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NUCLEAR ENERGY INSTITUTE

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March 8, 2011 (4:59 pm)

Janet R. Schlueter  
DIRECTOR  
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March 8, 2011

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Ms. Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**ATTN:** Rulemakings and Adjudications Staff

**Subject:** Request for Public Comment, "Francis Slakey on Behalf of the American Physical Society; Receipt of Petition for Rulemaking" [Docket No. PRM-70-9; NRC-2010-0372; 75 FR 80730]

**Project Number:** 689

Dear Ms. Vietti-Cook:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on the above referenced Notice of Receipt of a Petition for Rulemaking submitted to the Nuclear Regulatory Commission (NRC) on November 10, 2010, by Francis Slakey, on behalf of the American Physical Society. The petitioner proposes that the NRC amend its regulations at Subpart D of 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material," to require that a nuclear proliferation assessment be performed by license applicants for an enrichment or reprocessing facility and reviewed by the NRC in the associated license proceeding. Industry believes that the comprehensive regulatory infrastructure in place today appropriately and adequately addresses proliferation concerns and a new regulatory requirement for applicants to conduct a nuclear proliferation assessment is unnecessary. Accordingly, the subject rulemaking petition should be denied.

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<sup>1</sup> 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.

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NRC and Industry have adopted a comprehensive regulatory framework and implemented an integrated set of activities directed against the unauthorized disclosure of information and technology and the diversion of nuclear materials considered important to the common defense and security. Specifically, NRC regulations in 10 CFR Part 73 address the physical protection of special nuclear material against radiological sabotage, theft, and diversion. Further, NRC regulations in 10 CFR Part 74 address the control and accounting of special nuclear material. Finally, NRC regulations in 10 CFR Part 95 address the protection and handling of Classified National Security Information and Restricted Data received or developed in conjunction with activities licensed, certified, or regulated by the Commission. This regulatory infrastructure ensures that the proliferation of sensitive technologies (information and equipment) and special nuclear material is controlled through physical protection, personnel security, and information protection.

In addition to NRC and DOE regulations, uranium enrichment facilities have voluntarily committed to implement additional measures to further enhance the protection of information associated with classified enrichment technologies. NEI has developed a guidance document for enrichment facility licensees and certificate holders that the NRC has endorsed. The document provides guidance to be used by all U.S. enrichers for the protection of classified information, equipment, and technology. Each enricher establishes its own respective program based on the guidance to assure that the classified information, equipment, and technology are adequately protected from threats, and these additional measures and commitments become part of NRC's licensing basis as they are incorporated into facility-specific security plans.

As for Nuclear Proliferation Assessments as such, section 123 of the Atomic Energy Act of 1954, as amended (the Act), requires that the Department of State conduct assessments in developing agreements (i.e., referred to as "123 agreements") with other nations for peaceful nuclear activities. 123 agreements reflect the views and recommendations of the Secretary of Energy and the NRC. Further, the Nuclear Proliferation Assessments are prepared in consultation with the Director of Central Intelligence to address relevant classified information. These assessments are also to analyze whether a proposed 123 agreement is consistent with the criteria set forth in the Act, address the adequacy of safeguards and other control mechanisms, and include peaceful use assurances.

As discussed in an NRC letter dated March 15, 2010, from Mr. Michael F. Weber to Mr. Tom Clements, Friends of the Earth, the NRC considers the conduct of a "nuclear nonproliferation impact assessment to be outside the scope of agency's statutory responsibilities." The Act contains no requirement for such an assessment in the context of domestic licensing. The NRC letter further articulates previous Commission adjudicatory decisions concluding that "such an assessment is outside the scope of the NRC's responsibilities under the National Environmental Policy Act." This point was articulated by the Commission during the licensing of Louisiana Enrichment Services in 2005 and again in 2006 for the USEC Inc., American Centrifuge Plant. These proceedings indicated

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that nuclear nonproliferation issues were "far afield from our decision whether to license the facility" and reiterated that potential nuclear non-proliferation initiatives "are dependent upon the actions and decisions of the President, Congress, international organizations, and officials of other nations," and "are issues of international policy unrelated to the NRC's licensing criteria...."

Industry is committed to ensuring the protection of special nuclear material and sensitive technology to protect the common defense and security and public health and safety. For the reasons discussed above, the subject rulemaking petition should be denied. Thank you for the opportunity to comment. Should you have any questions, please feel free to contact me or Andrew Mauer at 202-739-8018; [anm@nei.org](mailto:anm@nei.org).

Sincerely,



Janet R. Schlueter

c: Ms. Cindy K. Bladey, ADM/DAS/RADB, NRC  
Mr. John Kinneman, NMSS/FCSS, NRC

## Rulemaking Comments

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**From:** SCHLUETER, Janet [jrs@nei.org]  
**Sent:** Tuesday, March 08, 2011 3:33 PM  
**Subject:** Request for Public Comment, "Francis Slakey on Behalf of the American Physical Society  
**Attachments:** 03-08-11\_NRC\_Request for Comment on APS Petition for Rulemaking.pdf

March 8, 2011

Ms. Annette Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

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Janet R. Schlueter  
Director, Fuel and Materials Safety

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## Rulemaking Comments

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**From:** Vietti-Cook, Annette  
**Sent:** Tuesday, March 08, 2011 4:58 PM  
**To:** Rulemaking Comments  
**Subject:** FW: Request for Public Comment, "Francis Slakey on Behalf of the American Physical Society  
**Attachments:** Request for Public Comment, "Francis Slakey on Behalf of the American Physical Society