



NUCLEAR ENERGY INSTITUTE

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OPERATIONS SUPPORT
NUCLEAR GENERATION DIVISION

October 9, 2008

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Comments on U.S. Nuclear Regulatory Commission Proposed Rulemaking, 10 CFR Part 73 - Criminal Penalties; Unauthorized Introduction of Weapons (*Federal Register Vol. 73, No. 171*), dated Wednesday, September 3, 2008. RIN3150-AI31

Project Number: 689

The Nuclear Energy Institute (NEI)¹ is pleased to have the opportunity to comment on the Nuclear Regulatory Commission's (NRC) proposed rulemaking concerning Criminal Penalties; Unauthorized Introduction of Weapons. *73 Fed. Reg. 51378*, September 3, 2008. The proposed rule would implement section 229 of the Atomic Energy Act of 1954, as amended, by authorizing the imposition of federal criminal penalties for the unauthorized introduction of weapons or explosives into certain facilities and installations. The NRC solicited comments on several specific topics, including: (1) the definition of the terms "dangerous weapons," "dangerous instrument or material," and "explosives," (2) the sufficiency of the proposed 90-day implementation period; (3) the sufficiency of the proposed performance-based signage requirements; and (4) the clarity and effectiveness of the language used. NEI's comments on each of these specific topics are included below.

Defining Terms

The proposed rule would authorize the imposition of federal criminal penalties for the unauthorized, willful introduction of any "dangerous weapon, explosive or any other dangerous instrument or material . . . into or upon" certain NRC-regulated facilities and installations. *73 Fed. Reg. 51381*. In addition, in the Supplementary Information published with the proposed rule, the NRC stated that weapons, explosives, or other dangerous instruments that are introduced without authorization

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

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SECY-02

would be considered "contraband" under paragraph I(d) of appendix G to part 73. Therefore, the actual or attempted introduction of weapons, explosives, or other dangerous instruments into a licensee protected area, material access area, vital area, or transport would be subject to the one-hour and 60-day reporting requirements contained in § 73.71(b) and paragraph I(d) of appendix G to part 73. *73 Fed. Reg. 51380.*

The NRC solicited comments on whether the terms "dangerous weapons," "dangerous instrument or material," and "explosives" should be defined in the final rule or in a regulatory guidance document, and if they are defined, what the definitions should be. Since the proposed rulemaking would impose federal criminal penalties for the unauthorized introduction of these items, NEI believes that these terms should be defined in the final rule. Defining these terms is also important because, as explained above, unauthorized introduction of these items would trigger the reporting requirements of § 73.71(b) and appendix G to part 73. NEI believes that it would be prudent for the NRC to engage other appropriate federal authorities, such as the Department of Justice, to provide clear definitions for these terms, and to ensure consistency with any other relevant federal law. The definitions could then be included in the final rule. After regulatory definitions of these terms are developed, the NRC could provide regulatory guidance to the industry, including specific examples, to illustrate implementation of the definitions.

90-Day Implementation Period

The proposed rule would also require certain licensees and certificate holders to conspicuously post notices warning that the unauthorized, willful introduction of dangerous weapons, explosives, or other dangerous instruments or materials is a federal crime. According to the proposed rule, these notices must be posted at every vehicle and pedestrian entrance to the protected area, or, if there is no protected area, at that personnel and vehicle entrances to each building containing nuclear or radioactive materials. *73 Fed. Reg. 51381.*

The NRC solicited comments on the sufficiency of the proposed 90-day implementation period for the posting requirement and on the feasibility of adding the notices at the entrance of the protected area, or at the entrance to buildings containing nuclear or radioactive material. NEI has surveyed a select group of licensees and the consensus of the group is that procurement and installation of signs containing the required notice would be feasible, however up to 180 days would be needed to ensure procurement and installation of the appropriate signage. Implementation time needs to be flexible and site specific based on plant schedules and weather conditions. Posting signs at the entrance of the protected area, or, if there is no protected area, at every entrance to buildings containing nuclear material should be sufficient. But, in addition to the postings required by the rule, licensees should also have the option to post the signs on roadways leading to checkpoints or parking areas so that individuals would have additional advance notice and, if necessary, could avoid the site (or at least the protected area) without incident.

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Performance-Based Signage Requirement

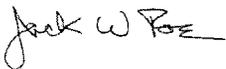
The proposed rule requires that each posted notice "must be easily readable day and night by both pedestrian and vehicular traffic entering the facility or installation." *73 Fed. Reg. 51381*. The NRC has solicited comments on whether the regulation should remain performance-based, or be written more specifically to specify font size, color, and lighting requirements. The NRC also requested comment on whether incorporation of a consensus technical standard, such as the Americans with Disabilities Act signage standard, would be appropriate. NEI recommends that the final rule contain prescriptive language specifying font size and color, but that the lighting requirements should remain performance based. Specification of a standard font size and color would ensure readability of the signs, and would enhance the enforceability of the regulation by providing a definite and consistent standard.

Clarity and Effectiveness

The NRC has requested comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. NEI believes that the clarity and effectiveness of the language used in this proposed rule should be sufficient for licensee implementation with minimal regulatory guidance.

Please do not hesitate to contact me if you have any questions or need further clarification.

Sincerely,



Jack W. Roe

c: NRC Document Control Desk

Rulemaking Comments

From: Carol Gallagher
Sent: Friday, October 10, 2008 9:48 AM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Criminal Penalties; Unauthorized Introduction of Weapons
Attachments: roe.pdf

Attached for docketing is a comment letter on the above noted proposed rule (73 FR 51378) from Jack Roe, NEI, that I received via the regulations.gov website on 10/9/08.

Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by TWMS01.nrc.gov
([148.184.200.145]) with mapi; Fri, 10 Oct 2008 09:48:07 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: Carol Gallagher <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Fri, 10 Oct 2008 09:48:06 -0400
Subject: Comment on Proposed Rule - Criminal Penalties; Unauthorized
Introduction of Weapons
Thread-Topic: Comment on Proposed Rule - Criminal Penalties; Unauthorized
Introduction of Weapons
Thread-Index: Ackq3tLRvuqHO8WATfKmEJ217M5UwQ==
Message-ID: <83F82891AF9D774FB39974B6CB134F75767629C8@HQCLSTR01.nrc.gov>
Accept-Language: en-US
Content-Language: en-US
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X-MS-Exchange-Organization-SCL: -1
X-MS-TNEF-Correlator:
<83F82891AF9D774FB39974B6CB134F75767629C8@HQCLSTR01.nrc.gov>
MIME-Version: 1.0