13th Staff requirements memorandum that  
25 sent us off to actually do this particular work.

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1 If I could have Slide 5, I want to first spend a  
2 moment or two on a rulemaking which is already well underway  
3 but which is related to this activity. In our jargon down  
4 in the Staff this is Rule 1, which formed the legal basis  
5 for registration. That rulemaking, a very short rulemaking  
6 which was published in December of last year, provided the  
7 legal basis for us to actually establish a contact and  
8 return process. It added a new 10 CFR 31.5(c)(11)  
9 paragraph, which provided that the general licensee has to  
10 respond to requests for information from the NRC in 30 days  
11 or as specified.

12 It gave me the basis for going and specifically  
13 making those contacts and follow-up. That comment period  
14 closed in February. We received seven comment letters,  
15 three from the states, three from folks in the steel  
16 industry, and you will be hearing from them in a little bit,  
17 and one from an individual.

18 In general, all of those comments were very  
19 supportive of the rulemaking. They made a number of  
20 suggestions, a number of which were actually focused more  
21 towards the contents of this rulemaking than it was per se  
22 that specific legal basis.

23 When the Commission approved that proposed rule  
24 last October, you asked the Staff to specifically look at  
25 potential follow-up activities as a result of going through

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1 the rulemaking process -- this is Slide Number 6. As we  
2 usually do, we tried to provide copies of the rulemaking  
3 action to the affected class of licensees. This is one of  
4 the biggest ones around. We mailed 47,000 copies of that  
5 Federal Register notice to the general licensees who are  
6 general licensees under 31.5 of the regulations that went  
7 out on December 15th.

8 As of the end of March, we had not quite 9,000 of  
9 those come back as undeliverable. That is about a 20  
10 percent return rate, and if I look more specifically at the  
11 population of general licensees who would be subject to this  
12 registration program, that is approximately 6,000  
13 registrants, 816 or roughly 14 percent of those have  
14 currently come back as undeliverable.

15 We established a process with the contractor who  
16 currently manages the old mainframe database, the general  
17 license database, to try and do some follow-up activities.  
18 the first thing was to simply see whether we had the right  
19 mailing address and thus far, and they have only started of  
20 course the process of cranking through these, about a third  
21 of those are simply corrections to the mailing address  
22 accounting for those unreturns.

23 We have a process established where they will then  
24 go look, search the Internet, search local Chambers of  
25 Commerce, eventually try to make contact with vendors for

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1 whom we believe those devices are as additional steps to  
2 follow up, and then eventually come to a point where we  
3 would put regional resource into following up on some of  
4 these if we have not been able to establish why those  
5 particular licensees could not be contacted and as part of  
6 the FY 1999 planning and budgeting process we have  
7 reallocated some resource for the region out of my non-core  
8 inspection program for late in this fiscal year if that need  
9 arises in order to be able to cover that activity.

10 Moving then onto Rule 2, the rule which you have  
11 before you, in a brief overview of that rule, there are some  
12 clarifications in terms of the applicability of sections of  
13 Part 30 to Part 31. This is more or less housekeeping we  
14 are doing at the same time as going in and making some other  
15 amendments because over the course of time it was not clear  
16 that things like employee protection, providing complete and  
17 accurate information, deliberate misconduct provisions of  
18 Part 30 were applicable for this class of licensees, and so  
19 there are some editorial adjustments to make that clear.

20 There are some additions and clarifications to all  
21 of the 31.5 class of general licensees. Those are the  
22 gauging, measuring most of the fixed tritium exit signs, by  
23 far the largest class of general licensees that are in Part  
24 31. Then there are the specific provisions for those  
25 subcategories who would become registrants and we have taken

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1 this opportunity to make some additions and clarifications  
2 in the requirements that apply to the vendors of these kinds  
3 of devices.

4 Moving on to the next slide, looking a little more  
5 at what we did for all of the 31.5 general licensees, first  
6 is to place a requirement in there to have an appointment of  
7 a responsible individual. Previously there has been a point  
8 of contact. That unfortunately has in many cases been the  
9 poor person down in the stockroom or ordering or purchasing  
10 who ended up being the person who had to actually sign the

11 little slip in order for them to be able to buy it and had  
12 no ongoing knowledge of or other activities associated with  
13 where that went and how it came about.

14 This would now put in place the requirement for  
15 the general licensee to specifically identify an individual  
16 who would be responsible for this and would be able to  
17 execute the responsibilities that the general licensee has  
18 in terms of that device.

19 It adds some requirements for change of address  
20 reporting. As we already have seen, a good third of the  
21 initial returns were simply because the post office box had  
22 changed or something else like that, in order to try and  
23 keep that updated.

24 We would add to the report that gets made when  
25 someone comes in and takes over the factory, buys the

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1 factory, there is a change of ownership or other activities,  
2 so that that gets updated, including having whom the new  
3 responsible individual is if there is a change in those  
4 sorts of activities. Again, to try and make sure that there  
5 is an ongoing line of accountability and knowledge as those  
6 sorts of transactions happen, because again one of the  
7 things we have observed over the course of time, someone  
8 else comes in, someone else comes in, someone else comes in,  
9 over a 10 or 15 year period, the person who might have  
10 originally known a long time ago -- long ago and far away --  
11 moved on to something else and that chain of knowledge has  
12 been broken.

13 We would add to the report on the transfers of  
14 specific licensees a requirement for the recipient's license  
15 number, serial number, and the date of the transfer. This  
16 is another piece of information which is just critical if we  
17 are going to track each of the devices as they move through  
18 the system so that we know if the general licensee sends it  
19 back to the vendor or to some other licensee that we know  
20 where it went, which model it was, which serial number it  
21 was in order to be able to track those.

22 Then in addition to that we have added some  
23 restrictions on the time allowed in storage and the testing  
24 that can be done while it is in storage. This is in many  
25 senses very similar to equivalent timeliness rule provisions

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1 which are in place for specific licensees.

2 One of the things we have seen happen is a  
3 licensee will go through and do modifications of process  
4 lines or otherwise they will put it over in the corner.  
5 They will forget it is over in the corner. At some future  
6 time, maybe only a few months, maybe a few years later  
7 somebody will go through and decide to clean up that corner  
8 and bye-bye, the device is gone, and so this would restrict  
9 the amount of time that those devices could sit there.

10 COMMISSIONER MERRIFIELD: Chairman, may I ask a  
11 clarifying question?

12 CHAIRMAN JACKSON: Of course.

13 COMMISSIONER MERRIFIELD: See, I go first that  
14 way. You don't have to worry about chipping in later.

15 What information are we requesting of the  
16 licensee? Would it be their name, their address and their  
17 telephone number or are there any other identifying  
18 information we are asking?

19 DR. COOL: The general licensee who will become a

20 registrant, this rule will end up having them name, address,  
21 model, serial numbers, isotopes, activities, responsible  
22 individual, place of use.

23 COMMISSIONER MERRIFIELD: Okay.

24 DR. COOL: I may have missed one or two but that  
25 is the specific sorts of things that we would be looking at,

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1 and for which we would be tabbing and updating that each  
2 year.

3 COMMISSIONER MERRIFIELD: If I may make a  
4 suggestion, having dealt with some of this before, because  
5 we are having such difficulty tracking the people we have in  
6 the past I don't know if you have given some consideration  
7 asking they also provide the taxpayer identification number.  
8 That may also provide a source of information that would  
9 make it more easy for us to track them down in the future.

10 CHAIRMAN JACKSON: Since he started, I'll just ask  
11 one question and I'll come back. Has the Staff considered  
12 bankruptcy reporting for all 31.5 general licensees as  
13 suggested by the Steel Manufacturers Association?

14 DR. COOL: We have. This rule would apply it  
15 specifically to that category under the registrations, being  
16 the ones that posed the greatest risk, the ones with the  
17 contamination levels if you did break it then that device  
18 would always post the highest levels.

19 One of the things which in fact wasn't in that  
20 slide is it does clarify that bankruptcy notification would  
21 come in for a registrant.

22 COMMISSIONER DIAZ: That includes purely cessation  
23 of business, not necessarily financial bankruptcy -- if a  
24 business closes for any reason?

25 DR. COOL: John, let me make sure that you get it

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1 right.

2 DR. LUBINSKI: Actually I believe it is specific  
3 in the regulations in Part 30 and we are referencing the  
4 Part 30 regulation, which applies to specific licensees, and  
5 this is the filing of bankruptcy, either voluntarily or  
6 involuntarily under Chapter 11, so that is all it applies  
7 to.

8 DR. COOL: So you could get the financial or the  
9 reorganization.

10 COMMISSIONER DIAZ: That's it. I just wanted to  
11 make sure that specifically we addressed the issue of  
12 cessation lists might be more significant than bankruptcy.  
13 That's interesting.

14 DR. COOL: Moving on then to Slide Number 9, this  
15 rule adds the specifics for the actual registration program.  
16 The details for the registration, the criteria for the  
17 devices to be registered. This comes directly from the  
18 recommendations of the NRC Agreement State working group, 1  
19 millicurie of Cobalt, 10 millicuries of Cesium, a tenth of a  
20 millicurie of Strontium or a millicurie of Americium.

21 The Cesium and the Americium account for 75  
22 percent or so of the total number of devices that would be  
23 captured, which is roughly 24,000 and approximately the same  
24 percentage of the actual general licensees that are out  
25 there, a population that would be covered by this

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1 approximately 6,000 general licensees today and contains the  
2 specifics of the information that would be required upon

3 registration, which were the things that I just suggested to  
4 Commissioner Merrifield.

5 It would also add specifics associated with the  
6 registration fee and we'll get to the fee issue in just a  
7 moment.

8 COMMISSIONER MCGAFFIGAN: Madam Chairman?

9 CHAIRMAN JACKSON: Please.

10 COMMISSIONER MCGAFFIGAN: There is currently under  
11 study by the Staff the possibility I believe with a couple  
12 of Agreement States of adding about 1100 additional  
13 licensees if we -- to this category of folks that are going  
14 to be registered. It involves certain portable moisture  
15 density gauges, et cetera.

16 Where does that stand? When is that -- how are  
17 the two going to come together?

18 DR. COOL: The Commission's direction to us,  
19 because we had been looking at a specific application, was  
20 to get together with the states and to do that within the  
21 context of the risk review study, which the Staff had also  
22 had done. The Staff plans to have that available in June  
23 and to be entering that specific discussion with the states.  
24 I know Roland plans to address it and I don't want to  
25 specifically touch his -- I know there is great concern

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1 about portable gauges being registered. While safety is  
2 built into these devices for the most part, they wander  
3 around a lot more because they are portable, which  
4 immediately ups that probability of them getting somewhere  
5 where you didn't really want them to be. It's a lot more  
6 likely than if you bolt them to the steel I-beams somewhere,  
7 and so there will be a number of discussions this summer on  
8 that particular topic.

9 COMMISSIONER MCGAFFIGAN: Is it with all Agreement  
10 States or two particular Agreement States that I understood  
11 the discussion was likely to occur?

12 DR. COOL: We will have specific discussions with  
13 some of the states, and some of the others in particular. I  
14 fully expect before this gets done that it will have gotten  
15 vetted through the Organization of Agreement States.

16 COMMISSIONER MCGAFFIGAN: Okay.

17 Slide 10. The revisions for the vendors. There  
18 are some revisions to the quarterly material transfer  
19 reports. These reports are already required, there's  
20 updates and add some specificity to those to be more  
21 specific in terms of model number, serial numbers. The  
22 information on devices returned.

23 Another one of those things that happens that you  
24 don't necessarily get a good handle on is a GL will send it  
25 back and ask for a replacement. So we are asking that the

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1 vendors update those which they get back and replace with a  
2 different device, simply so that, again, we can track each  
3 of the devices by serial number through the different change  
4 in pathways.

5 From the vendors, the name and the phone number of  
6 the responsible individual that has been identified by the  
7 general licensee. That will actually be the first place  
8 that we will hear about that information when we get that  
9 quarterly report.

10 The address specified is the mailing address for  
11 the location of use. And this got to be a rather

12 interesting little thing because you can envision a couple  
13 of scenarios that wouldn't be particularly helpful to us.  
14 One being a corporate office which might be here in  
15 Rockville, Maryland. The actual place of use might be over  
16 in Tyson's Corner, Virginia. Well, it doesn't help me very  
17 much to go to Rockville, Maryland. I can't see the device  
18 or inspect it if I want to. Furthermore, Maryland -- that  
19 Maryland address would have led us to believe that it was  
20 agreement state general licensee, when, in fact, it was  
21 within our jurisdiction. So the address is specified as to  
22 location of use.

23 The other thing this helps us deal with is  
24 locations would end up being general licensees. So if you  
25 are a large corporation with many, many sites, each of those

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1 sites would effectively be a registration sheet with the  
2 five, ten, however many devices you had there, and I would  
3 have a separate sheet for the other one that you had in  
4 Richmond and the other one that you had over -- wherever it  
5 might be, so that we knew where those devices were.

6 We would add to the labeling requirements as  
7 suggested by that working group. More durable permanent  
8 labels associated with these particular devices, and some  
9 separate labeling associated with sort housings or other  
10 things if it became disassociated with the overall device,  
11 so that in the event that they do get separated and we are  
12 trying to track back, there is a higher probability of being  
13 able to identify and track it back to its originally  
14 intended location.

15 Some revisions to the vendor reporting  
16 requirements and the vendor record keeping. How long the  
17 records have to be kept, moved up to several years past the  
18 expected life or the known disposition of the device and  
19 some provisions, so that if a vendor goes out of business,  
20 there is still some provision that those records stay around  
21 so that somebody else can get to that information on an  
22 ongoing basis.

23 And revises the timing and the content of the  
24 information to be provided to the customers. In particular  
25 here, that information has to be to that customer prior to

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1 Theodore receipt of the device, rather than showing up sort  
2 of in the packing materials, which we all, of course, read  
3 all of the packing materials and instructions and the  
4 details and all those other things that come up with every  
5 little piece of appliance and things that we always get, and  
6 we always go through those in great detail. It is a little  
7 bit late after that to discover that you have got some  
8 obligations.

9 So this would make it a requirement for that  
10 information to be transmitted prior to the time, and would  
11 include applicable regulations which contain the  
12 requirements, the services that can only be conducted by a  
13 specific licensee such as servicing, change-outs.  
14 Information with regards to potential disposal options that  
15 would be available to the general licensee, and the  
16 regulatory point of contact, whether that be us or if it is  
17 being distributed to someone in agreement state, the  
18 appropriate agreement state regulatory point of contact.

19 Slide number 11. The resources to implement this  
20 program. And I think maybe one of the most important points  
21 here is that these resources go well beyond what you might



22 look at in terms of a typical regulatory analysis for this  
23 rule, because in fact these resources are the resources  
24 necessary for us to execute this entire program. And a good  
25 part of it is implementing that which already exists in the

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1 regulations. Licensees, general licensees have already been  
2 required to keep account of their devices, to provide  
3 certain reports to us. That hasn't always occurred. So  
4 this adds to it, the actual administration of the  
5 registration program, updating the database, sending out the  
6 registration sheet for them to check off this is an  
7 agreement, make the corrections, come back and then the  
8 follow-up activities that would be associated with that.

9 There are significant costs early in the program  
10 to do the follow-up and much of the cost that we have here  
11 is driven by the assumption that we are going to have to do  
12 fairly significant follow-up in the first couple of years of  
13 this program to sort out why there are inconsistencies, why  
14 there are discrepancies, and where those devices are.

15 COMMISSIONER DIAZ: Excuse me. Do you have a  
16 ballpark figure about what the extra cost to the licensees  
17 is going to be? Is it 10 percent more, 20 percent more,  
18 what they normally -- what they have been doing?

19 DR. COOL: For the licensees themselves, and I  
20 will make the assumption it is a licensee who has been  
21 complying with the existing 31.5, it is a relatively small  
22 amount. They will need to identify a responsible individual  
23 and tell me that. They will need to respond to my request  
24 and check those off, and they will need to send me in the  
25 fee. And that is really about all there is, because

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1 virtually everything else, they should have been doing  
2 already.

3 COMMISSIONER DIAZ: So that is minor.

4 DR. COOL: It is relatively minor.

5 COMMISSIONER DIAZ: The only real problem are the  
6 ones that have not been complying.

7 DR. COOL: For those who have not been complying,  
8 the story will not be the same.

9 CHAIRMAN JACKSON: Are there presently budgeted  
10 program areas that will be significantly affected by the  
11 enhanced program for generally licensed device licensees?

12 DR. COOL: This program is within the budget  
13 proposal that we are sending forward for FY 2000-2001 and  
14 the following years. I have it all covered under the  
15 planning, budgeting process that we have been going through.

16 CHAIRMAN JACKSON: So it won't have any negative  
17 impact on the other areas?

18 DR. COOL: That's correct.

19 CHAIRMAN JACKSON: Okay.

20 COMMISSIONER McGAFFIGAN: Madame Chairman.

21 CHAIRMAN JACKSON: Yes, please.

22 COMMISSIONER McGAFFIGAN: On the fee issue, not  
23 for the general licensees who are going to go into the  
24 registration program, but this year, FY '99, as I understand  
25 it from the paper, the costs are 8.6 FTE and \$910,000. How

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1 did we, in the fee rule that is out for comment at the  
2 moment -- since there is no registration program, we are not  
3 getting any money at the moment. How is that money handled?

4 Was there a category of licensees who -- the vendors, or  
5 whatever, who had a significant increase in their annual  
6 fees as a result of us starting this program?

7 DR. COOL: I will start, but I think I am going to  
8 try and turn to Mr. Turdici to perhaps provide you a little  
9 more. We are in fact eating that out of the smeared  
10 surcharge that gets charged across to all licensees.

11 MR. TURDICI: All material licensees, that is  
12 correct.

13 COMMISSIONER MCGAFFIGAN: So it is all material  
14 licensees.

15 MR. TURDICI: Share in that cost, that is correct.

16 COMMISSIONER MCGAFFIGAN: And what was the per  
17 licensee cost that -- if I could add it up, it is about two  
18 million bucks, so it is a few dollars per licensee, or \$10  
19 or \$20?

20 MR. TURDICI: I could look and see if we can come  
21 up with that number while we continue rather than holding it  
22 up right now. I don't know it right off --

23 CHAIRMAN JACKSON: Why don't we let him do that?

24 COMMISSIONER MCGAFFIGAN: Okay.

25 DR. COOL: The last item that I wanted to mention,

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1 the costs of the program, we would expect to decline. Quite  
2 frankly, our performance goal and, in fact, the metrics that  
3 we are setting up, success in great measure can be tracked  
4 by whether or not you see a consistent trend downward in the  
5 number of disconnects that you have each year. And so that  
6 is one of the performance goals and metrics that we have  
7 established for ourself. And as we get some years down the  
8 road and that settles down, we will look very hard at what  
9 we are actually expending and have that translate to the  
10 appropriate fee.

11 COMMISSIONER DIAZ: I notice that in the paper you  
12 were exploring, I think is the word, whether you could  
13 contract with agreement states to do some of the follow-on  
14 work. Had you progressed from that exploration? Is there  
15 anything you can tell us of how this is going to be done  
16 regarding agreement states?

17 DR. COOL: We are at this point still in  
18 exploration. We have been looking at the formalized  
19 arrangement which would end up being modifications to the  
20 agreements under 274. That has got enough red tape in it to  
21 gag almost anything.

22 It would be wonderful if I had 50 or 60 Jim  
23 Tedescos around who were doing things on their own and with  
24 whom. With informal activities we could do a bunch of  
25 things. Unfortunately, I know of only one of those, unless

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1 Joe was hiding some of the --

2 COMMISSIONER DIAZ: But we are discussing your  
3 abilities that you could actually --

4 COMMISSIONER MCGAFFIGAN: Madame Chairman, I have  
5 one more question, something that Don said.

6 You said this is really the cost for the whole  
7 program. And looking at your costs, they do decline. But  
8 is this really the whole program? There is also this  
9 program you are working with the states on, the CRCPD and  
10 the E-34 Committee for how to deal with sources once they do  
11 turn up, on a national basis, our share, the states' share,  
12 DOE's share, et cetera. And I guess EPA is funding that in  
13 the initial years.

14 Is this the whole program, or is this the whole  
15 program minus whatever decision is made on that program?

16 DR. COOL: Let's see, unfortunately, I am not sure  
17 which version of whole program. When I meant whole program,  
18 I mean my process of touching a general licensee, making  
19 sure they are in the database and following up with them.

20 COMMISSIONER MCGAFFIGAN: Not the other program.

21 DR. COOL: It does not include the activities that  
22 we might pursue with CRCPD or other groups to deal with the  
23 actual orphan source, nor does it deal with my routine  
24 program for responding to events, event tracking, the  
25 activities that we do in terms of interacting with DOE for

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1 pickups when sources are found in the public domain and  
2 those others pieces.

3 CHAIRMAN JACKSON: Mr. Turdici, do you have any  
4 intelligence for us at this stage?

5 MR. TURDICI: Depending on how it was budgeted, it  
6 depends on how we split the dollars among the specific  
7 licensees. For example, we take a portion out for agreement  
8 states. That then goes into our surcharge. At maximum, it  
9 would be probably no more than \$400.

10 COMMISSIONER MCGAFFIGAN: Per licensee?

11 MR. TURDICI: Per licensee. Because we have about  
12 6,000 licensees. Now, that is at the high side. I would  
13 have to go back specifically to see how we budgeted, how  
14 much was distributed back to the surcharge category, and how  
15 that was split out. Assuming zero dollars there, taking \$2  
16 million approximately and backing it into 6,000 licensees,  
17 we get approximately 4,000, at the high side. I would guess  
18 it is --

19 CHAIRMAN JACKSON: \$4,000 or \$400?

20 MR. TURDICI: I am sorry, \$400. Six thousand  
21 licensees, \$400 at the high side.

22 COMMISSIONER MCGAFFIGAN: But how many of those  
23 licensees -- I mean we are going to get into the fee roll,  
24 so we could probably just quit at some point. But how many  
25 of those get small business exceptions? Quite a few them,

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1 don't they? That they are capped by -- we try to reduce  
2 fees.

3 MR. TURDICI: That is correct. There is  
4 approximately \$5 million, I think this year in the fee roll  
5 it is even a little higher, that we supplement because of  
6 those small licensees.

7 Do we know offhand approximately how many? Twelve  
8 hundred of the 6,000.

9 COMMISSIONER MCGAFFIGAN: Okay.

10 MR. TURDICI: I can get specific information and  
11 feed that back to you on how we handle it in this fee roll.

12 COMMISSIONER MCGAFFIGAN: I have opened up a can  
13 of worms, I will back off.

14 CHAIRMAN JACKSON: Okay. Thanks very much.

15 DR. COOL: Moving on then to slide number 12 and  
16 the fee options. Last year you asked us specifically to  
17 look at the options for how to assess the fee. We looked at  
18 four fundamental different activities: A flat fee per  
19 licensee; a fee per device. Some sort of sliding scale, if  
20 you had 1 to 15, 16 to 50, or more than 50. We are trying  
21 to actually do a breakout of the actual costs that were  
22 expended to each licensee.

23 We looked at those options, trying to keep in mind  
24 several key activities and things, working very closely with  
25 Mr. Turdici's folks in the CFO's office, those being trying

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1 to recover the costs for providing the service. And when  
2 you look at the kinds of activities that I will be doing and  
3 how that relates, most of that in fact relates to a general  
4 licensee. I will send them out a registration.

5 The difference between sending out a sheet which  
6 has one or two devices and 50 devices is a few lines, as the  
7 computer spits out the package. Likewise, a follow-up.  
8 Once they have identified, I am following up with them  
9 whether it is one on the list that was out of sync or  
10 whether it is three, four, five of them that are out of  
11 sync. So a lot of the activities to be conducted translated  
12 to a pro licensee type of activity rather than translated to  
13 individual devices.

14 We were trying to use, to keep it a simple  
15 process, trying to keep it as simple and straightforward and  
16 the CFO's office was very concerned about trying to be  
17 consistent with the existing policies that they had laid  
18 before you. The net result of those considerations was the  
19 proposal that we have in the SECY paper for you of a flat  
20 fee per licensee rather than trying to move to something  
21 which would be a sliding scale or per device, or an actual  
22 cost per licensee.

23 COMMISSIONER MERRIFIELD: Chairman.

24 CHAIRMAN JACKSON: Please.

25 COMMISSIONER MERRIFIELD: It was not clear to me,

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1 if you have an individual that goes and purchases a new  
2 device that will be subject to this registration  
3 requirement, at what point would they have to pay a fee? Is  
4 there an overlap? I mean I don't understand when they would  
5 pay their fee.

6 DR. LUBINSKI: The way the fee is structured at  
7 this point it would be submitted with the application for  
8 registration. Currently, we are going to impose that by  
9 having NRC send out the request for registration. If  
10 someone is a brand new licensee, has not received any  
11 devices, that would be, quote, their anniversary date, if  
12 you will. We would send them out a registration form at  
13 that time requesting them to register. We get their name  
14 and information from the vendor to do that. That is the  
15 first time they would pay the fee. And then annually we  
16 would ask them to re-register.

17 However, if they are an existing licensee, an  
18 existing general licensee that has gauges, and they receive  
19 an additional gauge at that point in the process, they would  
20 not have to register that gauge with us until their current  
21 anniversary date, that is the next time that the  
22 registration occurs, and they will pay a fee at that time.

23 So what we are doing is calling it an application  
24 fee, but because the registrations will go out on an annual  
25 basis, it has the same effect as an annual fee for the

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1 general licensees. The reason we did that is we did not  
2 want to have someone who is receiving devices during the  
3 year, additional devices, be subject to two or three times  
4 the fee of someone else just because of timing.

5 CHAIRMAN JACKSON: You had another question?

6 COMMISSIONER MERRIFIELD: I have a comment, but I  
7 am going to hold that for later.

8 CHAIRMAN JACKSON: Okay.

9 DR. COOL: Okay. Moving in then to slide number  
10 13. The staff requested last fall the Commission's  
11 permission to do this rulemaking activity with early public  
12 input. The Commission agreed to that. So the Federal  
13 Register notice on this staff draft was sent out at the end  
14 of December. It made people aware that a staff draft of  
15 this rule was available on our web site.

16 Now, a number of people have taken a look at it,  
17 although not a whole lot of folks actually chose to upload  
18 comments via that web site. We have also gone through two  
19 rounds of interactions with the agreement states. An early  
20 version of this last fall was provided only to the agreement  
21 states, and specific discussion during the agreement state  
22 meeting in Bedford back in October, and then all of those  
23 folks again participating in and looking at the open  
24 discussions, and a specific request for the agreement states  
25 to comment during the December, January, February type of

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1 timeframe.

2 There were some contacts to the steel industry to  
3 try and make sure that they were aware that this was up.  
4 There was also a note of that in the Federal Register notice  
5 on Rule 1 which we discussed earlier, so that they were  
6 aware that this would be available, and a specific letter to  
7 the vendors, not necessarily a licensee, to make sure that  
8 they were aware, because it contained requirements that were  
9 changing for them. So we have done a number of those  
10 things.

11 COMMISSIONER DICUS: Madame Chairman.

12 CHAIRMAN JACKSON: Please.

13 COMMISSIONER DICUS: In addition, of course, to  
14 the steel industry and the vendors, as well as the states,  
15 what about companies that specialize in the demolition of  
16 buildings and plants? Has there been any contact with them?

17 DR. LUBINSKI: We have early in the process had  
18 contact with the National Association of Demolition  
19 Contractors on this rulemaking and moving forward. They  
20 have been on routine mailing lists on information. In this  
21 case they did not receive any specific phone calls for  
22 comments on this rulemaking package. However, they were in  
23 the past involved, even as far back as the working group in  
24 1995, kind of the link.

25 COMMISSIONER DICUS: What about the scrap

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1 recycling industry?

2 DR. LUBINSKI: The scrap recycling industry has  
3 also been involved. ISRI, the Institute of Scrap Recycling  
4 Industries are also on the mailing list. And with respect  
5 to this actual rulemaking, I can not say whether or not they  
6 were actually contacted. I believe they were, but I can not  
7 verify that.

8 DR. COOL: Slide 14. We talk about agreement  
9 state compatibility. Key to having a consistent national  
10 program is for our folks in the agreement states to also be  
11 moving in this direction. And here you will find some  
12 differences in views. The regulated community has supported  
13 a number of different forums. A relatively strict kind of  
14 compatibility in order to try and facilitate commerce, have

15 a consistent playing field, particularly vendors and other  
16 folks, and a lot of the steel manufacturers. Consistent  
17 approach no matter where you are within the country.

18 The proposal that is before you has two  
19 categories, that being first for the distributors, which  
20 would be a category B, elements essentially identical, so  
21 that all the vendors were providing similar sets of  
22 information, whether they were a vendor which was located in  
23 an NRC state or a vendor which was located in an agreement  
24 state, so that the database would be consistently fed with  
25 that kind of information.

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1 For the states themselves, for their requirements  
2 on general licensees, category 3, which is the essential  
3 objectives of the rule, essential objectives. Getting  
4 contact, maintaining accountability, having a responsible  
5 individual identified. But the exact approach that would be  
6 taken by the agreement state could vary. There are a number  
7 of states out there who are already doing something, they  
8 are ahead of us in this particular game. Illinois, Texas,  
9 Oregon, North Carolina, for example, have registration or  
10 registration like programs.

11 Presuming those had the accountability and touch  
12 sorts of things built in as part of the -- those, we would  
13 view as being compatible here. Likewise, if a state was  
14 doing this by a specific license, as we believe the state of  
15 New York is actually issuing a specific license and  
16 re-upping that each year.

17 Again, the underlying objective of contact and  
18 accountability being achieved, consistent with compatibility  
19 level C. We have tried to do this in such a way that those  
20 states that are out in front of us and doing the job don't  
21 have to go in and make substantial changes to their program  
22 just because NRC has finally gotten itself together and is  
23 moving forward in that arena.

24 There is one particular area where this package  
25 would specifically request comments, and that is with

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1 regards to some early implementation of the vendor reporting  
2 more quickly than the standard three years, which the  
3 agreement states are allowed to become compatible, so that  
4 we very rapidly get consistent vendor reporting information  
5 out of that. And that is the specific question that the  
6 package asks.

7 CHAIRMAN JACKSON: Please.

8 COMMISSIONER DIAZ: I was just going to ask, if  
9 those states that are really not away ahead of us, how do we  
10 plan to assist them in getting up to par? Do we have a  
11 program that looks at what agreement states will require to  
12 become, you know, compatible?

13 DR. COOL: We have done a lot of talking with them  
14 and in a moment or two, I am going to talk about some of the  
15 other pieces of the program. That was a consideration and  
16 part of the things that we were looking at as we were  
17 developing our IT solution. Can we build a system which,  
18 when they see it running, they will say, I would like to buy  
19 this? The details of how they might go about doing that,  
20 and exactly to what extent the NRC would provide that to the  
21 state, you know, provide assistance to them to modify it for  
22 their particular provisions and otherwise, is still being  
23 worked out. There are some precedents in terms of us  
24 providing assistance with the Internet to the events

25 database, and some of those sorts of things.

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1 The part that is going to be more difficult is the  
2 same problem that we have talked about a number of times,  
3 which is the initial follow-up of the activities. And  
4 there, short of us moving into an agreement state to  
5 follow-up on their activities, which I don't think would be  
6 too well received, that is going to be some resource that  
7 the state is going to have to find a way to deal with just  
8 as we have.

9 COMMISSIONER DIAZ: Okay. But if that become a  
10 very resource intensive issue, maybe the Commission should  
11 know.

12 DR. COOL: Certainly.

13 CHAIRMAN JACKSON: I think Commissioner --

14 COMMISSIONER MERRIFIELD: Commissioner Dicus can  
15 go first.

16 COMMISSIONER DICUS: Looking at what the state is  
17 doing with regard to their agreement state to their  
18 registration program, would that be part of the impact  
19 review? Is that intended?

20 DR. COOL: Quite frankly, we haven't gotten down  
21 to that level yet.

22 COMMISSIONER DICUS: Okay.

23 DR. COOL: It certainly could be at some point we  
24 try to look at the common elements. We might at some point  
25 be coming to the Commission with a revision to that

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1 management directive which could add some criteria. We have  
2 not yet at this point tried to draft up such an approach,  
3 this being only a proposed rule at this time.

4 COMMISSIONER DICUS: Okay.

5 COMMISSIONER MERRIFIELD: Was there in your IT  
6 analysis, was there some consideration given to trying to  
7 have an electronic database that is equally useful across  
8 the country? I mean it would seem to me that if you have a  
9 lost source that you find in a steel mill, you go to the NRC  
10 and you look at our database, then you are confronted with  
11 individual databases around the country. I mean if we don't  
12 merge that system together very well in an electronic  
13 format, it is going to be very non-user-friendly.

14 DR. COOL: To say the least.

15 CHAIRMAN JACKSON: Well, in fact, hasn't the  
16 American Iron and Steel Institute even recommended  
17 electronic reporting, and so it is kind of -- and then we  
18 have ATOM's implementation. So there is kind of a  
19 motivation to go in the direction that Commissioner  
20 Merrifield is talking about.

21 DR. COOL: There is. Part of the systems  
22 requirements that we were looking at was to try and have a  
23 system that was easily scalable so that I could go to that  
24 level and those number of inputs, if we had the interest and  
25 ability to move that. They are trying to have a system

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1 which would be sufficiently user-friendly and comfortable  
2 that they would want to buy into the process, because that  
3 would be important.

4 It has provisions for electronic access, although  
5 that is not built into this system, that being pacing with  
6 the agency's other activities in terms of electronic

7 transmittal and submissions of information that will come  
8 along with the ATOM's part. So I haven't tried to build  
9 that into the system, but the system requirements included  
10 provisions for those kind of interfaces to be available and  
11 ready.

12 COMMISSIONER MERRIFIELD: Just to provide prior  
13 advertising, I would be interested in getting the states'  
14 view on that issue as well, because the coordination between  
15 the agreement states and between us is very vital, I think,  
16 to make that work.

17 DR. COOL: Did you want to add something?

18 DR. LUBINSKI: If I can add to that. In the  
19 comments, as you are saying, from the agreement states, and  
20 their views on that, a couple of issues that do come up that  
21 would be very much hurdles in the national database of  
22 generally licensed devices is, number one, to actually do  
23 that in an effective manner, you would have to change the  
24 compatibility requirement of this general license rule to a  
25 compatibility B, which now means that you would have to go

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1 to some of the states that currently have registration  
2 programs and require them to make changes to their program.

3 You would also restrict -- one example Don gave  
4 was allowing states to issue specific license, rather than  
5 general license registrations in this area. That would  
6 restrict that type of program and would require the states  
7 to implement general license registration programs. So that  
8 is one of the concerns that the states would need to  
9 discuss.

10 The second would be --

11 COMMISSIONER MERRIFIELD: If I can stop you here  
12 for a second.

13 DR. LUBINSKI: Sure.

14 COMMISSIONER MERRIFIELD: I appreciate that. I  
15 mean my concern is here, we are at a steel mill, or we are  
16 at a facility. We have found a device, it is now lost -- or  
17 is now found. We don't know who the rightful owner is. And  
18 it is a question of, you know, how do we come up with a  
19 system that works right? And what I am getting here is we  
20 can go to the NRC, and if it is a non-agreement state and it  
21 falls within that category, we can get it. But, otherwise,  
22 we are going to have to go state by state by state, and that  
23 seems cumbersome.

24 DR. LUBINSKI: I agree with your statement. And I  
25 guess what I was trying to only provide is not any arguments

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1 against your statements, but more in talking with the states  
2 and getting feedback, just some issues that we are going to  
3 need to be aware of. Because if we do decide to go to that,  
4 this is one issue.

5 The second is confidentiality of information.

6 Much of the information is submitted -- or all the  
7 information currently is submitted by vendors of the  
8 devices, and they have requested, because this is their  
9 customer list, to keep this proprietary. Now, the question  
10 is, when you have one national database, can we keep  
11 agreement state information proprietary, or withhold that  
12 information from public disclosure? And vice versa, can the  
13 states withhold ours from public disclosure since they have  
14 access to the system? Again, not that there is an argument  
15 against a national database at this point, just these are  
16 some hurdles that would need to be overcome in achieving



17 that objective.  
18 CHAIRMAN JACKSON: Yes, but presumably, you know,  
19 that is true with automobile registration, I mean, and, you  
20 know, you are able to track them down. So it just strikes  
21 me that this is a resolvable issue. It just -- it is going  
22 to require some little thought put to it. It doesn't make  
23 sense otherwise.

24 You, yourself, Dr. Cool, talked about having a  
25 licensee whose headquarters is in one place and the use of

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1 the device or devices is somewhere else, and it could be a  
2 different state. And it may not even be contiguous states.  
3 And so one has to really have an ability to track these  
4 around. So I don't see that one can get away from the issue  
5 of some national database. And so I think these issues are  
6 going to have to be addressed.

7 Commissioner McGaffigan, did you have a comment?

8 COMMISSIONER MCGAFFIGAN: No.

9 CHAIRMAN JACKSON: Please.

10 DR. COOL: Moving on then, slide 15. As I  
11 mentioned at the beginning of the discussion, there are a  
12 series of related activities in order for my folks to be  
13 ready to run this program. Part of the package actually  
14 submitted with the SECY paper included the draft standard  
15 format and content guidance document on NUREG-1556, Volume  
16 16, to help deal with these issues.

17 We have also been working on the inspection  
18 guidance instructions that would be necessary for our  
19 inspectors to do the follow-up activity, how to go about  
20 conducting that, and that will be ready in time to do the  
21 follow-up activities this summer, if necessary.

22 The Commission has already had an opportunity to  
23 examine how the proposal with the interim enforcement  
24 policy, and that was in fact published a little over a month  
25 ago. And we have already spent a few minutes talking about

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1 the IT upgrades. We are carefully pursuing through the  
2 system development life cycle methodology with the chief  
3 information officer. The staff is in fact in receipt as of  
4 yesterday of the contractor's formal proposal.

5 We have a date with the IT Business Council on I  
6 believe it is May 5th. And with their approval and with the  
7 EC's approval, we will go into the actual building mode of  
8 that process. We have completed the SEPIC analysis and that  
9 is what we will be briefing the IT Business Council on in  
10 just about two weeks. So we are moving along on a pace and  
11 right on the schedule which we had provided in a memorandum  
12 in January listing out the significant milestone dates in  
13 terms of the development of the system. And that system  
14 really is the pacing item for when I can actually send out  
15 the first wave of these cards, which would be by June of  
16 next year, that system completely on line, uploaded. The  
17 information from the existing general license database  
18 transferred over and actually sending out the actions.

19 COMMISSIONER MCGAFFIGAN: Madame Chairman.

20 CHAIRMAN JACKSON: Please.

21 COMMISSIONER MCGAFFIGAN: Can I ask on that, did  
22 we end up finding something that was cheap, commercial, off  
23 the shelves, something some other federal agency with a  
24 registration program already was using, or whatever?  
25 Because some of the numbers you shared with us earlier in

1 the year were sort of astounding for something that you  
 2 would think some of the programs we all get with our -- when  
 3 we buy a computer, again, we all get a database program and  
 4 it costs nothing. Maybe it is worth nothing, but they are  
 5 widely used by small businesses. And you guys were using  
 6 numbers several orders of magnitude higher, so.

7 DR. COOL: The analysis -- and I am going to be a  
 8 little bit circumspect here because we haven't gone through  
 9 the Business Council and things.

10 COMMISSIONER MCGAFFIGAN: Right. You are in  
 11 procurement mode, right.

12 DR. COOL: We looked at a range of options from  
 13 staying on the existing old mainframe system to a series of  
 14 things constructed with the same underlying SI base,  
 15 power-builder sorts of things which underlie the rest of  
 16 this agency's IT infrastructure, to a number of Access based  
 17 systems, the typical databases, and had that ranked against  
 18 a whole series of pros and cons in terms of usability,  
 19 expandability, and a variety of things like that.

20 The answer is there is no cheap one in the sense  
 21 that I am going to be able to walk down to CompUSA and buy  
 22 it for \$39.95 a package. What I can tell you is that this  
 23 analysis comes out and tells me that vis-a-vis staying on  
 24 the old system and trying to keep that running, I will  
 25 recoup the entire cost of the system in year one.

1 CHAIRMAN JACKSON: Let me just say this,  
 2 Commissioner, I think it would be appropriate to follow-up  
 3 your questions, in fact, with the CIO, because he mentioned  
 4 that it hasn't gone through the Business Council. And part  
 5 of the examination through the Business Council and by the  
 6 CIO office, in terms of the whole process for procurement of  
 7 this kind of a system, requires, in fact, addressing the  
 8 questions that you have brought up.

9 COMMISSIONER MCGAFFIGAN: The reason I am raising  
 10 the question, I didn't pile on when Commissioner Merrifield  
 11 was raising it, but for a state, an agreement state that is  
 12 going to be trying to do something similar, my suspicion is  
 13 that they are not going to be able to afford what we are  
 14 going to afford, even if it pays itself back as quickly as  
 15 you say. I mean they are going to try to find that \$39.95  
 16 thing at CompUSA. So in thinking about this, you know,  
 17 within the bounds of federal procurement confidentiality or  
 18 whatever, you may want to talk to some of the states about  
 19 what they are experiencing.

20 CHAIRMAN JACKSON: No, but I am saying that the  
 21 way this happens in this agency is he has his proposal.

22 COMMISSIONER MCGAFFIGAN: Right.

23 CHAIRMAN JACKSON: He has his user requirements in  
 24 terms of what the system has to be able to do. And, in  
 25 fact, it is the responsibility of the CIO, under the CIO

1 Act, to look for where the opportunity exists for  
 2 commercial, off-the-shelf software, and where it can be used  
 3 and to accommodate what we need. And so that is actually --  
 4 I mean rather than --

5 COMMISSIONER MCGAFFIGAN: Right. I understand.

6 CHAIRMAN JACKSON: He lays out what the  
 7 requirements have to be in order to do the job. Under the  
 8 regulations, the CIO has to do the job of getting it in the

9 most optimized way possible. And I think the issues you  
10 raise are valid in terms of compatibility and affordability  
11 by the states. And I think that has to be folded into the  
12 CIO's considerations. But I don't think we are going to be  
13 able to go any further on it with Dr. Cool at this point.

14 COMMISSIONER MCGAFFIGAN: My concern only -- what  
15 I have discovered I think in the time I have been here is  
16 that it is real hard for us to use commercial, off-the-shelf  
17 technology because of all the other constraints that come in  
18 from the ITC system itself.

19 CHAIRMAN JACKSON: We should then have the CIO,  
20 Mr. Gallante, come and sit at the table if we are going to  
21 pursue that, because I don't think we can get to it with Dr.  
22 Cool this morning.

23 DR. COOL: Let me put one final note on that, if  
24 you would allow me. Part of our --

25 CHAIRMAN JACKSON: You had better quit while you

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1 are ahead.

2 [Laughter.]

3 DR. COOL: Part of our process in fact  
4 specifically looked at a number of things the states were  
5 doing both in the byproducts material arena and some of the  
6 things they were doing on the X-ray registration side, as  
7 part of the CIO's requirements to go look at what was  
8 available.

9 Slide 16 then, and to wrap this up just very  
10 quickly. We have in front of you the rule which I believe  
11 would substantially improve our ability to track this class  
12 of folks, to understand where they are, to increase their  
13 accountability. We have looked hard at the costs to try and  
14 minimize the burden that is associated with that, to try and  
15 develop the IT infrastructure necessary to be efficient in  
16 that process as we execute the program. The package that we  
17 have in front of you makes the recommendation that the  
18 proposed rule be approved for public comment. This would  
19 formally put it in the Administrative Procedure Act Public  
20 Comment process and continued interactions with the states.  
21 And that completes my presentation.

22 CHAIRMAN JACKSON: Do any Commissioners have any  
23 further questions or comments? Commissioner Merrifield? I  
24 am going to go that way -- just go down the table here.

25 COMMISSIONER MERRIFIELD: Currently there are

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1 requirements, a variety of requirements for holders of  
2 general licenses. These requirements are specified in Part  
3 31 and include among other things accountability and proper  
4 disposal procedures.

5 Does the NRC have authority to enforce these  
6 actions, and given the fact we do not inspect licensees or  
7 general license devices, have we ever conducted enforcement  
8 actions against these licensees and why or why not?

9 DR. COOL: The answer is yes and yes. I do have  
10 the ability to do --

11 COMMISSIONER MERRIFIELD: Please explain.

12 [Laughter.]

13 DR. COOL: I do have the ability to go in and do  
14 inspections. Those have been pretty much done as a reaction  
15 to an event or other activity. I can cite a case we had  
16 just in the last -- a little over a year ago which involved  
17 an Americium source that showed up shredded in some

18 non-ferrous auto fluff, and we were in fact able with the  
19 assistance of DOE and the Los Alamos laboratory get a serial  
20 number off of that source. We were able to backtrack it to  
21 the general licensee who was supposed to have it. These  
22 were one of these folks who had taken them off the line,  
23 stuck them in a corner, and we in fact pursued enforcement  
24 action with them.

25 COMMISSIONER MERRIFIELD: All right. The second

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1 question I have is really going back to the fee issue we  
2 discussed earlier.

3 In Attachment 2 onto the paper that we were given  
4 it talked about the issue of sliding scales, of fees, and  
5 there was a very brief sentence on that, which concluded by  
6 saying the determination of -- I'm sorry -- the Commission  
7 has previously rejected the approach of using sliding fees  
8 and establishing fees and sort of close it off there.

9 It strikes me that one of the reasons we are in --  
10 we are undergoing a process to try to identify this because  
11 we have got a problem because these sources are lost. As a  
12 matter of old-fashioned common sense, it seems to me that if  
13 you have an individual who has one device and you have an  
14 individual that has 50 devices or 100 devices, there is a  
15 greater likelihood that the person who has got 50 is more  
16 likely to lose one, so there's some innate logic, it seems  
17 to me, of having a higher fee for someone that has a lot of  
18 devices versus someone that has one.

19 I am wondering in your analysis did you merely  
20 make the conclusion, well, the Commission has rejected this  
21 before and we don't really need to worry about it, or did  
22 you really go through the thought process to determine  
23 whether or not a sliding fee would be appropriate?

24 DR. COOL: Well, I believe we went through an  
25 analysis process, and I am going to turn to Jim in just a

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1 moment to talk about the CFO side of this.

2 In the end I think we came back to the issues  
3 associated with what was it costing me to follow up with  
4 their activities.

5 We did not try to go into a detailed what is the  
6 probability of a person who has one. He's probably going to  
7 pay attention because he's only got one. That curve  
8 probably actually isn't a straight downward slope or  
9 otherwise you'd get to a few and he's probably going to pay  
10 less attention. By the time he's got 50 or more, he may  
11 have a big enough program that he's in fact starting to pay  
12 attention again, because he's got enough of those and they  
13 have become more important to the business and his quality  
14 control aspect, so I am not quite sure that I am in fact  
15 able to quantify in any sort of serious way all of those  
16 influences back through, so I ended up coming back to  
17 looking at the issues of what was it costing me to do this  
18 work and how did that translate into my actions to the  
19 individuals which brought me back to the licensee --

20 COMMISSIONER MERRIFIELD: Let me put on my old  
21 hat. I remember having testimony up on Capitol Hill. You  
22 always get the small business folks from NFIB come in, who  
23 would say, gee, you know, you are treating me -- little  
24 small guy -- I got three employees -- the same as you are  
25 treating a big Fortune 500 company that's got 10,000

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1 employees and that is unfair. I have only got one device  
2 He's got 100 and you are charging me the same as you are  
3 charging him.

4 I don't know if you have gotten those responses  
5 yet. I would imagine we may.

6 DR. COOL: We may, and at this point --

7 CHAIRMAN JACKSON: Jim, do you have any comments  
8 you may wish to make?

9 MR. TURDICI: Only that part of our logic was that  
10 we were following the same logic that we do for specific  
11 licensees today. The specific licensees today, whether they  
12 have one device or 10 devices, they are paying one annual  
13 fee. This is a registration fee as opposed to an annual  
14 fee, but we followed that same logic.

15 We have been generally going toward -- and by the  
16 way, that annual fee includes any inspections that we may  
17 have. Recently in fact we have also included any amendment  
18 fees, so we are trying, we were trying as much as possible  
19 to make it as simple a process as possible and not burden  
20 the licensee.

21 Another approach would have been to separate and  
22 have a separate license fee strictly for registration and  
23 then any inspections that were performed, we can do it per  
24 the cost like we do for reactors, as an example.

25 That is another approach that can be taken that

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1 gets to your point of burdening. It would take the burden.

2 But as Don indicated earlier, we envision that  
3 early on we would be informing more inspections until we got  
4 this program further along and then the resources would  
5 diminish and so therefore would the price but that was part  
6 of the logic that we used in terms of the policy we kind of  
7 established on this specific side.

8 CHAIRMAN JACKSON: Commissioner McGaffigan?

9 COMMISSIONER MCGAFFIGAN: I see you are  
10 bouncing --

11 CHAIRMAN JACKSON: I am not. I am going in an  
12 order.

13 COMMISSIONER MCGAFFIGAN: Okay. It just wasn't  
14 clear to me what the order was. Now it is.

15 CHAIRMAN JACKSON: Now you know.

16 COMMISSIONER MCGAFFIGAN: Now I understand.

17 [Laughter.]

18 COMMISSIONER MCGAFFIGAN: The EPA unfortunately  
19 wasn't able to be here today because the person is ill but  
20 my understanding is they are quite supportive of what you  
21 have been doing and have been involved in discussions with  
22 you.

23 DR. COOL: Yes. I had a discussion with Mary  
24 Clark of EPA, who was the individual who was close to the  
25 effort, unfortunately, she is ill, about a week and a half

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1 ago. They are very supportive of these activities.

2 As I believe you mentioned, Madam Chairman, EPA in  
3 fact has provided some of the initial funding to CRCPD,  
4 looking at related issues in terms of orphan sources and  
5 otherwise. This is an arena where we are in fact working  
6 very well together.

7 COMMISSIONER MCGAFFIGAN: Thank you.

8 CHAIRMAN JACKSON: Commissioner Diaz.

9 COMMISSIONER DIAZ: Yes. I know that the answer

10 to this question changes according to the issue, but you  
11 have proposed to have a press release before the notice goes  
12 to the Federal Register and on occasions we have found that  
13 that works and on other occasions we found that that doesn't  
14 work.

15 Is there a particular reason why we should have a  
16 press release that does not have the specific date or the  
17 information in the Federal Register or would it be better  
18 just to do it with the notice in the Federal Register so you  
19 have the proper information at that time?

20 DR. COOL: Quite frankly, I am guilty of trying to  
21 anticipate, based on your desire to have a press release  
22 immediately after the meeting last year.

23 COMMISSIONER DIAZ: I was wondering whether that  
24 was the issue.

25 [Laughter.]

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1 CHAIRMAN JACKSON: See, we are at fault as  
2 usual --

3 DR. COOL: As you wish --

4 COMMISSIONER DIAZ: No, I know that Commissioner  
5 McGaffigan's particular -- you normally have some preference  
6 in the way these things are. I wonder if you want to state  
7 them.

8 COMMISSIONER MCGAFFIGAN: I have not a clue.

9 [Laughter.]

10 CHAIRMAN JACKSON: I hope that's not the  
11 deal-breaker. Commissioner Dicus.

12 COMMISSIONER DICUS: Okay. You mentioned DOE a  
13 while ago and I want to make the point or at least one point  
14 that recognizing that whatever registry that we have at the  
15 NRC and to whatever extent we are to have some sort of  
16 national registry including those registered by the  
17 Agreement States, still we are only going to be covering  
18 just a portion of the devices, generally licensed devices,  
19 that are available, notwithstanding the norm material and  
20 accelerator produced, but DOE has a very large number among  
21 their contractors of these devices and I am aware last  
22 summer in some DOE rulemaking they did include a section on  
23 accountability of devices, but I have lost track of where  
24 that rulemaking is. I don't know if it's been finalized or  
25 not.

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1 Do you have a feel for DOE's program for registry  
2 of the devices that are under their control?

3 DR. COOL: Not in sufficient detail to want to try  
4 and risk representing them today. We could get you that  
5 information.

6 COMMISSIONER DICUS: I think it might be useful to  
7 have a feel as to what sort of program they have given the  
8 fact that they have a rather large number of sources I think  
9 stretched over the DOE complex.

10 Another question that I have has to do, and maybe  
11 we are not far enough along in the program to address this  
12 at this time, but do you have criteria or have you thought  
13 of the criteria that you would want to have to make the  
14 decision that a device is indeed lost and we should not  
15 expend further resources looking for it?

16 DR. COOL: We have had long discussions on those  
17 but I don't have a number today, and in fact I am not sure  
18 that it actually boils down to a single number. I suspect  
19 it's going to boil down to a set of things which would

20 include the activity, how many years ago was the last touch,  
21 and perhaps several other things in terms of trying to  
22 decide how much further to send the inspectors and if it is  
23 a relatively recent one, I am probably going to do more than  
24 if it was last seen in 1970 because the rate of return on  
25 that is just simply not going to be as good.

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1 COMMISSIONER DICUS: Okay. I understand the Staff  
2 has seen Dr. Lipoti's slides, which contain some additional  
3 recommendations. Do you have any comments on those you  
4 would like to share with us at this time?

5 DR. COOL: I really don't want to pre-judge what  
6 Dr. Lipoti's going to say. I'll just make one or two  
7 general observations, which really is sort of potential next  
8 steps beyond this, because certainly there's been a lot of  
9 thought about getting this up and running and then perhaps  
10 where do you go from there.

11 There are certainly issues that we really  
12 seriously need to look at in terms of what about specific  
13 licensees who have devices which are essentially identical  
14 to these, and should we be recommending to you at some point  
15 trying to move those into this system as a better approach.  
16 We are looking at those issues.

17 Should we extend this to other kinds of devices?  
18 Well, if this proves to be an efficient and effective  
19 system, then we would certainly want to look at that and  
20 provide additional recommendations to you there. I don't  
21 know exactly how those play out, so I don't really have the  
22 ability today to tell you that on "x" date certain we will  
23 be making a specific recommendation, but those are high on  
24 our screen of awareness.

25 As we looked at our IT solution, in fact one of

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1 the things I was looking at was the expandability, and my  
2 basic bottom line on it was if every single thing I do out  
3 there ends up in this system, can we handle it?

4 COMMISSIONER DICUS: Okay. Now let me close with  
5 just a couple of quick comments, and I appreciate what you  
6 just said. I also appreciate the work that you have done  
7 and the Staff has done on this issue. It does represent a  
8 tremendous effort.

9 It's going to represent even greater effort in the  
10 next couple of years and that is definitely appreciated. It  
11 is good work.

12 I would also like to say that we do need to more  
13 forward as quickly and as effectively as we possibly can,  
14 because the United States is actually lagging  
15 internationally in this program. Other developed countries  
16 including developing countries already have registration  
17 programs, so we are a little bit behind the curve already,  
18 and I think we are all aware that the IEA has this on their  
19 agenda now as well and are beginning to establish these  
20 programs to help other countries establish them, so I just  
21 wanted to close with that comment. Thank you.

22 CHAIRMAN JACKSON: I want to thank the Staff very  
23 much. Now I will call forward the steel industry  
24 representatives who are present, and I am going to ask each  
25 presenter to be as succinct as possible, and we will try to

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1 discipline ourselves to be as succinct as possible.

2 COMMISSIONER MERRIFIELD: Chairman?  
3 CHAIRMAN JACKSON: Yes.  
4 COMMISSIONER MERRIFIELD: I assume we can  
5 represent to the individuals testifying that we've read  
6 their testimony and, therefore, a summary of that would be  
7 in order.

8 CHAIRMAN JACKSON: I think we've -- as the  
9 Commissioner has suggested, you can assume that we've  
10 actually read your testimony and, therefore, a summary would  
11 be in order. Why don't we begin with Mr. Hernandez.

12 MR. HERNANDEZ: Thank you, Chairman Jackson. Good  
13 morning. My name is Peter Hernandez. I'm Vice President,  
14 Foreign Relations, American Iron and Steel Institute, a  
15 non-profit trade association, which 38 domestic member  
16 companies account for about 70 percent of the raw steel  
17 production in the United States. I'm here to present AISI's  
18 views on the actions that NRC and its staff has taken or  
19 plan to take, in order to improve control over and  
20 accountability for generally licensed devices.

21 As you indicated, you've read our testimony and we  
22 appreciate the action that the Commission has taken thus far  
23 to really move this issue forward. And while we believe  
24 that the actions that you are proposing will go along way to  
25 address some of the concerns about lost sources, we are --

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1 we remained concerned that other devices hopefully will be  
2 put into the registration program, as time goes on, and you  
3 amass at least your initial database.

4 The -- as we noted in our February 16th comments,  
5 we believe the NRC should permit licensees to report  
6 required information electronically, in order to minimize  
7 the paperwork burden. And we, also, respect the Commission  
8 to develop a universal reporting form that can be used in  
9 filings with both the NRC and the agreement statements. And  
10 we think it makes sense to exclude from this registration  
11 program for generally licensees any generally licensed  
12 devices that appear on specific licenses, since they already  
13 have detailed -- more detailed reporting requirements under  
14 the specific license. In addition to supporting the  
15 December 2 proposed rule, we agree with the interim  
16 enforcement policy that was announced March 9th. And we  
17 believe that this interim enforcement policy should help  
18 prevent an interim melt during the time that elapses before  
19 the full registration program becomes operative.

20 As we noted before, however, simply identifying  
21 devices that cannot be accounted for is not sufficient. The  
22 Commission must also determine why the licensee cannot  
23 account for the device. And so an active role by the  
24 Commission comparing annual inventories and transfer reports  
25 and then resolving any discrepancies is a critical component

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1 of an effective oversight and accountability program. We  
2 believe any costs that would be involved and separate can be  
3 funded through additional fees of penalties that are levied  
4 on licensees with shortcomings and make follow-up action  
5 necessary.

6 As I also was gratified to see the other working  
7 group recommendations, such as requiring vendors to report  
8 to transfers and providing proper disposal information to  
9 customers and ensuring that devices being transferred be  
10 clearly visible and durable identification on labels are  
11 included in the staff's draft proposed rule of December 16,



12 1998. That was the date, by the way, that appeared on the  
13 Internet Website. The document, itself, was not dated,  
14 specifically. Moreover, given the severe consequences  
15 associated with the loss of accountability, we urge the  
16 staff's proposals to secure the resources needed to fund the  
17 registration program through fees imposed on general  
18 licensees is reasonable and appropriate. As holders as both  
19 general and specific licenses, our member companies would be  
20 willing to pay the proposed \$370 annual fee for this  
21 purpose. At the same time, we are encouraged to note that  
22 the NRC believes these annual fees will decrease over time.

23 While the staff's draft proposal deals with many  
24 issues involved in ensuring better control over and  
25 accountability for generally licensed devices, it does not

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1 address the problems that arise when there is a loss of  
2 accountability. Such losses have occurred in the past and,  
3 undoubtedly, will still occur in the future, though with  
4 reduced frequency, if the staff's draft rule is adopted.  
5 And I might just also make a side note that the steel  
6 industry is not the only major industry that could be  
7 affected by these sources. Any other industry that melts  
8 the hot metal, including aluminum and non-ferrous foundries,  
9 would also benefit from your actions.

10 COMMISSIONER DICUS: With regard to that, I'd like  
11 to point out, just very recently, the Commission has given  
12 us that guidance to work on the alternate source issue. So,  
13 that is under consideration.

14 MR. HERNANDEZ: Thank you, very much. This draft  
15 rule does not address this -- regarding the orphan issues is  
16 understandable and we appreciate the fact that you're  
17 working on it.

18 As we stated previously, under the current system,  
19 a person, who unwittingly and involuntarily takes possession  
20 of source device is an innocent victim of inadequate  
21 oversight. Yet, as a practical matter, if that innocent  
22 victim makes an effort to identify and acknowledge  
23 possession of the device, he or she must bear the burden of  
24 substantial costs for managing and disposing of radioactive  
25 material. The current system thus creates a disincentive

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1 for non-licensees to screen for radioactive devices and an  
2 incentive for them to pass the devices onto others, without  
3 notification when they are found. From the standpoint of  
4 accountability and public health, this is a perverse  
5 incentive structure.

6 A better system is needed to identify and remove  
7 radiation sources from the scrap supply. There must be a  
8 simple means for those who find the source to be able to  
9 dispose of it without incurring any costs. Non-licensees  
10 should be given an incentive, not a disincentive, to look  
11 for orphan sources and the materials to handle and to take  
12 appropriate action when such devices are found. The  
13 responsibility for removing and disposing and paying for  
14 disposal of orphan sources must be clearly assigned to  
15 appropriate government bodies, both domestically, where  
16 responsibility should be delineated clearly among DOE, the  
17 Commission, and agreement states, and internationally, since  
18 radioactive scraps may enter the U.S. recycling system from  
19 abroad. The government funding to accomplish this public  
20 health and safety objective must be made available through

21 new legislation, if necessary.  
22 Developing and implementing a coordinated  
23 international system to ensure that orphan devices are  
24 properly and safely removed from the scrap screen and  
25 disposed of properly is a project that should be given very

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1 high priority. Towards that end, the work being undertaken  
2 through the E34 committee should be expedited. And more  
3 generally, the Commission should do what is necessary to  
4 move forward on this issue, in parallel with its efforts to  
5 promulgate the staff's proposed rule.

6 In closing, I'd like to say that with its December  
7 2, 1998 rulemaking and the March 9th interim enforcement  
8 policy of 1999, we believe the NRC has taken an important  
9 first step to prevent a serious accident involving American  
10 workers in the local community. We urge the committee --  
11 the Commission to implement these measures promptly and to  
12 act with appropriate urgency on the remaining steps that  
13 need to be taken by publishing the staff's draft rules for  
14 public comment as soon as possible, and by adopting a  
15 program for the removal and disposal of orphan devices at no  
16 expenses to those who discover such devices in their  
17 possession. Thank you.

18 CHAIRMAN JACKSON: Thank you. Mr. Danjczek.

19 MR. DANJCZEK: Chairman Jackson, Michael Peters  
20 will be making the comments for us, please.

21 CHAIRMAN JACKSON: Okay.

22 MR. PETERS: Good morning. My name is Mike  
23 Peters. I'm the Vice President and Environmental Manager  
24 for SMI Texas. I'm speaking on behalf today of the SMA,  
25 which is a trade association of 59 North American steel

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1 companies. I've been working with the SMA's efforts  
2 regarding NRC and its efforts to improve accountability.  
3 I've participated in several meetings with NRC staff. These  
4 are some bullet points. And Chairman, you got our regular  
5 statement here, so I'm not going to read that.

6 The Steel Manufacturers Association, just to give  
7 you a background, is the largest steel trade association in  
8 North America and the primary trade association for the  
9 electric ARC furnace steel producers, which make steel from  
10 feed stock, for virtually 100 percent scrap. My company  
11 alone, with operations in Texas, Alabama, and South  
12 Carolina, recycles about two million tons of scrap each  
13 year. So, out of the -- we're one of the major participants  
14 and the beneficiaries of these new rules.

15 Last year, the industry recycled 50 million tons  
16 of iron and steel scrap, which would otherwise have been  
17 land filled or littered the countryside. Steel is the  
18 nation's most recycled material. With the SMA member  
19 companies recycling 80 percent of that 50 million tons, I  
20 guess it's easy to understand why this issue is important to  
21 us. Radioactive sources in the ferrous scrap supply produce  
22 significant, unanticipated economic consequences, and health  
23 and safety risks to our steel workers and to the general  
24 public. SMA member companies have taken the initiative to  
25 take unwanted and orphan radioactivity out of their mills

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1 and have become more of the second net to catch improperly  
2 discarded sources that escapes NRC's regulatory regime, and  
3 we do this at considerable costs to ourselves.

4 Member companies of the SMA have an interest in  
5 NRC's proposal, not only because we receive radioactive  
6 scraps or sources in our scrap supply, it's also because we  
7 are general licensees ourselves, and, therefore, be held to  
8 many of the proposed new requirements, also. The NRC has  
9 been aware of the lack of accountability and control on its  
10 general licensed programs since 1983. This is the first  
11 time that there was an inadvertent melting of a radioactive  
12 source at a steel mill and it's clearly within, we believe,  
13 the NRC's authority to amend its licensing regime. With  
14 respect to the proposal -- the staff proposal, on the  
15 responsible individual, all SMA companies already designated  
16 individuals within their own companies to be responsible  
17 with complying with NRC regulations. We believe that all  
18 licensees should be required to do this.

19 Regarding labeling, we support the NRC's proposed  
20 labeling requirements. And although I usually use the  
21 expression preaching to the choir, at this particular forum,  
22 I feel like I'm preaching to a house of bishops. But, I  
23 have some pictures here of some of the types of sources that  
24 we see coming in, in our scrap supply. If you haven't seen  
25 these already, you might find it amusing, if not

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1 interesting. With respect to labeling, we support the NRC's  
2 proposed labeling requirements, including the requirement of  
3 a permanent labeling. Steel companies have received, on  
4 several occasions, improperly discarded sources and source  
5 housing from which the labels have been removed. A marking  
6 of the serial number on the source housing will alert the  
7 NRC and the public to the existing of the missing source.

8 With respect to additional reporting requirements,  
9 we, also, support the additional paperwork requirements,  
10 such as requiring a license number and a date for all  
11 transfers. This information would provide additional  
12 verification of the licensee's identity and additional way  
13 for the NRC to monitor the sources it licenses.

14 Quarterly distributor notification: we support  
15 this particular provision, because it would alleviate the  
16 compatibility problem associated with the NRC agreement  
17 state regime, where the NRC can't track devices when they  
18 move from one to the other. The requirement will not add  
19 significant burden to current reporting requirements.  
20 Rather, this proposal would efficiently mend part of the  
21 regulatory net, by providing the NRC a mechanism to track  
22 sources of which it would otherwise could lose control.

23 Vendor control: it is more efficient for the NRC  
24 to control devices upstream, rather than downstream.  
25 Distributors are specific licensees and are limited in

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1 number. It's easier for them to report on sources they have  
2 sold to the approximately 45,000 general licensees.

3 Simplified notice to one office at NRC: the SMA  
4 supports the simplified notification procedure, because it  
5 encourages general licensees to notify the NRC of incidents,  
6 where sources become unsealed or lost, more promptly.

7 Bankruptcy notification: bankruptcy notification  
8 would bring to the NRC's attention facilities, in which  
9 there is increased likelihood of lost or improper discarded  
10 sources. It should apply to all licensees, regardless of  
11 whether they're included in the registration program.

12 CHAIRMAN JACKSON: What about Commissioner Diaz's

13 question about those, who has ceased completely?

14 MR. PETERS: I think the same thing holds for  
15 those. We don't see a whole lot of difference, from our  
16 standpoint, on that.

17 MR. DANJCZEK: If we had thought of it, we would  
18 have put it in our comments.

19 MR. PETERS: Also, I'd like to add the contacts  
20 we've made with the trade association that does the  
21 ventilation is also a very important one, too. We see that  
22 coming in quite a bit.

23 Notification before purchase: all prospective  
24 licensees should be notified of the general license  
25 requirements before they purchase these devices. By

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1 providing notice in the regulations and the potential costs  
2 of proper disposal, the prospective general licensee can  
3 make an informed decision, regarding the purchase. There's  
4 no excuse.

5 Finally, the \$370 registration fee: the current  
6 regulatory regime has shifted the cost of lax accountability  
7 on the steel makers, insurers, and the taxpayers. General  
8 licensees do not pay for their licenses, nor provide  
9 information directly to the NRC about the sources they hold.  
10 The costs also fall on the general public, in the form of  
11 increased risk to health, safety, from unanticipated  
12 exposure to dangerous levels of radioactivity. General  
13 licensees, who benefit economically from their manufacture,  
14 sale, and use should be required to shoulder their fair  
15 share to protect the public. Accordingly, the \$370 fee per  
16 source is not only equitable, but entirely reasonable.

17 In conclusion, the SMA supports the NRC staff's  
18 latest proposal in their current form, with a few  
19 modifications that we have suggested and urge their swift  
20 implementation. I always appreciate the staff's efforts in  
21 drafting this proposal. I look forward to working with the  
22 Commission, the staff on the issues that we have raised.  
23 We, also, applaud the comments, Commissioner Dicus, you made  
24 regarding accountability on the part of DOE. That's it.

25 COMMISSIONER DICUS: Your welcome.

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1 CHAIRMAN JACKSON: Okay. Thank you. Mr.  
2 Merrifield.

3 COMMISSIONER MERRIFIELD: Mr. Peters, in your  
4 testimony, you mentioned -- you believe that the fee of \$370  
5 per source is equitable. Here, we're saying -- really, it's  
6 not \$370 per source, it's \$370 per licensee, which is the  
7 staff proposal. I question the staff, as to the issue of  
8 whether we ought to consider the notion of having a sliding  
9 fee, so that licensees, who have multiple sources, might pay  
10 more than licensees, who have a single source. I don't know  
11 whether you or Mr. Hernandez had any comments on that issue.

12 MR. DANJCZEK: I might do, more from my  
13 background, as a general manager of steel plant. I don't  
14 know the number that we had in the plant, but there probably  
15 were 20 plus devices in the plant that I had. We had a very  
16 detailed program with how to do it. Individually, it needs  
17 to be controlled. I think the issue might be how best to  
18 control it. I don't think we're particularly -- on what the  
19 dollar amount is, as long as it's a reasonable amount  
20 vertically to the small users. I -- we don't think you made  
21 the mistake of the \$370. I don't know if you would say that  
22 or not, Pete.

23 MR. HERNANDEZ: Well, we are willing to pay the  
24 fee on our end. Right now, steel is not an investor --  
25 maybe, we --

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1 COMMISSIONER MERRIFIELD: Yeah, well, you members  
2 are a little bigger than some of those that have one source.

3 MR. PETERS: With regard to that, I think Tom was  
4 speaking on the part of the general licensee holder. As  
5 part of the scrap procedures, we would like to the fees be  
6 as high as they possibly can be, to make sure that people  
7 hold accountability.

8 CHAIRMAN JACKSON: Well, I guess it boils down to,  
9 does it make sense to have this structure and have it on a  
10 per source basis -- per source held or per license.

11 MR. HERNANDEZ: From our perspective, we would  
12 prefer to see it on a per license basis, because I agree  
13 with the comments made by the NRC, that companies that hold  
14 multiple sources tend to have professionals, who are charged  
15 with making sure all the requirements are met. And so,  
16 they're already bearing an increased cost for that. And if  
17 you really want this to work with minimal opposition, if you  
18 will, from larger sources of holders and to the single --

19 CHAIRMAN JACKSON: But, \$370 per source is not  
20 excessive.

21 MR. HERNANDEZ: That's true, but --

22 CHAIRMAN JACKSON: No, no, no, I'm not -- are you  
23 saying \$370 per source is excessive?

24 MR. HERNANDEZ: No. We're saying that our members  
25 would be willing to pay \$370 per license.

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1 CHAIRMAN JACKSON: No, no, no, I know, I know.  
2 And I --

3 MR. HERNANDEZ: I'm not sure the \$370 per source  
4 is -- you certainly would get a lot more money that way.

5 CHAIRMAN JACKSON: Well, if it's amortized over --  
6 if the net cost is amortized over the sources, in principle,  
7 it may be less per source. But, the real question is  
8 whether -- what approach -- or per licensee approach is the  
9 more equitable one.

10 MR. HERNANDEZ: If you took a per source approach,  
11 and let's say instead of \$6,000, you're now talking about  
12 \$60,000, and the fee would drop to \$37 per source, if that's  
13 --

14 CHAIRMAN JACKSON: But, it would be -- those with  
15 multiple sources would pay more than those with one.

16 MR. HERNANDEZ: Right. But, I think the  
17 difficulty is \$37 per source sufficient to get somebody's  
18 attention; whereas, \$370 might be.

19 CHAIRMAN JACKSON: Well, what you're saying is to  
20 put in, to be a threshold built in.

21 MR. HERNANDEZ: That's correct.

22 CHAIRMAN JACKSON: The attention getting  
23 thresholds.

24 MR. HERNANDEZ: Right.

25 CHAIRMAN JACKSON: Okay; all right.

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1 COMMISSIONER MERRIFIELD: The second question I  
2 have relates to, just from my understanding, particularly as  
3 it relates to -- and this is directed to Mr. Peters -- you  
4 got mills that you represent that are 100 percent -- you'll

5 use any version of product. It all comes from recycling of  
6 materials that were previously utilized in the marketplace.  
7 Where are the sources of those materials? Does, you know, a  
8 large percent of it come first through members of the  
9 Institute for Scrap Recycling? Or are you getting it  
10 directly from individual corporations that are getting rid  
11 of these materials? Just to give me some indication --

12 MR. DANJCZEK: I would answer that, sir, in two  
13 ways, if I might. First of all, I look at it from a source  
14 of materials. Since the steel industry produces  
15 approximately 20 percent of its production goes towards the  
16 automotive industry, you are -- you can see that 20 percent,  
17 or about 15 million cars a year are recycled. So, I would  
18 think that the first source, whether that's in shredded form  
19 or whatever form that's in, the automotive source.

20 In many cases, it varies. There's not a single  
21 answer. Michael could answer for his company, or if it's  
22 owned by CMC. In many cases, our members have relationship  
23 with scrap brokers, who are members of ISRI. Sometimes,  
24 they, themselves, own the scrap company. Sometimes, there  
25 are three or four brokers outside the gate, who manage it.

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1 I'm afraid that there isn't a singular answer, but in most  
2 cases, we're dealing through scrap companies, who prepare  
3 and marshal the material, as an oversimplified statement.

4 Michael, would you comment on your company?

5 MR. PETERS: Yes. We don't deal with those types  
6 of vendors. We go out and we go to mom and pop shops,  
7 whoever they may be, and bring in the scrap from them, sort  
8 of the collector yard.

9 COMMISSIONER MERRIFIELD: By mom and pop shop, you  
10 mean individual scrap dealers?

11 MR. PETERS: Exactly; exactly, yeah, bring those  
12 in. We, also, work through some of the larger scrap yards,  
13 some of which are owned by the company, some of which are  
14 outside. But, in some of those, we'll process the scrap  
15 ahead of time, by putting it through a shredder or something  
16 like that.

17 COMMISSIONER MERRIFIELD: Can some of these  
18 material may come from abroad, as well?

19 MR. PETERS: Uh-huh.

20 COMMISSIONER MERRIFIELD: What percentage of --

21 MR. PETERS: Of our scrap comes from abroad?

22 MR. DANJCZEK: The scrap from abroad may come in  
23 two forms. As a general comment, we are -- as a country, we  
24 are scrap exporters. We typically export -- if we generate  
25 60 million tons a year, we typically export about eight

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1 million tons. With the Pacific problem last year, I think  
2 it dropped to a magnitude of five or six. But, scrap does  
3 come -- for example, during the hard times in the former CIS  
4 countries, there's been a fair amount of scrap coming in. I  
5 don't know the numbers. I could supply them. They are  
6 available through Commerce, on what the import numbers are.  
7 I just don't know them off the top of my head. Do you,  
8 Pete?

9 MR. HERNANDEZ: I don't.

10 MR. DANJCZEK: I think -- I'm guessing -- I'm  
11 guessing on the magnitude of several million tons, like a  
12 two million type magnitude, while we export about six or  
13 seven million. But if that's wrong, we will supply that to  
14 staff.

15 CHAIRMAN JACKSON: Maybe if you could just that  
16 information.  
17 MR. DANJCZEK: Fine.  
18 CHAIRMAN JACKSON: Thank you.  
19 COMMISSIONER MERRIFIELD: Just as a follow-up of  
20 my last question, in the testimony both organizations have  
21 given this morning, you talked about the notion of having  
22 cost of the orphan sources picked up, so it's no longer  
23 placed on you, and presumably that might come from fees that  
24 we would impose on licensees. But, I guess some of the  
25 questions, since we haven't enforced from abroad and some of

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1 these working sources may be from non-licensees or may be  
2 from individuals, who are not registering in this program,  
3 we struggle here, because we're required to obtain  
4 reimbursement for what we do here at the NRC from our fees.  
5 But, we have made requests in the past for taxes to general  
6 revenues for individual programs. Do you believe that the  
7 cost of picking up on an orphan source program like this is  
8 something that is appropriate to pass on to other licensees  
9 or is this something that you believe would be more  
10 appropriate to pass on to general revenues?

11 MR. HERNANDEZ: I really -- we really would have  
12 no acceptance. However, I may note that we're not the only  
13 ones, who might detect a source, in terms of the economic  
14 disincentive. Many of the scrap dealers, who handle the  
15 material, are the first to come in contact with it. And so,  
16 it's important for them not to have an economic  
17 disincentive; for the mom and pop shops, who discover  
18 something, to turn this over in a very simple way to the  
19 government and let them take care of it and properly dispose  
20 of it.

21 MR. PETERS: Let me add one comment to that, that  
22 -- and, again, a preacher to the house of bishops here, but  
23 it's much easier to find a source, when the scrap is at its  
24 lease dense. Most of the scrap that we get is going to be  
25 brought in, in either 100 ton loads on a rail car or 20 ton

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1 loads in a truck. It would be much easier if we could have  
2 it found when it's coming in in a small pickup or whatever.  
3 So, if we can put that as far downstream as possible, it  
4 would make it, I think, the most efficient way of finding  
5 this orphan sources or whatever. So, if that gives you any  
6 sort of insight as to general revenue or source, you know,  
7 take that as you will.

8 CHAIRMAN JACKSON: Do you intend to have detection  
9 devices at the entrances to a facility?

10 MR. PETERS: No, we don't intend to; we do.

11 [Laughter.]

12 MR. DANJCZEK: Absolute. At every railroad  
13 access, at every truck, now it's on the magnets to the  
14 cranes. The liability is in -- one company had an  
15 experience of a \$16 million problem. We pay significant  
16 insurance bills to mitigate those risks. The insurance  
17 carrier and the companies insist on it.

18 CHAIRMAN JACKSON: Got you.

19 COMMISSIONER MERRIFIELD: Do you require scrap  
20 dealers that you deal with to provide -- to obtain equipment  
21 of that nature, as well?

22 MR. PETERS: Yes, we do. And we assist them, in a  
23 lot of cases. Our member companies assist the scrap yard.

24 If they are marginal economic profitability, we will assist  
25 them in putting in the appropriate equipment.

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1 MR. DANJCZEK: In both the AISI, I believe Pete  
2 and myself have had a lot of -- long relationship with ISRI,  
3 the scrap recyclers, and they have participated with us in  
4 seminars, etc. I don't think our views are significantly  
5 different, in terms of how it's managed, sir.

6 CHAIRMAN JACKSON: Commissioner McGaffigan?

7 COMMISSIONER MCGAFFIGAN: This is a question you  
8 all may not be able to answer, except to the extent that you  
9 own some of these sources. How much does a source -- what  
10 is the variation in costs, when you originally buy one of  
11 these 6,000 sources, we're going to put into the  
12 registration program? Is \$370 a year for 20 years a  
13 significant fraction of the cost or is it a trivial fraction  
14 of the cost?

15 MR. DANJCZEK: I can only answer for myself, the  
16 steel mills, and I'll mention two places where we have  
17 sources. We have thickness gauges off a hot strip mill. We  
18 have level detection sources on a caster to control the  
19 liquid level. The systems for those, not just the source --

20 COMMISSIONER MCGAFFIGAN: Right.

21 MR. DANJCZEK: -- you might answer, you don't just  
22 -- but during level two of the hardware -- are typically in  
23 the magnitude of several hundred thousand dollars, the steel  
24 mill equipment.

25 MR. HERNANDEZ: That's right; that's right. Also,

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1 our folks will use moisture -- the moisture density gauges  
2 that you made reference to in the draft proposal.

3 COMMISSIONER MCGAFFIGAN: In following up on  
4 Commissioner Merrifield, I do think -- this isn't a  
5 question, it's more a statement -- I do think that we run  
6 into these fairness and equity issues on parts of this  
7 program, maybe not all of it, maybe it's right, but the  
8 orphan source piece that we'll be working with other  
9 agencies -- EPA, for example, made a contribution to start  
10 the E-34 committee and that comes out of a general fund.  
11 Our involvement -- when it's an orphan source, all we can do  
12 is fine somebody and that fine goes to the treasury. But,  
13 then, our licensees, who are fine outstanding citizens, may  
14 get the pay.

15 So, there may well be fairness and equity issues  
16 that, as the Commission tries, thus far with minimum  
17 success, to get more of its fairness and equity issues into  
18 the general funds and off of the fee base, this may be a  
19 category that we need to consider. I just agree with  
20 Commissioner Merrifield on that.

21 CHAIRMAN JACKSON: Commissioner Diaz?

22 COMMISSIONER DIAZ: I want to just agree with that  
23 point.

24 CHAIRMAN JACKSON: Commissioner Dicus?

25 COMMISSIONER DICUS: I just want to make a

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1 comment, with regard to the radiation detectors and all the  
2 scrap metal companies. Perhaps, the states can address this  
3 even more. I've gotten away from it for a few years. But,  
4 many states, if not most states, have set up programs to  
5 assist -- this goes back to one of Commissioner Merrifield's  
6 earlier questions -- to assist scrap metal dealers, in



7 setting up these detectors, particularly some of the  
8 smaller, like mom and pop operations, and have gone out even  
9 to test them periodically for them. So, I just wanted that,  
10 as a matter of the record, if the states may be able to  
11 provide a little bit more information on that.

12 CHAIRMAN JACKSON: Thank you, very much,  
13 gentlemen.

14 I'd like to call forward Mr. Roland Fletcher and  
15 Dr. Jill Lipoti, Mr. Fletcher from the Organization of  
16 Agreement States and Dr. Lipoti from Conference of Radiation  
17 Control Program Directors. I have to tell you, I may have  
18 to leave before you are done. Mr. Fletcher, would you like  
19 to begin, please?

20 MR. FLETCHER: Chairman Jackson, members of the  
21 Commission, good morning, and it's once again a pleasure to  
22 come before you and to talk about this rulemakings.

23 I'm very pleased to bring you support from the  
24 Organization of Agreement States for this rulemaking and to  
25 recommend very strongly that this be given Commission

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1 approval and sent forward. Now, having said that, there are  
2 some things that have been noted that we would like to bring  
3 -- to have further concern, further discussion on. And  
4 though I represent Sam Marshall and the OAS executive, I  
5 must point out that there are bound to be some individual  
6 comments from some of the states on some of the issues.

7 You have, I believe, a summary of the main things  
8 that I wanted to talk about. Let me first of all point out  
9 that this is considered a very beneficial result of a joint  
10 undertaking between the Agreement States and the NRC. This  
11 is the kind of product -- beneficial product that the  
12 Agreement States have long worked for. As has been brought  
13 up in many cases, the whole aspect of locating and insuring  
14 the proper disposal of certain GL devices has been  
15 burdensome to the states, because, quite frankly, we just  
16 didn't know where they were and they would be located under  
17 circumstances that required our response, rather than our  
18 knowledge ahead of time, particularly at scrap yards,  
19 particularly orphan sources appearing at landfills. But,  
20 these are areas that the Agreement States have long been  
21 concerned about and we're very happy that this rulemaking is  
22 underway.

23 Let me point out some concerns that have already  
24 been elevated, with regard to GL devices. And one, I'm not  
25 sure this rulemaking addresses, and we may want to comment

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1 on further, and that is the fact the establishment of what  
2 constitutes a GL device, in certain circumstances. We have  
3 at least a few states that want to limit certain GL devices,  
4 particularly those that are gamma emitters to one currie or  
5 less. The problem is we have some specific licenses that  
6 have a lower activity and exposure concern than some of the  
7 general licenses, and we want to try to establish some kind  
8 of balance: beta emitters, 30 curries or less; alpha  
9 emitters, 1 currie. As I said, more specific comments are  
10 going to be brought forward in that area.

11 COMMISSIONER DICUS: Would those specific comments  
12 give the technical basis for these recommendations?

13 MR. FLETCHER: Yes.

14 COMMISSIONER MCGAFFIGAN: Madam Chairman, on this,  
15 it strikes me the comment may go beyond the rulemaking, in

16 some sense, because the comment essentially says that we  
17 should be moving devices into the specifically licensed  
18 category. Do we do that by rule or do we do that by  
19 guidance, at the current time, I honestly don't know. But,  
20 it could be that this comment may go, in legal terms, beyond  
21 the scope of the rulemaking, as proposed, and it would  
22 require separate rulemaking.

23 MR. COOL: Our view, at this point, is that it  
24 would need to be by rulemaking, and that is, in fact, part  
25 of what we were looking at with the materials restudy and

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1 that whole process, which should be within registration,  
2 which should be a specific license. The study, which you  
3 have in front of you, is one of the basis of understanding  
4 that baseline, understanding the kinds of risks, the kinds  
5 of barriers that can be imposed, and then come back and say,  
6 okay, what makes the most appropriate regulatory structure.  
7 But, then, that should be done by rule, with the additional  
8 rulemaking.

9 COMMISSIONER MCGAFFIGAN: But, you're not  
10 soliciting comment in this rulemaking on this subject. You  
11 intend to solicit comments in the future rulemaking on this  
12 subject, is that correct, as we understand that?

13 MR. COOL: You are correct. That is not in this  
14 rulemaking. That would need to be the subject of its own  
15 rulemaking activity and discussion. And I would expect that  
16 we would do that only after coming to you with an initial  
17 proposal, before we start through that process. Because,  
18 that would be one with a great deal of discussion. We would  
19 need to have all of the folks here and other ones. Because  
20 when we start to change a system like that, you've got some  
21 major ramifications to the system.

22 MR. FLETCHER: Also, there have been some  
23 discussion about some of the gauges. And, at this point in  
24 time, let me point out that the Agreement States have a  
25 great deal of difficulty allowing the gauges to be anything

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1 but specifically licensed. Now, I'm sure there are going to  
2 be more specific -- more comments on that. But, we have a  
3 great deal of problem with gauges being lost, stolen, etc.  
4 And one of the ways that we reduce that probability is to  
5 ensure that the program for radiation, safety, and control  
6 within the facility is maintained, an RSO was trained, is on  
7 board. Having someone, who is just given the responsibility  
8 for a device, doesn't measure up, at least in current  
9 thinking, to the RSO that would be required for these types  
10 of devices. So, we're really concerned about not, you know,  
11 expanding into that area, for the time being.

12 Right now, the Agreement States -- the 30  
13 Agreement States probably have about 70 percent of the  
14 specific licenses. I would imagine that the general license  
15 numbers are within the same ballpark, as far as their  
16 locations are concerned, and we have a very high vested  
17 interest in insuring that this rulemaking, this registration  
18 goes forward and helps improve our ability to maintain a  
19 level of control.

20 CHAIRMAN JACKSON: When you say the exit signs,  
21 static eliminators, and counterweight should be allowed -- I  
22 mean, are you suggesting a definition -- a change in the  
23 definition of general -- of what should be a general license  
24 device?

25 MR. FLETCHER: Well, I think -- yeah. That ties

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1 to the other comment, that requires separate --  
2 CHAIRMAN JACKSON: Right. And so, again, I mean,  
3 if we're talking of changing the definitions, you know, in  
4 terms of categorization of the device -- of the licenses,  
5 then those both would be required.  
6 MR. FLETCHER: Have to be addressed.  
7 CHAIRMAN JACKSON: So, they -- are you suggesting  
8 that we ought to hold up the rule that's been proposed, in  
9 order to address these questions? Or are you --  
10 MR. FLETCHER: No, I don't want to --  
11 CHAIRMAN JACKSON: -- saying this is something  
12 that should be addressed?  
13 MR. FLETCHER: I think it's something that should  
14 be addressed. I don't want the rule to be held up to  
15 address it. But, it is something that the Agreement States  
16 would like to have addressed.  
17 On one of your other points, and I will just now  
18 try to remember some of the points that were made that you  
19 wanted to me to address, as far as the equitability of  
20 whether or not a licensee should be assessed per one -- per  
21 each source or per total number of sources, and I think Dr.  
22 Lipoti is going to cover it in more detail, we turn to what  
23 we do in our radiation machines program, my x-ray machines  
24 program, whereby we have a registration program and it is on  
25 a per machine basis. So -- because, from our philosophy,

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1 the larger facilities also have the ability to multiply  
2 their use of the device and, therefore, their profit making,  
3 and, therefore, it should be on a per source -- from our  
4 perspective, it can be on a per source basis.  
5 The only other thing I'd like to comment on is, as  
6 far as the system is concerned, to ensure that all states  
7 can implement the same system. There are various way of  
8 approaching this, and I realize cost is one of things that  
9 we have to consider, and I think, once again, Dr. Lipoti is  
10 going to go into more detail. But, we have systems, whereby  
11 in order to insure a maximal system, and I can only think  
12 about the mammography quality assurance program under the  
13 Food and Drug Administration, whereby to insure that  
14 everybody was on the same page and had the same basis of  
15 communication, there was a distribution of the devices and  
16 the communication systems to every state, and that way there  
17 was an insurance that every state was reporting the same  
18 information the same way.  
19 I'll now --  
20 CHAIRMAN JACKSON: I think Commissioner Merrifield  
21 has a comment that he has to make, because he has to leave.  
22 And, unfortunately, I'm going to have to leave in a few  
23 minutes.  
24 COMMISSIONER MERRIFIELD: I'll just make it brief.  
25 Madam Chairman, thank you, very much. I just did want to

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1 make mention, and I appreciate the states coming in, and I  
2 apologize for having to leave, as I have another engagement  
3 coming up, but I will instruct my staff to carefully go  
4 through your testimony. I will review it in the transcript.  
5 And I look forward to -- I did have a question that I  
6 posited earlier about coordination between the states and  
7 the NRC in the electronic database, and I particularly look

8 forward to your response to that. And I appreciate the  
9 initial response on the fee issues.  
10 Thank you, very much. Thank you, Chairman.  
11 CHAIRMAN JACKSON: Thank you.  
12 COMMISSIONER MCGAFFIGAN: Madam Chairman, can I --  
13 the Food and Drug Administration president, basically, is  
14 distributing the software, is that what I understood you to  
15 say.  
16 MR. FLETCHER: Hardware and software.  
17 COMMISSIONER MCGAFFIGAN: Hardware and software.  
18 How much was that?  
19 MR. FLETCHER: I don't know what the cost is. I  
20 can probably --  
21 COMMISSIONER MCGAFFIGAN: But, they basically gave  
22 you a computer terminal, which would be -- which would  
23 connect to theirs and the software to go with it and  
24 everybody then just --  
25 MR. FLETCHER: Yes.

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1 COMMISSIONER MCGAFFIGAN: Okay. I'm not sure  
2 we're going to get there.  
3 CHAIRMAN JACKSON: Dr. Lipoti, I'm going to have  
4 to apologize to you, too, but I do want to hear the first  
5 few remarks. So, I'm going to ask you to do me a favor and  
6 that is -- you know, they say sometimes the best talk is to  
7 say what your bottom line is in the beginning, give your  
8 talk, and then say it at the end. So, I'm going to ask you  
9 to tell me the bottom line, and then -- so, I know that I  
10 would have heard it. But, I, too, like Commissioner  
11 Merrifield, will weight everything that you said, in making  
12 any judgment on this rulemaking.  
13 DR. LIPOTI: Thanks. I had to provide comments by  
14 last Friday, but I only got the document on Tuesday. So, I  
15 changed my comments from last Friday and you should read my  
16 updated comments, because I did make changes, because you  
17 did make changes. Also, my comments are updated, because I  
18 received concurrence from the other members of the board of  
19 directors. There's a concurrence process in CRCPD; before I  
20 can speak to you on their behalf, I have to get concurrence.  
21 Six other states have unanimously endorsed these comments.  
22 The states are: Illinois, Washington, California, Texas,  
23 Alabama, and Massachusetts. And so, I think you have a good  
24 cross section of large states, small states, different  
25 demographics. And for them all to buy into this, I think

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1 it's a pretty strong statement of what states believe on  
2 this subject.  
3 The bottom line is I think you should add two  
4 things to the rulemaking before it goes out. One is a very  
5 brief change, and that is that you include a backup  
6 responsible individual, not just a responsible individual.  
7 That was recommended by the NRC Agreement State Working  
8 Group and it's not in the regulation. And it is really true  
9 that there is a lack of institutional memory, if that  
10 responsible individual moves on. And the responsible  
11 individual doesn't have the training that an RSO does, and  
12 so it isn't part of a big job description. And if you lose  
13 that responsible individual, nobody might look in his file  
14 to see that, in fact, they possess radioactive materials.  
15 And, in fact, there's no limit to the amount of GL devices  
16 at any facility. That responsible individual could have  
17 more radioactivity under their control, than an RSO at a

18 specific licensee. And so, I think it's essential that you  
19 include a backup.

20 CHAIRMAN JACKSON: Do you think the backup  
21 responsible individual, would it be the primary mechanism  
22 for maintaining institutional memory?

23 DR. LIPOTI: Yes.

24 CHAIRMAN JACKSON: So, there are no others that  
25 you think would be as effective?

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1 DR. LIPOTI: I don't think so. I think it's  
2 important to have a person.

3 CHAIRMAN JACKSON: Okay.

4 DR. LIPOTI: The second recommendation that I  
5 think should be considered before the rulemaking goes out is  
6 to include some guidance on what to do if an incident  
7 occurs. I made the suggestion of something like a materials  
8 AP data sheet, just because that's -- people have files,  
9 where they keep all the materials AP data sheets for all of  
10 the hazardous materials on their facility. It would be easy  
11 to have a fact sheet, or whatever you want to call it, in  
12 that file, so if there's an incident, they go there and look  
13 for what to do. And it goes along with that institutional  
14 memory and the ability to look up what should happen, in the  
15 event of an incident.

16 I realize that incidents at the facility are few  
17 and far between. But, even your own cost impact statement  
18 projects seven incidents per year, which would require you  
19 to look over a decommissioning plan. So, clearly, there are  
20 incidents where radioactive materials could get loose and  
21 you should have someplace to go for instruction.

22 Those are the only two -- you wanted the bottom  
23 line first, that's the only two that I think should hold up  
24 to the rulemaking, or should be put in place --

25 CHAIRMAN JACKSON: To put in place before the

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1 rules --

2 DR. LIPOTI: The other ones are comments on  
3 several other matters that I'll go on to talk about.

4 CHAIRMAN JACKSON: Please; go ahead.

5 DR. LIPOTI: I think that the prioritization of  
6 the first 6,000 facilities is correct, because it's based on  
7 experience and we have 40 years of experience with GL  
8 licensees, and the NRC Agreement States Working Group was  
9 correct in recommending those as the initial. But, like  
10 Roland, I suggest that we use the byproduct material risk  
11 review, as an opportunity for really determining what is an  
12 appropriate level for a general license and what is  
13 appropriate for a specific license. And I read your SECY  
14 paper 062 on that and I understand the schedule will now  
15 come out and the states will comment on that risk document.

16 The second one is sales literature. I still think  
17 that sales literature is an important way of conveying that,  
18 in fact, this product contains radioactivity. There is no  
19 requirement for the sales literature to say anything. And I  
20 don't know -- I mean, the buyers may think it works by  
21 magic, but, in fact, there's nothing that says that  
22 radioactivity is in this device, until they get the next  
23 communication, when they're about to buy it from the vendor,  
24 and that's when they find out that, oh, yeah, there's a lot  
25 of cost if you try and dispose of the device.

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1 CHAIRMAN JACKSON: Full disclosure.  
2 DR. LIPOTI: Right. So, I really recommend that  
3 that be an early disclosure.  
4 The third one is some definition of what might be  
5 inappropriate conditions for the use of these devices. Now,  
6 it's left to the manufacturer to advise those, who are  
7 purchasing the device, on what might be inappropriate uses  
8 of the device. And, in fact, there's an incentive for the  
9 manufacturer to say anything is appropriate, because then  
10 they can sell more devices; and that guidance from a  
11 regulatory agency, I think, would be useful.  
12 The rest of my comments are really in response to  
13 a number of other things that came up this morning. The  
14 orphan source program is a great program. And, although  
15 your direction on the orphan source program, the SECY paper  
16 99-038, was not public before this meeting, so I couldn't  
17 read it in preparation, I am happy that EPA, NRC, and DOE  
18 are working together on this program.  
19 Commissioner McGaffigan mentioned that this -- the  
20 rulemaking for this effort was supported by fees from all of  
21 the licensees. So, I have one of your NRC licenses. I'm a  
22 licensee. And, so my \$400 went towards this.  
23 CHAIRMAN JACKSON: Are you happy how it's done?  
24 DR. LIPOTI: It was well spent.  
25 CHAIRMAN JACKSON: Okay.

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1 DR. LIPOTI: But, next year, I'll pay the license  
2 fee again and I would suggest my \$400 perhaps should go to  
3 the orphan source program next year.  
4 [Laughter.]  
5 COMMISSIONER MCGAFFIGAN: This comes up in  
6 Congress all the time, Madam Chairman. We had something  
7 called the World Peace fund for those who didn't want to  
8 contribute to the Pentagon. I don't think in collecting  
9 taxes, the federal government lets people say just quite how  
10 they're going to --  
11 CHAIRMAN JACKSON: It would be 400, plus 370.  
12 DR. LIPOTI: Oh, no, I'm a specific licensee.  
13 I did want to commend you on the use of  
14 performance indicators and to say that we very much have to  
15 monitor the performance indicators on how well the  
16 registration program works for GL devices owners, how well  
17 the orphan source program works for providing recovery and  
18 disposition of those sources, and how well the international  
19 effort is going at detecting radioactivity before it enters  
20 our recycling facilities.  
21 We need to constantly make corrections in our  
22 regulations, to make sure that there are appropriate level  
23 of regulation. There's a wide range between volunteered and  
24 heavily regulated. We're always looking for the right  
25 price, where should regulators be. As a regulator in a

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1 state, there's a whole bunch of low-dose sources that are  
2 coming on the market now. And I look at the GL experience  
3 and I say, well, let's be very careful not to just dismiss  
4 these out of hand and let's find the appropriate level of  
5 regulation. So, I'm looking to your performance indicators,  
6 as well as ours, to see what the proper regulation is.  
7 The last comment I'll make is on the national  
8 database issue and the Food and Drug Administration has a  
9 national database for mammography. And they began with a

10 national database for inspection of mammography facilities.  
11 And all of our inspectors have laptops and their inspection  
12 information is uploaded automatically to the FDA database.  
13 And that enables the FDA to make some very good decisions on  
14 where they need to concentrate their resources.

15 CHAIRMAN JACKSON: So, let me make sure I  
16 understand. So, you think it's a good thing?

17 DR. LIPOTI: It's a good thing.

18 CHAIRMAN JACKSON: And you don't believe that it's  
19 impossible to do?

20 DR. LIPOTI: It's not impossible, because I just  
21 went from an inspection program of the states as accrediting  
22 bodies and our states as certifiers. It was a pilot program  
23 with Illinois, California, and Iowa. As long as managers  
24 got out of the way and let the computer people talk to the  
25 computer people, they solved the problems. And so, I think

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1 it is possible and they can use the FDA experience.

2 CHAIRMAN JACKSON: We want the Commissioners to  
3 get out of the way and let the computer people talk to the  
4 computer people.

5 [Laughter.]

6 CHAIRMAN JACKSON: On that note, let me just thank  
7 you.

8 DR. LIPOTI: Ask me questions.

9 COMMISSIONER DICUS: Okay. And I would point out  
10 that we do still have a quorum, so we can still go forward,  
11 except you can't leave.

12 [Laughter.]

13 COMMISSIONER DICUS: Commissioner Diaz, do you  
14 have a question or comment?

15 COMMISSIONER DIAZ: Well, I don't have some  
16 questions. I appreciate the comments and they will  
17 certainly be taken into account.

18 COMMISSIONER DICUS: Commissioner McGaffigan?

19 COMMISSIONER MCGAFFIGAN: I'll make a comment and  
20 it's to commend both the Organization of Agreement States  
21 and CRCPD for their efforts in this area. On the  
22 information technology issue, I don't know, and this  
23 question really goes to the staff, is it a requirement of  
24 the CPIC process, as you've been trying to put together  
25 proposals for how we're going to do this database, that

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1 there would be opportunities for the states to leverage it,  
2 if we're not going to quite provide laptops and the  
3 software, itself? Is that a requirement, at the moment, or  
4 is that something that you're not requiring?

5 MR. COOL: That is a requirement, which will field  
6 into our analysis. I don't believe that's a formal  
7 requirement of the CIOCPIC process, itself.

8 COMMISSIONER MCGAFFIGAN: It's not a formal  
9 requirement. But, in going forward, you're advocating that  
10 as a requirement for whatever is chosen?

11 MR. COOL: What we have, and this was in our  
12 systems specifications, and there are several -- the system  
13 requirements in the requirements documents, into the capital  
14 planning investment control analysis, which analyzes the  
15 options it would meet that set of requirements. Part of the  
16 requirements we laid out was usability with ourselves,  
17 expendability with ourselves, usability and supportability  
18 with the states, because we would want to try, if we could,

19 to move to that national system.  
20 COMMISSIONER MCGAFFIGAN: Okay. Well, there's a  
21 tendency to stovepipe everything and if there -- you know,  
22 if we need to encourage, I certainly encourage that we --  
23 that that requirement that you have in there be taken  
24 seriously, as the process goes on. We don't want to be  
25 penny-wise and pound foolish and do something that will hurt

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1 the compatibility issue. I'm not sure -- you probably  
2 shouldn't hold your breath for the laptops and the software.  
3 But, maybe even the software, itself -- I don't know whether  
4 -- you know, if it's off the shelf, it's a lot easier than  
5 if it's, you know, some proprietary thing that nobody is --  
6 they want to make money off of all of you guys. But, I hope  
7 that that's a requirement that sticks through the process.  
8 And I don't know quite -- as I said earlier, I don't know  
9 quite how we can, in a federal procurement setting, we can  
10 bring these folks in. But, maybe we need to find a way to  
11 make sure that what we're doing is indeed compatible or  
12 whatever.

13 COMMISSIONER DIAZ: Excuse me, and the software is  
14 probably the easiest, because, you know, everybody has  
15 enough hardware now. So, it's an issue of software more  
16 than the issue of the hardware.

17 COMMISSIONER DICUS: Good point. Thank you. I'd  
18 like to thank each of the presenting organizations for the  
19 information you've provided in this briefing. We recognize  
20 that it takes time and effort to prepare to come in, to  
21 provide this kind of testimony, plus just coming in and of  
22 itself. But, you provide invaluable service to us and to  
23 your own interest, and just want you to know how much it is  
24 appreciated very much. I'd also like to, again, thank the  
25 staff for a job well done. It's been, as I mentioned

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1 earlier, a major undertaking, but it is -- you've done a  
2 very good job and thank you.

3 The Commission, obviously, will give serious  
4 consideration to the views that we've heard today, including  
5 the new recommendations that have come forward and, also, in  
6 our review of the NRC staff proposed requirements, to  
7 improve the accountability of certain generally licensed  
8 devices. It does appear, and I'm gratified for this, that  
9 there is general agreement with the need to enhance control  
10 of generally licensed devices, without imposing an  
11 unnecessary burden. However, there are some issues that  
12 have been raised this morning that will require close  
13 attention by the Commission, as we go forward in our  
14 assessment of SECY-99-108. And I assure you, we will  
15 consider these issues, as we review the proposals.

16 Any further comments from the Commissioners? Then  
17 we stand adjourned.

18 [Whereupon, at 11:10 a.m., the briefing was  
19 concluded.]

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