



**RUSSELL J. BELL**  
Senior Director, New Plant Licensing  
1201 F Street, NW, Suite 1100  
Washington, DC 20004  
P: 202.739.8087  
rjb@nei.org  
nei.org

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Ms. Cindy Bladey  
Office of Administration  
Mail Stop: 3WFN, 06-44M  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Industry Comments on Draft *NRC Regulatory Issue Summary 2014-XX Oversight of Counterfeit, Fraudulent, and Suspect Items in the Nuclear Industry*, Docket ID: NRC-2014-0212

**Project Number: 689**

Dear Ms. Bladey:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> is providing comments on draft *NRC Regulatory Issue Summary 2014-XX Oversight of Counterfeit, Fraudulent, and Suspect Items in the Nuclear Industry*, [Docket ID NRC-2014-0212]. We have interacted with the NRC on numerous occasions over the past several years on the topic of counterfeit and fraudulent items (CFI), and we are pleased to see these efforts come to fruition this year with enhanced industry guidance for licensees and suppliers, and with the subject NRC regulatory issue summary (RIS). EPRI published *Plant Support Engineering: Counterfeit and Fraudulent Items: Mitigating the Increasing Risks*, Revision 1 of EPRI-1019163 in July, and NEI provided a copy in a letter to Mr. Michael Cheok dated August 22, 2014. Also this year, we understand that the NRC staff plans a SECY paper to update the Commission on its CFI-related activities.

**Industry Comments**

1. The draft RIS provides a sound summary of the regulations that are relevant to the issue of CFI and supports the conclusion that existing regulations, including 10 CFR Part 50, Appendix B, and the actions the industry takes to comply with these regulations and provide reasonable assurance of adequate

<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. 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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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protection to the public health and safety. We recommend that the final RIS clearly state this important conclusion.

2. Discussion of the NRC's cyber security rule (10 CFR 73.54) for operating power reactors in the draft RIS is unnecessary and confusing, and we recommend that discussion of it be deleted. Cyber security threats are not a subset of counterfeit and fraudulent items, and the draft RIS conflates these two separate topics. As an example, on page 4, the draft RIS identifies the potential for a digital asset to contain malicious code. However, that potential exists regardless of whether the part is authentic or is a CFI. We are also concerned that the draft RIS's discussion of malicious code appears to introduce a new regulatory position, which is inconsistent with the intent stated in the draft RIS. We do not believe malicious code embedded in the software of digital electronic devices is a new or unique failure mode. We are also unaware of any prior NRC communication of this conclusion, and the draft RIS does not contain any further basis for the statement. If the NRC has concerns about cyber security, or believes that the regulatory treatment of cyber security deserves further clarification, then it should be addressed outside of the RIS for CFI. Finally, specific mention of digital assets in the RIS is not necessary, as they are adequately addressed in the RIS through the discussion of the applicable regulations, for example Appendix B to 10 CFR Part 50. For these reasons, we recommend deleting discussion of cyber security and digital assets in the following three places in the draft RIS:
  - 2.1. On page 1, second paragraph, second sentence: The sentence should be deleted.
  - 2.2. On page 4, second paragraph, second sentence: The first half of the sentence stating that "With the exception of potentially malicious code embedded in the software of digital electronic devices (a regulatory issue under 10 CF 73.54)," should be deleted. We agree with the second half of the sentence, that CFI does not create any new or unique failure mode, and believe it should be retained in the draft RIS.
  - 2.3. On page 7, third full paragraph: The entire paragraph discussing cyber security and digital assets should be deleted. We further note that Regulatory Guide 5.71 is not applicable to the topic of procuring safety-related digital assets; rather, Regulatory Guide 1.152, Revision 3, is more relevant to this topic.
3. On a related note, NRC has not promulgated a cyber security rule applicable to fuel cycle facilities or other non-power reactor materials licensees. Rather, a staff options paper is expected to be submitted to the Commission in the near term and an NRC decision on the path forward for cyber security at fuel facilities is forthcoming, e.g., issuance of orders or rulemaking. Therefore, the NRC should be mindful of this related programmatic direction when providing CFI guidance applicable to various categories of NRC licensees.
4. Finally, on page 7, second full paragraph, second sentence: The NRC states that licensees, applicants and vendors "may want to consider submitting" voluntary reports. It should be stated more clearly that this is an option, and the staff should use alternative wording such as "may submit."

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If you have any questions or require additional information, please contact Marc Nichol (202-739-8131; mrn@nei.org) or me.

Sincerely,

A handwritten signature in black ink, appearing to read "RJB", written in a cursive style.

Russell J. Bell

c: Mr. Michael C. Cheok, NRP/DCIP, NRC  
Ms. Andrea D. Valentin, NRO/DCIP, NRC  
Mr. Brian C. Anderson, NRO/DCIP/IGCB, NRC  
Mr. Jorge A. Cintron-Rivera, NMSS/DFCSER/PORB, NRC  
NRC Document Control Desk