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September 22, 2014

Subcommittee on Energy and Water Development  
Committee on Appropriations, SD-184  
Senator Dianne Feinstein (Chairwoman)  
United States Senate  
Washington, DC 20510  
202-224-8119

R.E.: FY15 EW OWT

Dear Senator Feinstein,

The Organization of Agreement States (OAS) is a voluntary, scientific and professional society composed of representatives of States (hereinafter designated as Agreement States) that have entered into an effective agreement with the United States Nuclear Regulatory Commission (hereinafter designated as NRC) under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689). The purpose of the Organization is to provide a mechanism for Agreement States to work with each other and with the NRC on regulatory issues associated with their respective agreements.

The Executive Board (Board) is authorized to conduct the routine business, activities, and any specific directives of the Organization, acting on behalf of, and in accordance with, the established policies and procedures of the Organization. We have reviewed the Subcommittee's 2015 draft appropriations bill dated June 16, 2014 and provide the following comments for its consideration.

1. The Board disagrees with the subcommittee using an appropriations bill for the creation of new security requirements. The Energy Policy Act of 2005 (Act) requires that civilian uses of nuclear materials and facilities be licensed, and it empowers the Nuclear Regulatory Commission (NRC) to establish by rule or order, and to enforce, such standards to govern these uses as "the Commission may deem necessary or desirable in order to protect health and safety and minimize danger to life or property." The Act states that Category 1 and 2 sources listed in the International Atomic Energy Agency (IAEA) Code of Conduct define the term "radiation source" for the enhanced security requirements. If Congress wishes to revise the list of radiation sources, it should update the Act.

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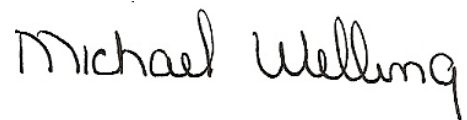
*Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin*

2. On page 68, the bill states that the NRC shall adopt and publish new mandatory security standards for all equipment using “High Risk Radiological Material”, which is defined as the 14 radionuclides identified in the 2010 Radiation Source Protection and Security task force report with activity levels greater than 10 curies. The Board is opposed to this approach as the NRC adopted security regulation provisions in 10 CFR Part 37 “Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material” on March 19, 2013. The Category 1 and 2 levels are derived from the IAEA code of conduct on the safety and use of radioactive sources. The delineation of 10 curies as the security activity level requirement equates to Category 3.5 of the IAEA code of conduct. In the 2005 Energy Policy Act, the standard was set as Category 1 and 2 of the IAEA code of conduct.
3. This bill requires the security standards shall be from criteria established by the National Nuclear Security Administration, Global Threat Reduction Initiative (NNSA/GTRI). These standards and equipment have been installed free of charge by GTRI for those licensees who volunteered. Requiring all licensees using greater than 10 curies of the 14 radionuclides identified in the 2010 task force report to follow these security standards will create a financial hardship. The Board disagrees with this process and requests that if these new security standards become law, that GTRI install the security equipment free of charge for all licensees.
4. On Page 69, the bill states that the NNSA/GTRI shall work with the NRC to establish and implement a training program for Commission and NRC Agreement State inspectors. The NRC currently has a training course (S-201 “NRC Materials Control & Security Systems & Principles) which is provided to Commission and Agreement State inspectors. The language should be revised to state “NNSA/GTRI staff may collaborate with Commission staff to provide security standards training to Commission and Agreement State inspectors”.
5. On Page 70 the bill states the definition of “High Risk Radioactive Material” as the 14 radionuclides in the 2010 task force report with activity levels of 10 curies or greater. The Board disagrees with using this definition as the IAEA is using Category 1 and 2 of the code of conduct as the security standards. This definition equals Category 3.5 levels. This definition would include the High Dose Remote Afterloader (HDR) unit which contains Ir-192 at levels greater than 10 curies. The HDR is used at thousand of medical facilities in the United States to provide radiation therapy treatment for breast cancer patients. Requiring this device to meet NNSA/GTRI standards would place a financial and equipment hardship on the licensees and would eventually lead to the loss of HDR units being used in the United States.
6. On Page 70 and 71 it discusses the NNSA/GTRI in-device delay mechanisms and states that it will be completed within 5 years. It also states that NNSA/GTRI will only provide 50% of the total cost of security enhancements. As stated in comment #2, GTRI has provided 100% of upgrade costs to date and that should continue for the newly required licensees if this bill is enacted.

7. The Board agrees with the concept of NNSA/GTRI providing 50% replacement cost for licensees who choose to exchange Category 1 or 2 sources for alternative technologies.
8. The Board wholeheartedly disagrees with section 402(f) "Licensing of Radiological Sources" on Page 72. The NRC and Agreement States are tasked with licensing the use of radioactive material for the benefit of society. High Risk Radioactive Material is used for medical therapy, inspection of pipe welds to ensure the safe passage of gas and oil and sterilization of food and products for our public health and safety. The security measures currently in place (10 CFR Part 37) are meant to enhance the Part 20 security requirements and protect the public from the malicious use of High Risk Radioactive Material. This bill does not provide the new security regulations time to prove their intent. This section also requires licensees to perform a feasibility review of non-radioactivity alternatives while the bill also states that NNSA/GTRI is to create a program to explore replacement technology. The Board does not understand how the subcommittee can place a burden on licensees of looking into technologies that do not exist and asks a government agency to begin the process of exploring the technology. Licensees should not be required to perform a feasibility study until NNSA/GTRI has either found equivalent technologies or creates them.

We appreciate the chance to comment on this subject, and stand ready to answer any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Michael Welling". The signature is written in a cursive, slightly slanted style.

Michael Welling  
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