AREVA

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Rulemaking, Directives, and Editing Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Comments on Draft Regulatory Guide DG-5034, "Protection of Safeguards Information"

The NRC has noted that public comments are being solicited on Draft Regulatory Guide DG-5034, "Protection of Safeguards Information," and its associated regulatory analysis or value/impact statement. The NRC also noted that comments will be most helpful if received by October 1, 2009.

AREVA NP Inc. (AREVA NP) appreciates the opportunity to provide comments on DG-1190. Detailed comments are included in the attachment to this letter. AREVA NP's most significant comment is that the Draft Regulatory Guide DG-5034 identifies four new requirements that are not part of the regulations:

- Page 6, Item 6, contains an implied requirement for reinvestigation of background information where none exists in regulation.
- Page 10, Item 13, identifies additional restrictions on handling encrypted electronic SGI.
- Page 12, Item 20, identifies additional restrictions on use of Safeguards Information outside the primary storage location.
- Page 14, Item 28(a), imposes additional restrictions on hand carrying Safeguards Information versus mailing.

AREVA NP considers that it is inappropriate for a Regulatory Guide to introduce new requirements. New requirements should be imposed only through Commission-approved regulations.

If you have any questions related to this submittal, please contact Mr. Pedro Salas at 434-832-4937 or by e-mail at pedro.salas@areva.com.

Sincerely,

Ronnie L. Gardner, Manager
Corporate Regulatory Affairs
AREVA NP Inc.

Enclosure

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Docket No. 52-020
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Attachment

AREVA NP Comments on Draft Regulatory Guide DG-5034, "Protection of Safeguards Information"

General	In providing acceptable means in carrying out the requirements of the Rule, the Regulatory Guide should be careful to avoid adding or inferring requirements that do not appear in the Rule.
General	The Regulatory Guide should be consistent in the use of language (e.g., must, shall, should, may, etc.) with other Part 73 Regulatory Guides.
General	Replace the term "guard(s)" with either the term "security" or "security officer(s)" as appropriate for consistency with other Part 73 Regulatory Guides.
General	Consistent with the other Part 73 Regulatory Guide format, the guidance should be provided in the same order as the requirements in the Rule.
General	Section C should be organized into subsections consistent with 10 CFR 73.22 and 10 CFR 73.23; e.g., Information to be Protected, Conditions for Access, Protection while in Use or Storage, etc., to make it easier to follow. Also, as worded/organized it's difficult to understand exactly when its referring to either Safeguards Information (SGI) or Safeguards Information-Modified Handling (SGI-M) or both.
General	The Designation Guide is referred to as additional guidance document for the determination of SGI. Although the guide was provided to licensees for informational purposes, it is not official guidance for licensees and should not be referenced as such in this Regulatory Guide. The Designation Guide is not a publicly commented document and is an internal NRC document. Eliminate the reference to the Designation Guide from the Regulatory Guide and insert necessary information from the Designation Guide into this Regulatory Guide language (perhaps as appendices). Remove reference 4 on page 21.
Page 4, Item 2	Item 2(e) and 2(f) are both Rule and Physical Security Plan (PSP) requirements. This section is potentially confusing since C.2 states "The system **should** do the following:" (emphasis added)
Page 4, Item 2(g)	There is no requirement for the training program in the Rule. There is a requirement that personnel receiving access to SGI

be knowledgeable of the requirements for protection of the information. This can be accomplished through individual briefings, general employee training, or other methodologies at the discretion of the licensee without the implementation of a formal training program.

Page 4, Item 3

Wording in the second paragraph is confusing. Intent appears to be to treat information in a conservative manner until classification is reliably determined. Delete second paragraph and insert: "If the reason for labeling the material as SGI is questioned, treat the material as SGI and confirm the determination as soon as possible with the originating organization that made the determination of the SGI."

Page 4, Item 4

This section requires the holder of SGI to inform exempted agencies so that "these agencies are fully aware of the protection requirements of SGI". It is unclear the depth of this requirement. It can be equally interpreted that this "awareness" is an assurance that the recipient is aware that the material to be transferred is SGI or is an assurance that the recipient has a broader awareness of all SGI requirements before the "fully aware" status can be assumed. The second interpretation places an unreasonable regulatory burden on the sender for the recipient's knowledge of the SGI labeling, handling, and storage requirements.

Page 5, Item 4

(1st Line) This section states that "written or oral confirmation" of understanding of SGI handling is required before sharing SGI by the possessor. Transfer by transfer re-validation is excessive and unnecessary if the individual is included in an approved SGI handling program.

Page 5, Item 4

2nd Paragraph - This section established a series of criteria for presumptive compliance with 10 CFR 73.21(a)(1). These expectations are not located in the rule and imply that there would be some audit to assure they are in place before SGI is shared with Local Law Enforcement Agencies (LLEA). This is impractical and has the potential for significant conflict with stakeholders (e.g., impact on a lawful order by a law enforcement agency or compliance with a judicial directive). The combination of proper SGI markings and clear identification of the material as controlled under 10 CFR 73.21 prior to transfer will provide reasonable assurance of protection.

Revise Section 4 as follows:
"Law enforcement agencies are presumed by NRC in accordance with 73.21(a)(2) to meet performance requirements of 73.21(a)(1). However, licensees should inform Federal, State, and local law enforcement agencies that the material is considered sensitive unclassified material under

10 CFR 73.21 before transferring SGI, so that these agencies are fully aware of the appropriate level of protection and the potential for civil and criminal sanctions against any person that discloses SGI in an unauthorized manner." Eliminate remainder of the text.

Page 6, Item 6

The requirement for access to SGI regarding verification of education exceeds requirements for Unescorted Access Authorization (UAA). For UAA, education is only used in lieu of work history. The education element of the background investigation for SGI should be consistent with UAA. A process also needs to be developed to specify adjudication criteria for SGI access.

Remove the following sentence:
"The verification of a person's stated level of education is considered a key attribute in determining a person's trustworthiness and reliability."

Insert the following:
"The trustworthiness and reliability determination is based upon verification of identity, employment history, education, criminal history records check, and appropriate reference checks as defined by "background check" in 10 CFR 73.2. For access to SGI, the background investigation elements should consist of the following:

- Employment history - Verify employment/unemployment history for the past 3-year period, or since age 18, whichever is shorter.
- Education in lieu of employment - Conduct a suitable inquiry of an educational institution for the appropriate timeframe.
- Criminal history record check - Conduct FBI fingerprint screening.
- Reference checks - Conduct reference checks with co-workers, neighbors, or friends. Either personal references or developed references may be used when collecting information to make a trustworthiness and reliability determination.
- Verification of identity - Compare a valid (not expired) official photo identification (e.g., driver's license; passport; government identification; State, Province, or country issued certificate of birth; etc.) with physical characteristics of the individual.

Page 6, Item 6

There is no reinvestigation requirement in the regulation. The draft Regulatory Guide is expanding the stated meaning of the rule by stating, "This implies that there is a continuing obligation for licensees and others responsible for allowing access to SGI to make reasonable efforts and use their best

judgments to ensure that persons with access to SGI remain trustworthy and reliable." The draft Regulatory Guide language adds requirements beyond those in rulemaking and should be removed.

Page 6, Item 6

The provision allowing acceptance of Federal Clearances is a positive inclusion. However, it is currently very difficult to verify federal security clearances by the private sector. It should be noted that only the Facility Security Officer (FSO) has the authority to retain this record in accordance with the U.S. Nuclear Regulatory Commission Notification of Access Authorization Form. For visitors, since we do not have access to the Joint Clearance Access Verification System (JCAVS), we have to request the visitor's FSO provide that information to us prior to us granting them SGI access. NRC assistance is requested in developing a process for the validation of Federal clearances and the addition of appropriate language to the Regulatory Guide.

Page 8, Item 9

This provision prevents the transfer of SGI access as stipulated in C.12 and the use of National Security Clearances in lieu of additional fingerprinting.

Change sentence to:
"Each licensee that is subject to the fingerprint provisions shall:

- Fingerprint each individual who requires access to SGI and submit the fingerprints to the NRC for transmission to the FBI in accordance with 10 CFR 73.22(b) and 73.23(b) or
- Verify a current National Security Clearance exists or
- Verify fingerprinting has been performed by another licensee through the SGI or UAA process

Page 9, Item 11

Only the granting of access to SGI or the basis for denial of access to SGI should be documented by the reviewing official. There is no value to documenting the basis for granting access.

Replace first paragraph with:
"Each individual record of those requesting SGI access should contain documentation from the reviewing official that access was granted or a brief explanation of the reason for denial of access."

Page 9, Item 12

This section requires validation of certain information with "the proof of identification presented and the physical characteristics of the individual". Since the person requesting the transfer is not likely to be physically present at the licensee facility at the time of the request, the validation of physical characteristics as a prerequisite for transfer has little or no

value and may cause a significant impediment to the information transfer.

Page 10, Item 13

(2nd Para) This section addresses the encryption of SGI for storage on hard drives and states that encrypted files containing SGI must be secured in the same manner as unencrypted files. There is no basis for this requirement. Encrypted files can be sent over unsecured email that may be intercepted. These files reside permanently in retrievable electronic media. The encryption is relied upon to provide the necessary protection from unauthorized disclosure. Therefore, treating encrypted information in the same manner as unencrypted information is unnecessary and should not be an expectation.

Page 10, Item 13

(2nd Para) The new requirement for special handling of encrypted files appears to be a change of previously approved guidance. The NRC approval of the NEI Draft Document, "USE OF PGP ENCRYPTION SOFTWARE FOR MANAGEMENT AND TRANSMISSION OF SAFEGUARDS INFORMATION," Dated March 26, 2004 in a letter dated May 5, 2004 provides for the use PGP to "manage" and "(for) uncontrolled handling (of)" SGI. The discussion section of the NRC approval letter, paragraph 2, states in part, "an individual file can be encrypted with PGP to ***allow uncontrolled handling*** and transmission as an email attachment." *(emphasis added)*

Page 10, Item 13

The sentence in the second paragraph starting with "Adequate storage..." should be a new paragraph." In addition, guidance is needed on the acceptability of storing SGI in safes provided in hotel rooms or other similar situations.

Page 10, Item 15

The completion of a project, retirement, or transfer to a new position, and the associated loss of need to know, should not require the administrative burden of changing the combination to the security container and the notification of all other users. The additional risk of exposure of the combination to inadvertent disclosure during frequent notifications of the new combinations exceeds the risk of a otherwise trustworthy individual who has had a function change. Only if there is a "for cause" condition should the combination require changing.

Page 10, Item 15

A record of opening and closing a cabinet provides very little value for the administrative burden involved. Remove expectation concerning open/close logs.

Page 10, Item 15

The term "security awareness inspection" is not a term utilized by the industry and such practice is not required. Remove language regarding "security awareness inspection."

Page 11, Item16	The term "ensure" assumes specific standards for sound attenuation which do not exist.
Page 11, Item 17	The term "ensure" assumes specific standards for sound attenuation which do not exist.
Page 11, Item 18	Incorrect reference, "(See Section 15 for additional guidance on SGI transmission procedures)". Section 15 does not provide SGI transmission guidance as indicated. Change reference to Section 28.
Page 11, Item 18	Clarification is needed on the term "assigned to the licensee or contractor's facility."
Page 11, Item 19	Guidance should use terminology such as "Smartphone or similar portable communication devices" instead of brand names.
Page 12, Item 20	This sections does not recognize the legitimate need for work outside the normal place of business. This section needs to be revised to allow programs to place appropriate limitations on the transport and utilization of SGI outside the approved containers while recognizing the need for flexibility in transport and utilization in non-routine circumstances such as industry SGI working meetings and multi-day transportation of SGI material. Revise Item 20 to state: "The rule contains no restriction on where SGI can be used or stored, but it is recommended that licensees **place appropriate administrative restrictions on** the use, handling or storage of SGI from one's home, private residence, or during travel status. SGI should not **routinely** be removed from a licensee's facility **solely** for the purpose of working from home due to the increased potential for inadvertent or unauthorized disclosure and the lack of adequate storage accommodations."
Page 12, Item 23	The requirements for marking SGI are clearly defined in the rule. Setting expectations for additional markings or cover sheets is unnecessary. Licensees may choose to add cover sheets or other controls at their discretion to assist in preventing human error, but the regulatory guide should not establish expectations for such measures beyond the rule requirements. The Regulatory Guide should not be so prescriptive on the placement of the Atomic Energy Act statement (i.e., "bottom (left side) of the document". Cover pages for documents vary substantially and placement of statements should be left to the organization.

Page 12, Item 23	A SGI cover page should not be required if the document cover page has the appropriate warning statements and labeling and itself contains no SGI material.
Page 13, Item 23	1st Para - The individual documents contained on the electronic media will likely have several designators and/or designation dates and therefore external marking of this information is impossible.
Page 13, Item 24	Paragraph 2 states that a disclaimer "must be conspicuously placed". While the document should be labeled to allow ease of separation, the use of "must" and the regulatory implications, seems unjustified.
Page 13, Item 24	The phrasing of the sentence "When separated..." is not appropriate for all situations and conditions where its use is required. Revise language to say "a statement similar to..." to allow situational customization.
Page 13, Item 25	Guidance in this paragraph is contradictory, overly prescriptive and not required by the Rule. The second paragraph states the individuals who arrange or participate in meetings, conferences, etc., MUST perform the (a) thru (c) actions. Revise the language to replace "must" with "should"
Page 13, Item 26	It is unclear what is meant by "within guarded" areas.
Page 13, Item 26	Restricting the ability of properly qualified workers to establish working conferences involving SGI is unnecessarily restrictive. A working conference, such as a SGI industry briefing or meeting, would require an excessive administrative burden. Criteria 25(c) already addressed the protection of SGI from inadvertent release during meetings.
Page 13, Item 27	"Copiers that have been designated for the reproduction of SGI must be clearly identified." The word "must" in this sentence indicates this is a rule requirement.
Page 14, item 28(a)	Hand carrying properly packaged SGI material is an acceptable means of transport. The risk of loss by a SGI qualified person transporting SGI will generally be less than the risk of loss in a general first class mail situation. In addition, accountability is maintained for the material. We disagree with the new restriction.
Page 14, item 28(a)	The requirement to double wrap hand-carried SGI is unnecessary as long as the individual maintains personal control of the information to prevent unauthorized disclosure. Also, indicating that hand-carrying information should only be done "as a last resort" is inappropriate. Individual control by an authorized individual is completely adequate protection.

Page 14, Item 28(a)	The addressing requirement "(i.e., the address of the intended recipient)" should be replaced with "(i.e., the name and address of the intended recipient or the name and address of the transporter)" when related to hand carried material. This will promote the most expeditious return of misplaced material.
Page 15, Item 28(b)	(b)(4) Guidance language does not address use of interoffice mail system. Include a provision to use the interoffice mail system to transport SGI between company locations of use or storage.
Page 15, Item 28(c)	Clarification should be added specifying whether NRC approval of the general method/device or NRC approval of the user-specific configuration is required for use of the encryption described.
Page 15, Item 28(d)	"Remove all traces...." As previously stated, encryption provides sufficient protection of SGI without additional measures. Taking "affirmative action to remove all traces of the encrypted SGI from the Internet-connected computer processing unit" is unnecessary and impractical. Delete guidance language related to removing traces of encrypted information from systems.
Page 15, Item 29	The requirement to remove material from the SGI category at such time the material no longer meets the criteria creates an undue administrative burden. The states the material "must" be removed "at such time" which implies both a regulatory expectation and an immediacy that is unwarranted. The statement should be reworded to read "should be removed from the SGI category after the information no longer requires protection under 10 CFR..."
Page 15, Item 29	The treatment of historical documents should be consistent with the guidance provided with respect to markings in Item 23.
Page 15, Item 29	It is not practical to identify all known recipients. There is no way of knowing who may have received these document years before.
Page 15, Item 29	The second and third paragraphs seem to conflict. The second paragraph says that "The authority to determine that ... matter may be decontrolled must only be exercised by... consultation with the individual or organization" and the third paragraph says "Personnel should not remove... unless themselves or their organization". One implies an absolute requirement and the other a suggestion.

Page 16, Item 30	This item is difficult to follow. It bounces between the electronic destruction of records and the physical destruction of media. It would be beneficial to separate these two subject into two items and discuss each separately.
Page 16, Item 30(b)	Burning or crosscut shredding of media is not appropriate for all forms of media. Hard drives containing SGI cannot be shredded in a crosscut shredder. Likewise burning may not provide positive destruction of information within the drive.
Page 16, Item 30(d)	Please define the term "unconditionally formatted" as it is not common terminology.
Page 16, Item 30(d)	Item (d) is inconsistent with the last sentence of the first paragraph. This item required degaussing then destruction and the first paragraph adds "where applicable".
Page 16, Item 30	The final paragraph on page 16 state that "When measured vertically and horizontally, the pieces should not exceed ¼ inch." Cross-cut shredders produce fragments that are typically 0.25 to 0.38 inches by 1.13 to 3 inches in length.
Page 19, Para 2	Wording regarding "dual possession" statement is too restrictive. As written, it could be interpreted that if NRC is in possession of a copy of any document that a licensee has, the NRC would have to determine "need to know" before the licensee could share the document with another party, even if the licensee was the originator. Clarify language to indicate that a licensee can determine need-to-know regarding all SGI in their possession.
Page 19, Para 4	The definition as written indicates the reviewing official must make the "need to know" determination. The reviewing official is only responsible for determining trustworthiness and reliability for access to SGI. The transferring individual makes the need to know determination.