NUCLEAR ENERGY INSTITUTE

2/1/2010
RDB Reid.

Chris Earls
DIRECTOR, SECURITY
NUCLEAR GENERATION DIVISION

12/16/09
74 FR 66589

January 29, 2010

2

Mr. Michael T. Lesar
Chief, Rulemaking and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop TWB–05–B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

Subject: NEI Comments on Draft Technical Basis for Rulemaking Revising Security Requirements for Facilities Storing Spent Nuclear Fuel and High Level Radioactive Waste – Docket ID NRC–2009–0558

Project Number: 689

Dear Mr. Lesar:

The Nuclear Energy Institute (NEI)[1] appreciates the opportunity to review and comment on the Draft Technical Basis for Rulemaking Revising Security Requirements for Facilities Storing Spent Nuclear Fuel and High Level Radioactive Waste. We further appreciate the NRC conducting a public webinar to help clarify the proposed draft technical basis.

NEI, on behalf of the industry, has attached comments on the NRC's proposed draft technical basis that are based on an initial review of a series of documents including the associated Federal Register

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. 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, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

SUNSI Review Complete

E-RIDS = ADM-03
Cadd = R. Rockhill (RJR3)

1776 I Street, NW | Suite 400 | Washington, DC | 20006-3708 | P: 202.739.8078 | F: 202.533.0135 | cee@nei.org | www.nei.org

Template = ADM-013

Cadd = P. Brochman (PTB)

Notice, Draft Technical Basis for Rulemaking, Commission Staff Requirements Memorandum to SECY-07-0148 ("Independent Spent Fuel Storage Installation Security Requirements for Radiological Sabotage"), Background Information on Threat Assessment and CARVER Analysis, and the January 14, 2010 webinar presentation.

We are concerned with a number of new approaches proposed within the draft document. The industry is concerned with an approach that would impose significant new security measures without any newly identified vulnerabilities or analysis of an increased threat environment. We are not aware of any new threats to these facilities that would require additional security measures beyond those currently mandated by the Orders. Those Orders mandated moderate security measures based on NRC evaluations of facilities in light of the threat environment. They also considered the potential threat posed by the type of material stored and the extremely robust construction of the various canisters and storage facilities in use. If there are no significant changes in the threat environment or significant vulnerabilities identified through a comprehensive analysis, then the industry believes there is not sufficient technical basis for a rulemaking that would impose new requirements or methods beyond those currently required by the Orders. It is the industry's position that if there are, in fact, new threats or design vulnerabilities that have been evaluated by the NRC, that this information should be immediately communicated to licensees.

Further, we have a concern with the use of a proposed new methodology (CARVER Analysis) that is different than the Design Basis Threat. This process, as proposed, is based on evaluating potential vulnerabilities to various adversary capabilities that are arbitrarily selected without consideration for a design basis or actual threat intelligence. Rulemaking that would implement this approach would only add to the regulatory instability that currently exists in security and likely result in misapplication of security measures.

In addition to your consideration of comments, we request that the staff conduct a review of lessons learned from the recent Part 73 Rulemaking effort. Specifically, in the areas of cost estimates associated with the rulemaking, alignment of the rulemaking and associated guidance schedules, and industry involvement in the rule and the related guidance development phases.

The industry would like to request a closed meeting with the staff as soon as practical to discuss new threat information or vulnerability studies that would or should affect the security measures at the facilities storing spent nuclear fuel and high level radioactive waste above those currently employed through the implementation of the associated Orders.

If you have questions or require additional information, please contact me at (202) 739-8078; cee@nei.org.

Sincerely,

Chris Earls

Attachment

c: Mr. Philip G. Brochman, NRC
Ms. Sandra L. Wastler, NRC
Mr. Rupert J. Rockhill, NRC
NRC Document Control Desk

INDUSTRY COMMENTS – DRAFT TECHNICAL BASIS FOR THE ISFSI AND MRS SECURITY RULEMAKING

Please be advised that no specific comments are being made to alter language in this document. Based on the comments provided, the industry believes that the proposed basis for rulemaking requires significant alteration and, therefore, specific comments on the current language would not be productive. See the specific comments for each section.

Section/Page Reference	Comment
Overarching Comment	While the industry appreciates the opportunity to comment on the draft technical basis document, we encourage the NRC to make a draft of the proposed rulemaking available as soon as practical so that stakeholders have the opportunity to provide additional feedback as the proposed new requirements crystallize. Also, NEI encourages the staff to provide a clear technical and regulatory/legal bases for specific changes to the existing regulatory scheme that are included in the proposed rule.
Overarching Comment	In the draft technical basis, the NRC staff states that "the use of a 'denial of task' protective strategy raises issues of sufficient technical complexity to necessitate prior staff review and approval of a licensee's security plan. The staff based this conclusion on experience it gained during reviews of reactor security plan changes necessary to implement the security and DBT orders, and its desire to maintain a separation between NRC security plan review and approval and NRC inspection functions. The NRC staff then goes on to explain that the change control process for ISFSI emergency plans is provided in 10 CFR 72.44(e)(for specific licensees) and 50.54(p)(1)(for general licensees). Both provisions allow licensees to make changes to emergency plans, without prior NRC approval, provided that the changes do not decrease the effectiveness of the emergency plan. If changes will decrease the effectiveness of the emergency plan, both general and specific licensees are required to use the license amendment process to obtain NRC approval of such changes prior to their implementation. After explaining the regulatory framework, the staff states that despite the provisions contained in 50.54(p)(1), it plans to revise the regulations to require "a reactor licensee, associated with a general-license ISFSI who chooses to employ a 'denial of task' protective strategy for the ISFSI, to submit its security plan . . . to the NRC for prior review and approval." Draft Technical Basis, at pp. 10. The staff goes on to state that such submittals "would be a specific licensing action under the associated Part 50 license that would create a potential hearing right under section 189 of the AEA." *Id.* Although the staff does not specify what type of "specific licensing action" review and approval of the plan would constitute, it appears that the staff is drawing an analogy to the

Section/Page Reference	Comment
	license amendment process. NEI believes that the NRC staff is unnecessarily conflating its desire to review and approve changes to licensee emergency plans implementing a "denial of task" strategy and the need for a license amendment or other licensing action. Specifically, as the staff points out, change control for emergency plans is currently governed by sections 72.44(e) and 50.54(p). The regulatory standard for requiring a license amendment in those provisions is whether a proposed change would decrease the effectiveness of the security plan. In this regard, the staff acknowledges that "[i]n all likelihood, a general-license ISFSI's shift to a denial protective strategy would not decrease the effectiveness of the associated power reactor's security plan under 10 CFR 50.54(p)(1)." Draft Technical Basis, at pp. 10. Thus, under the current regulatory scheme, it is unlikely that such a change would require a license amendment. Despite the fact that the current regulatory standard – which is a condition in all Part 50 operating licenses – would not likely require a license amendment, the staff seems to be proposing that review and approval of certain plan changes (i.e., a general licensees' adoption of a "denial of task" strategy) *must be accomplished through "a specific licensing action covered by section 189 of the AEA."* NEI disagrees with this proposition. Specifically, NEI believes that the staff can require prior review and approval of changes to security plans implementing a "denial of task" strategy at generally licensed ISFSIs, without requiring a license amendment. Indeed, one of the purposes of the staff's review and approval could be to ensure that the plan changes do not decrease the effectiveness of the licensee's security plan. In this way, the NRC would be requiring review and approval of this limited class of changes, in part, to ensure that a license amendment is not required. *See Cleveland Electric Illuminating Company* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328-29 (1996) (acknowledging that not every change that occurs at a nuclear power plant, even if significant, represents a license amendment and that requiring approval of certain licensee-initiated changes before they go into effect is a legitimate method of enforcing *existing* license requirements). This approach would leave the long-standing "decrease in effectiveness" change control standard contained in 50.54(p)(1), which has been in place for over 36 years, unchanged. *See* 38 Fed. Reg. 30538; Nov. 6, 1973. The approach described above is also more consistent with the section 218(a) of the Nuclear Waste Policy Act (NWPA) than the staff's proposed approach. As

Section/Page Reference	Comment
	the staff explains, the current Part 72 general license requirements implement sections 133 and 218(a) of the NWPA. Specifically, the staff recognizes that "Section 218(a) mandated that the Commission by rule approve technologies for the dry storage of spent fuel at civilian nuclear power reactors 'without to the extent practicable,' the need for additional site specific (i.e. licensing) approvals by the Commission." Draft Technical Basis, at pp. 10, FN 15. But the staff goes on to reason that because section 218(a) does not prohibit *all* site-specific licensing actions under the ISFSI general licensing process, its proposal to require a site-specific licensing action to approve plan changes is consistent with the NWPA. Draft Technical Basis, at 16-17. This reasoning turns section 218(a) on its head. As the staff seemingly acknowledges in footnote 15, section 218(a) imposes an affirmative duty on the NRC to use rulemaking to approve technologies for dry storage and to avoid (to the extent practicable) the need for additional site-specific licensing actions. Simply pointing out that section 218(a) does not prohibit all site-specific licensing actions to justify imposition of what, in our view, amounts to an unnecessary site-specific licensing requirement for generally licensed ISFSIs essentially ignores the affirmative duty imposed on the NRC by section 218(a). Therefore, NEI recommends that the NRC staff craft a proposed rule, using an approach like the one outlined above, that achieves its stated goal of reviewing and approving certain plan changes for general licensees, while avoiding – "to the extent practicable" – the need for additional site-specific licensing actions. This approach avoids unnecessary changes to the existing, long-standing change control process and is more consistent with section 218(a) of the NWPA.
In Reference to Backfitting	NEI agrees with the NRC staff's conclusion that this rulemaking is likely to raise backfitting issues under 10 CFR 72.62 and commends the staff for explicitly identifying potential new requirements in the draft technical basis. *See* SECY -07-0148, at 7; Draft Technical Basis, at 14-24. In addition, NEI believes that some of the proposed changes relating to general licensees may have backfitting implications under 10 CFR 50.109. NEI encourages the staff to perform a robust analysis on all proposed backfits, as adherence to the backfit rule is essential in ensuring that staff and licensee resources are properly devoted to activities that are necessary for adequate protection, compliance, or to achieve a cost-justified, substantial increases in overall protection.
Overarching Comment	Developing a rule specifically to address facilities storing spent nuclear fuel, with the objective to codify ISFSI security orders, enhance consistency across ISFSIs, and eliminate confusion regarding the various regulatory sections that apply, is a worthy undertaking. However, the rulemaking should be informed by the risk to public health and safety, the substantial protection

Section/Page Reference	Comment
	naturally provided by these facilities, and the current national threat environment. To arbitrarily impose the same security measures as mandated for operating power plants, and then subjectively select a set of weapons and tactics to be defended against without basis in the national threat environment is a flawed approach. This approach would likely result in misapplication of security measures with potential unintended consequences and result in a continuing fluid regulatory environment that does not support the Commission's objective of a stable regulatory process. ISFSIs should have security measures determined by a design basis that is informed by the threat environment and bounded by those measures that should reasonably be expected to be employed by public utilities with public security forces, supported by law enforcement, to protect these extremely robust structures. Any additional measures deemed necessary due to an escalation in the national threat environment should then be the responsibility of the United States government. As stated by the Commission in Objective Three, "Because of this high degree of protection afforded by these massive structures for design basis accidents, the NRC has required ISFSI licensees to implement moderate security measures and a "detect, assess, and communicate" protective strategy that was appropriate to the risk of malevolent acts releasing radiation or radioactive material". That statement holds true today and there has been no substantial changes in the threat environment that necessitates an escalation in security measures. Therefore, the new rules should not mandate additional measures, but simply codify the current appropriate security measures required by the ISFSI orders, which were imposed after considerable evaluation by NRC.
Page 1, A, (1)	Use of the term "current Commission thinking" indicates an approach that is fluid and constantly changing. It is extremely difficult for utilities to interpret regulation and design systems and programs in that environment. It is not a sound regulatory approach.
Page 1, A, (2)	The value of transposing "lessons learned from security inspections and Force-on-Force (FOF) evaluations" from power plants to ISFSIs is very limited due to the very different nature and operation of these facilities as pointed out in the document. NRC should be highly selective and have a clear basis for why lessons learned from those programs apply to ISFSIs.

Section/Page Reference	Comment
Page 1, A, (3)	"Risk informed and performance based" is a valid approach if clearly defined and bounded as described in the overarching comment above.
Page 1, Objective One, second paragraph	Mandating identical security requirements to those used in the reactor security rule should not be an objective. It would likely result in misapplication of technology and implementation of physical security programs that are not necessary for these facilities. The value in many cases would not be commensurate with the investment.
Page 2, first paragraph	The value of transposing "lessons learned from security inspections and Force-on-Force (FOF) evaluations" from power plants to ISFSIs is very limited due to the very different nature and operation of these facilities as pointed out in the document. NRC should be highly selective and have a clear basis for why lessons learned from those programs apply to ISFSIs.
Pages 2 & 3, Objective Three, second paragraph	This section states that ISFSIs were evaluated against aircraft attack and ground assault scenarios and a determination made that "no significant overall facility vulnerabilities were identified and thus no immediate changes in the security requirements for ISFSIs were necessary to ensure adequate protection of public health and safety", then goes on to say that "certain scenarios challenged previous NRC conclusions and merit increases security measures." If the original assessment was valid, what has changed that requires additional measures "to ensure adequate protection of public health and safety"? Either the threat environment has changed (for which there is no evidence provided) or the licensees will be required to implement security measures for "less than significant" vulnerabilities. The document provides no sound basis for an increase in security measures beyond those implemented in response to the ISFSI Orders.
Objective Three, Page 3 AND Page 13 (1)	It is noted that in the NRC Memorandum, dated 12/18/2007, the Commission addressed Issue 2: as follows: "The Commission has approved the staff's recommendation to keep the dose limit for radiological sabotage consistent with the dose limit for ISFSI Design Basis Accidents (DBAs) (i.e., a 0.05-Sv (5-Rem) dose limit at the controlled area boundary. The Commission has disapproved the staff's recommendation to meet a 0.01-Sv (1-Rem) dose limit for both safety and security events at the site area boundary"

Section/Page Reference	Comment
	The facility's "site boundary" is different than the "Controlled Area Boundary." Why is a calculation required to be done for the facility's site boundary? It is acknowledged that many ISFSIs may have a "site boundary" that is a shorter distance than the distance to the "Controlled Area Boundary." These ISFSIs are expected to have agreements in place to control access to the areas within the Controlled Area Boundary that are beyond the facility's site boundary, therefore, public health and safety is still protected. Based on this, the requirements should be changed to delete the dose calculation at the facility's site boundary and to delete the 5 Rem dose limit at this boundary.
Page 3, second paragraph	The statement that "new information" purportedly obtained during the assessments from 2003 to 2005 as justification to increase security measures five to eight years later, is not a valid basis.
Page 3, paragraphs 2 - 4	The "risk informed approach" described in this paragraph and the following text does not seem to reflect the term "risk informed". The approach described actually assumes that security measures in place will fail to prevent "the scenario" and therefore licensees will be required to evaluate the dose rates from a successful breach of the spent fuel containers. Since the postulated probability of security measure failure is "1", the only "risk" evaluated is the consequences of a release, followed by deterministic measures to mitigate that release. In addition, deliberate acts of sabotage should not be included within the description of "design basis accident". Deliberate acts are not forces of nature or accidents. Therefore, the concept of imposing the dose limit for design basis accidents is not applicable to acts of sabotage. Security measures in the new rule should be determined as described in the overarching comment.
Page 3, last paragraph and continuing on page 4	Using a subjective decision making process to select a set of weapons and tactics, which the document states are based on "vulnerability information that is not threat based" and "for which an underlying threat stream does not currently support their inclusion under the DBT", is an inappropriate methodology to determine regulatory requirements. It also is in conflict with the Commission's direction to Staff that "new performance-based security requirements" "do not impose a new Design Basis Threat (DBT)" and that ISFSI regulatory guidance "would be bounded by the adversary characteristics regulatory guidance supporting the Design basis Threat (DBT) for radiological sabotage associated with power reactors".
Page 4, second	This sentence is somewhat misleading, particularly for existing facilities. In the proposed

Section/Page Reference	Comment
paragraph, first sentence	approach, if the licensee doesn't have the footprint to establish a CAB to support the 5 Rem limit, they would be required to either make major modifications to the facility (in most cases not feasible) or implement a denial strategy. There is very little "flexibility" provided.
Page 4, second paragraph, second sentence	NRC has likely underestimated the number of facilities that would unnecessarily be required to implement a denial strategy. Since those facilities would be required to implement a drill and exercise program and could possibly be subjected to FOF inspections, the fees to licensees and impact on NRC staff resources would likely be significant.
Page 4, second paragraph, third sentence	The basis for this sentence needs explanation. Since the fuel loading (including burn up time), as well as facility construction, are major considerations in determining the CAB location and strategy, this approach does not appear to be "independent of future fuel loading characteristics and dry-cask storage designs". It appears that additional calculations would be necessary for future fuel loads to ensure the CAB dose limit would not be exceeded if a canister was breached.
Page 4, second paragraph, fourth sentence	This approach would require development of a significant amount of additional safeguards information that actually increases the risk of unauthorized disclosure instead of reducing it, simply due to the increased volume.
Page 4, third paragraph, first and second sentences	These statements clearly indicate the potentially severe financial impact of this approach without any appropriately corresponding benefit in protection of public health and safety. It is likely that NRC has underestimated the number of facilities that would be required to implement a denial strategy by this approach. Moving spent fuel to another facility would undoubtedly require significant expansion of that facility to new standards driven by this proposed regulation. The cost of expanding facilities and transporting fuel would be enormous. Changing from the currently implemented security measures to this approach should not be proposed without fully understanding the potential impact and its relation to increased public health and safety in the current threat environment.
Page 4, last paragraph	In accordance with the Commission's direction to Staff that "new performance-based security requirements" "do not impose a new Design Basis Threat (DBT)" and that ISFSI regulatory guidance "would be bounded by the adversary characteristics regulatory guidance supporting the Design basis Threat (DBT) for radiological sabotage associated with power reactors", it seems that the statement in this document that says "...the NRC would discontinue the application of the

Section/Page Reference	Comment
	design basis threat (DBT) for radiological sabotage to general license ISFSIs" is in conflict and the proposed approach does not appear to reflect Commission direction.
Page 6, B, First paragraph	The middle of this paragraph contains the sentence "These orders ensured that a consistent overall protective strategy is in place for all types of ISFSIs, given the current threat environment." Since there has been no substantial change to the threat environment, there is no apparent basis for adding additional security measures or attempting to solve a problem that doesn't exist.
Page 10, first paragraph	It is likely that the Staff's estimation that "only very few licensees may be sufficiently constrained to be unable to meet the radiological dose criterion through the use of passive security measures and thus would be compelled to shift to a "denial of task" protective strategy" is substantially underestimating the impact of the proposed approach. This information should be verified with the industry to the extent practical to gain a clearer view of the real impact.
Page 10, second paragraph	Requiring licensees that have ISFSIs located within the protected area of a power plant "to submit its security plan (for protecting both the reactor and ISFSI) to the NRC for prior review and approval" would impose a significant unnecessary burden on both licensees and NRC staff. If licensees elected to incorporate such ISFSIs in a denial strategy that is already in place for the reactor, they should have the ability to make modifications to the reactor strategy and make a determination that there is no reduction in physical security effectiveness, followed by a submittal under 10 CFR 50.54(p). Such submittals are always subject to follow-up inspection by NRC.
Page 11, C, first paragraph	Although implementing a new rule that addresses all ISFSIs and MRS facilities and reduces the complexities involved in the current regulation is a desirable outcome, imposing significant generic requirements without consideration of facility and cask design features, as well as the current threat environment, does not appear to be consistent with a "risk-informed and performance-based structure".
Page 11, C, second paragraph, last sentence	NRC evaluated security measures at ISFSIs from 2003 to 2005 and determined there was no "significant vulnerability" and imposed "moderate security measures" based on the risk to these facilities. To now state that those same studies "challenged previous NRC conclusions" and "indicated that increased security requirements were warranted" as a basis for a new rule that mandates significant changes is either a flawed conclusion or questions the validity of the

Section/Page Reference	Comment
	assessments. The NRC determined appropriate security measures based on the assessments and issued ISFSI Orders mandating those measures. Since there have been no significant new assessments or substantial changes to the threat environment, the new rule should simply codify existing requirements. The proposed changes should not be determined by subjective views of potential risk.
Page 13, G, (1)	The terms "site boundary" and "controlled area boundary" are both used in apparent reference to the same boundary. Since "controlled area boundary" is used throughout the document, the term "site boundary" should be changed. There is no discussion in this document of the access control measures or occupancy restrictions that may apply within the controlled area boundary. The controlled area boundary at many sites, especially those with facilities within the Protected Area of the power reactor, would encompass normally occupied structures. All within the protected area would likely encompass the power plant. Many of the structures are occupied 24 hours per day. NRC should consider the proposed approach in light of potentially high occupancy within the controlled area boundary. If the proposed approach is adopted, this aspect must be addressed.
Page 14, first sentence	Typographical error; "either prevent to prevent".
Page 14, (3)	As written, the last sentence implies that an evaluation of the effects of a vehicle bomb attack would only be necessary if no vehicle barriers are installed to protect the pathway. In reality the evaluation would need to be performed to determine if vehicle barriers are necessary, and if so, their location.
Page 14 (3) Page 18 (8)	Previously a specific blast analysis was not required if the VBS was located at a minimum specified XX foot distance from the ISFSI components and/or structures being protected. If this approach is adopted; a similar criteria should be established.
Page 14, G, last paragraph	Requiring licensees that have ISFSIs located within the protected area of a power plant "to submit its security plan (for protecting both the reactor and ISFSI) to the NRC for prior review and approval" would impose a significant unnecessary burden on both licensees and NRC staff. If licensees elected to incorporate such ISFSIs in a denial strategy that is already in place for the reactor, they should have the ability to make modifications to the reactor strategy and make a

Section/Page Reference	Comment
	determination that there is no reduction in physical security effectiveness, followed by a submittal under 10 CFR 50.54(p). Such submittals are always subject to follow-up inspection by NRC.
Page 14, H, second sentence	The text appears to describe a continuously evolving, unstable regulatory environment that is contrary to good regulation and Commission policy. As provided in the overarching comment, ISFSIs should have security measures determined by a design basis that is informed by the threat environment and bounded by those measures that should reasonably be expected to be employed by public utilities with public security forces, supported by law enforcement, to protect these extremely robust structures. Any additional measures deemed necessary due to an escalation in the national threat environment should then be the responsibility of the United States government. This provides stability and consistency in regulation that enables sound design of facilities and their associated security measures and enables effective NRC oversight.
Last sentence on Page 14 carrying over to page 15.	The wording in the referenced section specifically mentions "fitness for duty programs." We are concerned that this may infer that a Part 26 Fitness for Duty Program may become required. Due to the small staff sizes at many ISFSIs and the acceptability of the current ISFSI access authorization program imposed by NRC Orders, the proposed rule should not require a Part 26 Fitness for Duty Program.
Page 15, second full paragraph	This paragraph indicates informality in accumulating information on which to base regulatory requirements that is inappropriate for the rulemaking process. Some of the cited examples have no clear nexus with ISFSIs.
Page 15, second full paragraph, last sentence	This introduces an extensive list of "security performance capabilities and functions" that basically applies security measures for power reactors, in total, to ISFSIs. To arbitrarily impose the same security measures as mandated for operating power plants could potentially result in misapplication of security measures and resources with unintended consequences. Misdirection of limited resources is wasteful and could result in a reduction in overall effectiveness by inappropriately shifting focus without commensurate value added to protection of public health and safety. No additional security measures should be required for ISFSIs without careful evaluation of applicability to the current threat environment and value added.
Page 15, (1)	The "Vulnerability Driven Physical Protection Program", as currently described in this document, is an approach with significant flaws. It should be abandoned in favor of codifying currently

Section/Page Reference	Comment
	employed security measures mandated by ISFSI Orders.
Page 16, second paragraph	Consistent with the PSP for power reactors, the specific information on law enforcement response capabilities should reside in a law enforcement response plan located in facility procedures and subject to similar reviews and controls.
Page 16, third paragraph	See previous comment on submittal of security plans for ISFSIs located within the Protected Area of a power plant.
Page 18, (7), first paragraph, sixth sentence	The specifications for land-based vehicle bombs and waterborne vehicle bombs should be consistent with those for power reactors.
Page 18, (7), second paragraph, last sentence	The words "any other equipment necessary for the safety and security of the ISFSI or MRS facility" are too broad and should be "as identified in the facility PSP".
Page 18, (7), last paragraph, second sentence	Meeting ASTM Standard F2656-07 should not be the only means to determine acceptability of the VBS. Any generally accepted engineering methodology to calculate penetration resistance should be acceptable.
Pages 18-19 (8)	This Item needs to be clarified to state the requirements for the two barriers for the protected area where the spent fuel is stored and the barrier requirements for the central alarm station protected area. With respect to illumination of the first PA barrier in the 4th sentence, it should be clarified that a specific foot candle value will not be required as long as there is enough illumination for "adequate assessment and observation."
Page 19, second sentence in section (8)	The new rule should not mandate all security measures contained in 10 CFR 73.55 be applied to ISFSIs without regard to risk presented, facility design considerations, or threat environment.
Page 19, (10)	See previous comment on application of 73.55 security measures to ISFSIs.
Page 19, (11)	Imposing additional search requirements above those already employed are unnecessary to provide assurance that unauthorized items that could be used to sabotage the spent fuel containers are prevented access. In particular, adding a requirement for explosive detectors and metal detectors provides very little additional value in the context of preventing the introduction of materials that could damage the facility or its canisters. A physical pat-down search by trained

Section/Page Reference	Comment
	and qualified security personnel is adequate.
Page 20, (12), second sentence	Consistent with the new 73.55 rule, alarm stations should only be required to be "redundant and independent" if they are newly constructed. The functional equivalency requirements for current alarm stations should be maintained.
Page 20 (14)	The reference to 73.55 (i) (5) appears to be incorrect. 10 CFR 73.55.(j)(5) appears to be the correct reference.
Page 20, (14)	Multiple power sources for this type of facility are unnecessary. Response protocols and compensatory measures for loss of power are sufficient to identify hostile intent and initiate additional response, if necessary.
Page 21 (15)	1. The term "single node" is a brand new term and it needs to be defined. For example, could a whole building containing the central alarm station and back-up power supplies constitute a "single node" since the structure and equipment could be damaged/destroyed during an earthquake or natural phenomena event? 2. Why is "natural phenomena" included in this single node requirement? This could conceivably require certain structures containing security equipment and the equipment itself to be designed to meet a specific seismic standard in order to remain operable. The words "or natural phenomena" should be deleted.
Page 21, (15)	This section would impose requirements that exceed those for power reactors, and as written, the requirement could be applied to nearly any security equipment employed. This proposed requirement is unnecessary for this type of facility. Response protocols for security system(s) interruption are sufficient to identify hostile intent and initiate additional response, if necessary.
Page 21, (16)	NRC is correct that the value of FOF exercises for ISFSIs and MRSs does not outweigh the associated costs and risks of such exercises. The same holds true for licensee performance evaluations in a FOF style exercise. Response protocols for ISFSIs can be adequately evaluated through other means such as table top drills, limited scope drills, law enforcement liaison, etc. This section, which states that NRC is not considering NRC evaluated FOF exercises seems to be in conflict with the last sentence of the first paragraph on page 10 that states, "However, if an

Section/Page Reference	Comment
	ISFSI licensee revises its security program to employ a "denial of task" protective strategy, then the NRC staff would reevaluate the need for a FOF exercise against that ISFSI on a case-by-case basis."
Page 22 (19)	1. This is not an entirely new requirement because 73.51(b)(2) currently contains provisions for licensees to propose and the NRC to approve specific alternative measures, although the criteria within this document is more stringent than the words in 73.51(b)(2). 2. Will the NRC continue to honor their previous approval of a licensee's Alternative Measures or will licensees need to resubmit their Alternative Measures for NRC's review and approval again after the final rule is issued? For example, the NRC has previously approved use of Alternative Measures instead of a VBS for protection of primary and secondary alarm stations and some other equipment necessary for the safety and security of the ISFSI facility. These were judged to reasonably meet the performance capabilities specified in an NRC Order as allowed by 10 CFR 73.51(d).
Page 22 (23)	The current 73.55(m) was reviewed and 73.55(m)(1) states, in part: "As a minimum the licensee shall review each element of the physical protection program at least every 24 months. Reviews shall be conducted: (i) Within 12 months following initial implementation of the physical protection program or a change to personnel, procedures, equipment, or facilities that potentially could adversely affect security. ..." Note that the above words "that potentially could adversely affect security" are very different and more conservative than the 10 CFR 72.186 wording "decrease the safeguards effectiveness" that is used to determine if prior NRC approval is needed for a proposed change. If this was made applicable to ISFSIs and MRSs, it is not clear how the above requirements would be implemented. Who would make the judgment that a change to personnel, procedures, equipment, or facilities that potentially could adversely affect security?
Page 23 (24)	An ISFSI facility site boundary may have many different distances to the site boundary depending on the owner's property boundaries. Does the NRC want the distance from the nearest facility site boundary to the closest SNF or HLW storage cask (which would change as more casks were

Section/Page Reference	Comment
	moved to the pad) or edge of the storage pad?
Page 23, (24)	Section 26 of this document proposes effective dates and compliance dates. NRC recognizes under this proposed approach that "implementing these new provisions is not simple" and proposes "one (1) year from the effective date of the final rule to complete required analyses, design and develop necessary solutions, and if necessary submit any revised security plans to the NRC" and then have an additional six (6) months for implementation to achieve full compliance. Therefore, requiring licensees to submit some of the requested information (e.g., distance from the storage facility to the controlled area boundary) within 90 days of the effective date of the final rule would not permit the analysis and design necessary to provide accurate information. In addition, requiring annual submittals is unnecessary, since any changes to the facility that changed the types of information requested would necessitate submittal of a security plan revision to NRC.
Page 23, (25), fourth sentence	This sentence should only apply to collocated facilities that are outside the Protected Area of the power reactor. For collocated facilities inside the power reactor Protected Area, joint response functions may be totally appropriate based on the facility design and protective strategy employed.
Page 24, first paragraph continuing from (25), first sentence	The insertion of the term "interdict and neutralize" sets a standard that is not appropriate for facilities that employ a "detect, assess, and communicate" strategy.
Page 24, (26)	As stated in this section, "NRC recognizes that implementing these new provisions is not simple..." and further recognizes the complexity that may be involved with analysis and development of solutions. If this approach is adopted, licensees are presented with "performance based" options that potentially could include significant facility modifications beyond installing additional security equipment. To allow one year to analyze and develop solutions and only an additional 6 months to be in full compliance, would not allow licensees the ability to conduct these modifications using effective change management that is critical to ensuring quality and safety. In addition, the NRC webinar presented a schedule that showed release of associated guidance months after the final rule was published. Lessons learned from the Part 73 rulemaking should be considered. The guidance is critical information that licensees require to do evaluations and

Section/Page Reference	Comment
	develop solutions. Delayed release of guidance beyond the publishing of the final rule will result in the inability for licensees to meet a short cycled schedule or allow for effective change management. Industry experience regarding similar security-related modifications has established that a minimum of three to five years is required in order to allow sufficient time for major project budgeting, engineering design, and procurement activities to take place without incurring an extremely negative impact on previously developed licensee resource utilization plans.