



NUCLEAR ENERGY INSTITUTE

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3/12/09

THFR 10786

(2)

April 13, 2009

Mr. Michael Lesar  
Chief  
Rulemaking, Directives and Editing Branch  
Division of Administrative Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
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Washington, DC 20555-0001

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RULES AND DIRECTIVES  
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10/10/08

**Subject:** Draft Regulatory Issue Summary 2009-XX Implementation of New Final Rule, Protection of Safeguards Information

**Project Number: 689**

Dear Mr. Lesar:

On behalf of the fuel cycle industry, the Nuclear Energy Institute (NEI)<sup>1</sup> submits the following comments for your consideration as you finalize the subject Draft Regulatory Issue Summary (RIS) published for public comment by April 13, 2009. We thank you for the opportunity to comment and trust you will find these comments helpful.

First, while industry supports issuance of a generic communication to provide additional guidance on the significant recent changes to Part 73.21, 73.22 and 73.23 regarding protecting safeguards information, we noted that the Draft RIS appears to be focused entirely on Part 50 licensees and does not provide needed guidance for the unique and different challenges facing some fuel cycle facilities. Specifically, the safeguards requirements applicable to Category III fuel facilities increased with the new rule, in that, SGI-modified is no longer applicable to Category III facilities. Industry suggests that the U.S. Nuclear Regulatory Commission (NRC) consider developing a Designation

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

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Guide, applicable to fuel facilities, which would help licensees comply with the revised safeguards rule.

Second, page three of the RIS states that "the final rule does not automatically supersede the SGI orders" and goes on to state that the orders contain several provisions that were not included in the rule but remain in effect through the orders. For clarity and to help ensure compliance, the NRC should consider developing a "cross walk" to identify where conflicts between the orders and rule exist and which requirement supersedes the other. It is also unclear why the rule does not include certain requirements that, as the RIS states on page four, "the NRC staff continues to view as an essential part of the NRC's SGI protection requirements." The reliance on both the Orders and a new rule is a potential source of unnecessary confusion for facilities subject to the rule and thus should be further clarified in the final RIS.

Third, on page four, the NRC should consider clarifying the term "reasonably" as used in "reasonably recent time period" when discussing the grandfathering of certain individuals for access to SGI. Use of such a term is subject to interpretation and thus should either be clarified or recognized that licensees will use discretion in defining "reasonably" when complying with this requirement.

Fourth, it is not clear whether the RIS addresses any issues or points of clarification not discussed in the *Federal Register* notice for the final rule. If so, these should be clearly identified and articulated in the final RIS.

Finally, the last sentence under "Validity of Active Federal Security Clearances" on page five is grammatically incorrect and thus not clear.

Thank you for the opportunity to comment on the Draft RIS, and we look forward to reviewing the final version. If you have any questions concerning these comments, please contact me or Janet Schlueter (202.739.8098; jrs@nei.org).

Sincerely,



Felix M. Killar, Jr.