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NUCLEAR ENERGY INSTITUTE



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NUCLEAR GENERATION DIVISION

September 29, 2006

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Rulemakings and Adjudication Staff
SUBJECT: Secure Transfer of Nuclear Materials (RIN 3150-AH90)
PROJECT NUMBER: 689

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI)¹ is submitting the following comments on the "Secure Transfer of Nuclear Materials" (RIN 3150-AH90) that appeared in the August 30, 2006 *Federal Register*. NEI supports adequate security during the transportation and transfer of radioactive and/or nuclear materials. NEI supports the proposed rule as drafted. NEI, however, recommends the Nuclear Regulatory Commission (NRC) take a holistic approach to security during the transportation and transfer of radioactive and/or nuclear materials. In addition the NRC should reconsider the introduction of concepts in a proposed rule which will be implemented in future rulemaking.

The proposed rule addresses exception from the requirements for background checks, including fingerprinting and criminal history checks, as a prerequisite for unescorted access to radioactive materials while in transit. The industry spent considerable resources trying to determine its applicability. The problem arose from the NRC assumption that all licensees who were issued orders concerning

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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RAMQC were already under a fingerprinting background check in accordance with 10 CFR 73.57 or due to the separate Orders for fingerprinting and background checks issued to a limited set of licensees. There are a number of licensees that were not issued the additional order but have personnel who come in contact with radioactive materials in transit who are not covered by existing rules. The NRC's perception is "all" staff at nuclear power plants are subject to 10 CFR 73.57. This is not the case. Personnel in shipping and receiving operations located outside of the protected area are considered outside of the nuclear power facility and do not require access to Safeguards information. Personnel holding these positions are considered non-nuclear workers and are treated similar to personnel at a trucking terminal operation and therefore, not subject to 10 CFR 73.57.

The second area of confusion was a result of the introduction of the discussion of the proposed rulemaking slated for late 2007 concerning unescorted access. The introduction of that concept in the proposed rule resulted in licensees trying to determine where this rulemaking ended and where that proposed rulemaking will start. This remains an unanswered question and continues to concern the industry.

NEI does not have any issues with the proposed rulemaking; however, we don't believe it accomplished the intended task the NRC envisioned. We would be glad to discuss this with the NRC at its convenience.

Sincerely,



Felix M. Killar, Jr.

From: "KILLAR, Felix" <fmk@nei.org>
To: <SECY@nrc.gov>
Date: Fri, Sep 29, 2006 4:33 PM
Subject: NEI Comments on Secure Transfer of Nuclear Materials

Attached is NEI's comments on the proposed rule.

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