



Jack W. Roe  
DIRECTOR  
SECURITY  
NUCLEAR GENERATION DIVISION

3/12/09

74FR 10784

April 13, 2009

(3)

Mr. Michael Lesar  
Chief  
Rulemaking, Directives and Editing Branch  
Division of Administrative Services  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Mail Stop TWB 5B01M  
Washington, DC 20555-0001

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RULES AND DIRECTIVES  
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**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 nuclear power plant sector, 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.

1. On pages 2 and 3, under "Continuing Effect of the Orders," 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

<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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Mr. Michael Lesar

April 13, 2009

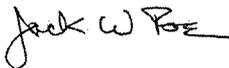
Page 2

potential source of unnecessary confusion for facilities subject to the rule and thus should be further clarified in the final RIS and all redundant Orders phased out.

2. On page 3, under "Grandfathering of Persons with Current Access to SGI" and "Validity of Active Federal Security Clearances," we appreciate the clarification that individuals with unescorted access or access to national security information do not have to repeat the background checks and fingerprinting, and that the Rule requirements are encompassed by the requirements to obtain that clearances and unescorted access privileges.
3. On pages 3 and 4, under "Storage of SGI and SGI-M," the statement is made that the Rule requires that the container where SGI or SGI-M is stored not bear markings that identify the contents. Whereas this may be appropriate for SGI-M, SGI is stored in protected areas, locked rooms and security offices, etc. Such markings serve a useful purpose in keeping personnel away who have no need to access SGI. It is our understanding that the U.S. Department of Defense and other federal agencies that handle classified material mark the containers with the classification level of the contents. It is a good human factors marking that serves a purpose in terms of cognitive enhancements.
4. On page 4, "Marking, Reproduction and Transmittal of SGI or SGI-M," we appreciate the clarification that there is no requirement to retroactively mark SGI documents that were produced prior to the new revised Rule.
5. Although the RIS clarifies the Rule to a considerable extent, more clarification is necessary to streamline licensee processes and address issues not clarified in this draft RIS. We think that there is room for the NRC to further engage with stakeholders, either through a Workshop, an enhanced final RIS, or a draft Regulatory Guide or other mechanism to further clarify the Rule interpretation.

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 Vijay Nilekani (202.739.8022; [vxn@nei.org](mailto:vxn@nei.org)).

Sincerely,



Jack W. Roe