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STONE & WEBSTER

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

30 March 2005  
DCS-NRC-000181

Attention: Rulemakings and Adjudications Staff

Subject: Docket Number 070-03098  
Duke Cogema Stone & Webster  
Mixed Oxide (MOX) Fuel Fabrication Facility  
Comments on Proposed Rule for Protection of Safeguards Information  
(RIN 3150-AH57)

References: (1) 70 FR 7196, February 11, 2005, Protection of Safeguards Information,  
Proposed Rule

This letter provides the Duke Cogema Stone and Webster (DCS) comments on the body of the proposed rule of Reference 1 concerning the protection of Safeguards Information. The DCS comments are provided in Enclosure 1.

If I can provide any additional information, please feel free to contact me at (980) 373-3787.

Sincerely,

Richard L. Sweigart  
Vice President, Regulatory Affairs

RLS/KLA/MAM:gdh

Enclosure: (1) DCS Comments on the Body of the Proposed Rule Concerning Protection  
of Safeguards Information

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Enclosure 1  
DCS-NRC-000181  
DCS Comments on the Body of the Proposed Rule  
Concerning Protection of Safeguards Information

- Comment 1 It is recognized that 10 CFR 73.22, for SGI, applies to reactors and licensees authorized to possess a formula quantity of strategic special nuclear material, etc. 10 CFR 73.23, for SGI-M, applies to licensees authorized to possess certain quantities of source and byproduct material and special nuclear material of moderate or low strategic significance. However, some materials licensees are authorized to possess, all as part of one license, in excess of a formula quantity of strategic special nuclear material, plus a significant quantity of source material, plus byproduct material. The proposed rule is not clear on how the licensee should or should not follow §73.22 versus §73.23 for material for which the section does not apply. It would seem burdensome for a single licensee to have separate SGI and SGI-M programs.
- Comment 2 The first paragraph of §73.22 is not clear when it refers to "... and fuel cycle facilities." Is it meant to apply to all fuel cycle facilities, or only those authorized to possess a formula quantity of special nuclear material, and not low strategic significance fuel cycle facilities (where SGI-M requirements would apply)?
- Comment 3 §73.22(a)(1)(iii) (and §73.23(a)(1)(iii), for SGI-M) is not clear when it refers to "emergency power sources." Is it meant to apply only to emergency power sources for alarm systems, or for any emergency power system?
- Comment 4 While the "need to know" requirement is not new, there is a new burdensome requirement for materials licensees that an individual to be authorized access to Safeguards Information (or SGI-M) have a comprehensive background check or other means as approved by the Commission (§73.22(b)(i)(B) and §73.23(b)(1)(i)). The proposed rule is not very clear on the implications of a "comprehensive background check or other means as approved by the Commission." If it is similar to the "Q" or "L" access authorization investigations or checks of 10 CFR 25, it is well recognized that it takes many months, or even more than a year, for such. Such a burden could not be tolerated by many licensees, especially for those newly developing an SGI or SGI-M program.
- Comment 5 The requirement in §73.22(d)(1)(i) regarding "... the individual authorized to make a ..." SGI "determination, and who has determined that the document contains" SGI is not clear (similar provisions are included in §73.23(d)(1)(i), for SGI-M). Are two individuals necessary, or does this imply one individual? Also, the requirement in this paragraph and the next paragraph, which are to be included on the first page of each SGI document, seem to be duplicated on the transmittal document (§73.22(d)(3)), and the necessity of such duplication is not apparent (similar duplication exists for SGI-M in §73.23(d)(1)(i) and (ii), and §73.23(d)(3)).

Enclosure 1  
DCS-NRC-000181  
DCS Comments on the Body of the Proposed Rule  
Concerning Protection of Safeguards Information

- Comment 6 The new requirements for portion marking SGI and SGI-M (§73.22(d)(3) and §73.23(d)(3)) are also burdensome, especially for the very broad SGI categories of (§73.22(a)(1)(xii)) “Engineering and safety analyses, emergency planning procedures or scenarios ...” (and the identical requirement for SGI-M in §73.23(a)(1)(x)).
- Comment 7 The requirement that information produced more than a year prior to the effective date of the rule implies that the licensee must back-mark SGI produced a year or less prior to the rule. It also implies that if the document is taken out of storage, even if more than a year old, it must be marked (§73.22(d)(4)).
- Comment 8 The new requirement prohibiting use of digital copiers connected to a network (§73.22(e), and §73.23(e) for SGI-M) is difficult in today’s electronic office environment.
- Comment 9 The new double packaging requirement for external transmittal of SGI (§73.22(f), and §73.23(f) for SGI-M), although not onerous, is akin to the protection afforded to classified matter.