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July 16, 2012

Ms. Cindy K. Bladey
Chief, Rules, Announcements and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Subject: Industry Comments on Draft Regulatory Guide, DG-5028, "Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants," Docket ID NRC-2012-0109

Project Number: 689

Dear Ms. Bladey:

On behalf of the nuclear industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunity to provide comments on draft regulatory guide DG-5028, "Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants," which was published in the *Federal Register* on May 14, 2012 (77 FR 28407). DG-5028 endorses ANSI N15.8-2009, "Methods of Nuclear Material Control—Material Control Systems—Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants," dated February 18, 2009 (Ref. 2) as an acceptable approach to meet the material control and accounting requirements in Subpart B of 10 CFR Part 74 at nuclear power plants. Industry believes that the proposed revision to this Regulatory Guide is an improvement from Regulatory Guide 5.29 (published in June 1975) and better reflects updated consensus standards. We thank the Nuclear Regulatory Commission for moving forward with this update and encourage the expeditious completion and issuance of Regulatory Guide 5.29.

DG-5028 states that "Backfit and issue finality considerations do not apply to licensees and applicants under 10 CFR Part 74." While it is correct that 10 CFR Part 74 does not contain a backfit or issue finality provision, that does not necessarily mean that backfit and issue finality provisions are inapplicable. Specifically, if a change associated with a regulation that does not contain a backfit provision requires backfitting of a facility licensed pursuant to a regulation that offers backfit protection (e.g., 10 CFR Part 50 or 10 CFR Part 70), then the backfit provisions of that regulation

¹NEI 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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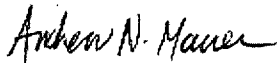
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would apply. For example, the NRC performed a backfit analysis when it last revised the radiation protection requirements contained in 10 CFR Part 20 (see 56 Fed. Reg. 23360; May 21, 1991). Part 20, however, contains no backfit provision. Nonetheless, the NRC performed this backfit analysis pursuant to 10 C.F.R. § 50.109 because the changes to Part 20 imposed backfits at nuclear power reactors licensed pursuant to Part 50.² Likewise, changes to Part 74 or the associated guidance could result in the imposition of backfits at Part 50 or Part 70 facilities. Thus, this sentence in DG-5028 should be clarified to more accurately reflect the potential backfit implications of changes to Part 74 and the associated guidance.

We thank you for the opportunity to comment on the document, and we look forward to reviewing the final version. If you have any questions concerning these comments, please contact me at 202-739-8018; anm@nei.org.

Sincerely,



Andrew N. Mauer

c: Mr. Brian M. Yip, RES/NRC
Mr. Peter J. Habighorst, NMSS/NRC

² "Even though the Part 20 rule is applicable to all NRC licensees and therefore is broader in scope than the "Backfit Rule," it would result in the need for revisions in the operating procedures dealing with radiation protection at nuclear power reactor facilities licensed under 10 CFR Part 50 and, consequently, a backfit analysis is to be performed for power reactor facilities." Proposed Rule, availability of supplemental information, 51 Fed. Reg. 30870, 30871; Aug. 29, 1986.