



Point Lepreau Nuclear Generating Station
PO Box 600, Lepreau, NB
E5J 2S6

TU 06374

July 26, 2024

Ms. Dana Beaton, Director General
Regulatory Policy Directorate
Canadian Nuclear Safety Commission
280 Slater Street
P.O. Box 1046, Station B
Ottawa, Ontario
K1P 5S9

Dear Ms. Beaton:

Subject: NB Power Comments on Discussion Paper DIS-24-04, Future Amendments the Nuclear Security Regulations: Granting Peace Officer Powers, Initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees

The purpose of this letter is to provide NB Power's comments on Discussion Paper DIS-24-04, Future Amendments the Nuclear Security Regulations: Granting Peace Officer Powers, Initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees (Reference 1).

NB Power's Point Lepreau Nuclear Generating Station (PLNGS) has collaborated with the industry to review Discussion Paper 24-04 in detail. Comments are being provided (Attachment 1) recommending improvements to the topics included in the Discussion Paper.

NB Power appreciates the opportunity to provide comments on this Discussion Paper and is prepared to clarify our comments and concerns. If you require additional information, please contact Nick Reicker at 506-659-7324 or nreicker@nbpower.com.

Sincerely,

Steve Bagshaw Digitally signed by Steve Bagshaw
Date: 2024.07.25 17:57:38 -03'00'

Steven Bagshaw
Site Vice President

SB/BT

- cc.** Heather Davis, Isabelle Gingras, Suraj Kandula, Moe Abdo, Alexander Mawhinney, Cheramy Thirumeny, Chloe Bridi, Mohamed Shawkat (CNSC - Ottawa)
consultation@cnsccsn.gc.ca
cnsccsn.licensee-titulaires.ccsn@canada.ca
forms-formulaires@cnsccsn.gc.ca
CNSC Site Office
Steven Bagshaw, Chris Fields, Eric Keenan, Ryan Paquet, Krista Ward, Amanda Gardner, Alex Bardsley, Nick Reicker, Brian Thorne, Jason Nouwens, Kathleen Duguay (NBP)

Reference:

1. Discussion Paper DIS-24-04, Future Amendments the Nuclear Security Regulations: Granting Peace Officer Powers, Initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees, May 2024.

Attachment:

1. Exact NB Power Comments on Discussion Paper DIS-24-04, Future Amendments the Nuclear Security Regulations: Granting Peace Officer Powers, Initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees

Attachment 1 – NB Power Comments on Discussion Paper DIS-24-04, Future Amendments the Nuclear Security Regulations- Granting Peace Officer Powers, initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees

#	Section	Industry issue	Suggested change	MAJOR/ Clarification	Impact on industry
	Overview	<p>Industry appreciates the opportunity to comment on this discussion paper DIS-24-04, <i>Future Amendments the Nuclear Security Regulations: Granting Peace Officer Powers, Initiating a Complaints Investigation Mechanism, and Transferring of Firearm Ownership to Licensees</i>. The discussion paper review has been undertaken by industry personnel familiar with the current Nuclear Security Regulations (NSRs) and the upcoming NSR 2023 changes. Licensees have identified several areas where clarification is required, or misunderstanding may be possible; these are detailed in this table of comments. The feedback is broken into MAJOR or requests for Clarification comments.</p> <p>Of note, we would highlight, based on previous experience, caution in regard to Section 7, Preliminary Impact Analysis. This section indicates an internal assessment of limited significant impacts and then invites reviewers to provide data on financial impacts. However, like previous reviews, we find there is not enough information in this paper to fully understand or assess the impacts of the proposed amendments. This is consistent with what occurred during the first draft of the NSRs -- we were asked to do a costing and impact analysis of the white paper which did not have enough detail to accurately cost out the changes. Based on these learnings, we recommend Licensees have ample opportunity to perform the necessary financial analysis prior to the Canada Gazette Part 1 publication.</p> <p>Further to the observation above, Industry recommends having a workshop prior to publishing the amendments in Canada Gazette Part 1 to discuss and understand potential impacts, as well as discuss the concerns identified and clarify many of the items provided in this table.</p>			
1.	Cover page	With respect to the title: “Future Amendments the Nuclear Security Regulations: Granting...”	Missing the word “to” on the cover page.	Editorial	
2.	General	Is there a process or criteria that provides direction for an individual with Peace Officer status on temporary assignment or extended leave?	Clarify temporary assignment/extended leave requirements.	Clarification	
3.	General	<p>Does the granting of Peace Officer status mean that our officers would then meet the definition of a Peace Officer under section 2 of the Criminal Code of Canada?</p> <ul style="list-style-type: none"> - If so, does arrest authority for our officers, transition from section 494 powers to section 495 powers? - The discussion paper speaks to Peace Officer status being granted under the Criminal Code of Canada but no specific reference to changes in definitions of section 2. 	<p>Clarify whether Peace Officer status is the same status as that under section 2 of the Criminal Code of Canada.</p> <ul style="list-style-type: none"> o If yes, clarify which Peace Officer status arrest powers in the Criminal Code apply to Nuclear Security Officers (NSOs). <p>In section 2, update the definitions of NSO as Peace Officers and the powers they have; to align with the applicable authorities granted to Peace Officers in the Criminal Code.</p>	Clarification	
4.	Pg 1, section 2 bullet 6	<p>With respect to: “On-site response” bullet item 6 states “observe and report on the movement of armed intruders” when explaining the duties of the Nuclear Response Force (NRF). This list of bullet points found under “On-site response” is the same list found in section 30 of the current Nuclear Security Regulations (NSRs) for Nuclear Security Officers.</p> <p>No Impact, however, this confuses the definitions of an NRF versus an NSO.</p>	<p>We suggest revising the wording to reflect NSRs section 32 - NRF duties and responsibilities, not NSO.</p> <p>“... that is capable of making an effective intervention, taking into account the design basis threat and any other credible threat identified by a threat and risk assessment.</p>	Clarification	

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5.	Pg 1, section 2	The duties listed as the responsibility of the NRF are from section 30 of the current NSRs (which define Nuclear Security Officer duties) and do not accurately reflect the enhanced duties of the armed NRF. Specifically, the duties listed in the discussion paper inaccurately reflect that NRF Officers will not intervene in an armed breach event at high-security sites.	Provide a listing of the enhanced duties in the discussion paper that accurately reflects NRF requirements and actions. Also, provide clarification on the responsibilities of NRF Officers.	Clarification	
6.	Pg 2, section 2	With respect to item 2: <i>“ ... Developing and implementing a process for the public to file, and for the CNSC to investigate (non-Criminal Code-related) complaints against peace officers...”</i> Informal discussions with CNSC have indicated they will simply use their current process for receiving and disposing of complaints from the public.	Confirm the CNSC intend to maintain the status quo for dispositioning public complaints.	Clarification	
7.	Pg 2, section 4	With respect to: <i>“ Effects of designation ... and for the purpose of performing any prescribed off-site duties and functions that are ancillary to their duties and functions at the site. ... may do so only at the high-security site for which they are designated...”</i> Section 4 (2) speaks to powers being extended offsite for ancillary duties – we interpret this as meant to support the transport of materials. However, section 4 (3) then states the NRF Officers may exercise their powers <i>“only at the high-security site for which they are designated”</i> . This seems contradictory. Similarly, section 4.1 text below requires more clarity on what offsite activities would be allowed or what would constitute an <i>“ancillary activity”</i> . <i>“ ... Officers cannot make arrests, seize items, use force, or otherwise exercise Peace Officer powers outside the site boundary. ... ancillary to their on-site duties. This includes securely transporting their firearms to a shooting range and/or to a suitable training facility. ...”</i>	Clarify apparent contradiction and provide clarity on the definition of <i>“ancillary activity”</i> .	Clarification	

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8.	Pg 3, section 4.1	If there are multiple high-security sites in the same proximity, an off-site duty ancillary to Peace Officers’ on-site duties should include transporting their firearms between high-security sites.	We suggest revising the last paragraph to: <i>“This includes securely transporting their firearms to a shooting range and/or to a suitable training facility, <u>and/or between high security sites.</u>”</i>	Clarification	
9.	Pg 3, section 4.1	Under this section, it’s not clear, based on the definition in the NSCA of “high security site” and “nuclear facility” what constitutes “offsite” vs “on-site” and what constitutes the “site boundary”.	We suggest revising the last paragraph to: <i>“The NSR will also be amended to reflect these ancillary duties <u>and identify the physical demarcation between what is considered “off-site” and what is considered “on-site.”</u>”</i> Recommend including updated new NSR definition of “Owner Controlled Area” (i.e., on-site) area within the property boundary to help differentiate between on and off-site.	MAJOR	It is important the physical demarcation between the “high security site” and “off-site” is clear so Licensees can effectively provide for site security.
10.	Pg3, section 4.1, 1st bullet	As per Section 4.1, bullet 1: <i>“Officers may verify the identity of any individual, conduct searches of individuals and things, and seize anything <u>on the licensed site</u> that the NSO believes that may pose a risk to the safety or security of the site.”</i> Clarification is required for the definition of “licensed site”. For example, as per the Power Reactor Operating Licence or Waste Facility Operating Licence – Licence Condition Handbooks? It is necessary to identify the boundaries of varying site locations/layouts and considerations to Controlled and Protected Area boundaries.	We suggest revising to: <i>“Officers may verify the identity of any individual, conduct searches of individuals and things, and seize anything on the licensed site <u>as per the respective Licence/Licence Conditions Handbook</u> that the NSO believes that may pose a risk to the safety or security of the site”</i>	Clarification	
11.	Pg 3, section 4.2.1	It is unclear whether an NSO can be designated as a Peace Officer for multiple high-security sites.	Suggest revising 1 st paragraph to: <i>“The Commission will have the authority to grant an individual Peace Officer status <u>for one or more high-security sites</u>, and only after it is demonstrated that the individual meets all necessary qualifications and training.”</i>	MAJOR	If a Licensee has multiple high-security sites, it would be important that NSOs can be designated as Peace Officers for multiple high-security sites to effectively manage personnel and security responses.
12.	Pg 3, section 4.2.1	With respect to the 9 th & 10 th bullets: <i>“ ... valid Driver’s Licence³ • Valid Possession and Acquisition Firearm card ...”</i> It appears criteria are being added, for example, a valid driver’s licence under the current regulations is not required for an NSO, however, some Licensees include this as a “must” in their hiring process.	Clarify why additional criteria are being added. Also, clarify whether an individual can be designated as an NSO without being a Peace Officer. Suggest providing a visual organization diagram/table of Peace Officers versus	Clarification	

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		<p>A negative impact occurs if an NRF Officer loses their driver’s licence (for any reason) they will not be employable as an NSO.</p> <p>Similarly, a Possession and Acquisition Licence is currently not required for an NSO.</p>	non-peace officers to clarify differences in requirements between the two designations.		
13.	Pg 3, section 4.2.1	The discussion paper does not identify if the application for designation of an NSO/NRF to be Peace Officers is a mandatory requirement, and if Public Agent status will be maintained or replaced. It also does not clarify whether an NSO is required to be armed to obtain Peace Officer status.	Clarify the requirements for Peace Officer designation and whether Public Agent status will be maintained or replaced.	Clarification	
14.	Pg 3, section 4.2.1	<p><i>With respect to the 13th bullet:</i> <i>“ ... Documented proof of NSO drug and alcohol pre-placement testing”</i></p> <p>We understand that this is forthcoming, however, it is not currently in place, and it is unknown when this will be implemented due to challenges in Federal Court.</p> <p>Noting NSOs (safety-sensitive in the REGDOC) do not currently have the same qualification criteria as NRFs (safety-sensitive in the REGDOC); Industry support maintaining the status quo.</p>	Clarify if this requirement will be dependent on the REGDOC-2.2.4 Federal Court challenge.	Clarification	
15.	Pg 3, section 4.2.1	<p>We note the proper terminology is “Possession and Acquisition Licence (PAL)”; this section uses the term “Possession and Acquisition Firearm card”.</p> <p>It is unclear which PAL classification is being referred to - non-restricted or restricted. Current Licensee requirements are for a non-restricted.</p>	<p>We recommend changing to: <i>“Possession and Acquisition Firearm-card Licence”</i></p> <p>Clarify which PAL classification is being referenced – non-restricted or restricted.</p>	Clarification	
16.	Pg 3, section 4.2.1 bullet 13	<p>With respect to: <i>“Documented proof of NSO drug and alcohol pre-placement testing”</i> Will all current NRF and NSO require alcohol and drug testing before being considered for Peace Officer status by the commission?</p>	No suggested changes require clarification.	MAJOR	All current NRFs and NSOs are doing their roles as designated by the CNSC for NRFs and the Licensee for NSOs. Would the Licensee be required to alcohol and drug test the entire Security Department before granting Peace Officer status or would this only account for all new hires once the changes come into effect?

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17.	Pg 3, section 4.2.1	The criteria to become a Peace Officer indicates that NSOs must meet the training, equipment, and qualification standards for NRF, and will be designated as safety-critical positions under REGDOC-2.2.4 Volume II for the purpose of pre-employment drug and alcohol testing. It is not clear if these requirements are for all NSOs designated as Peace Officers, or if they are limited to armed NSOs.	Clarify the requirements for Peace Officer status for armed and unarmed NSOs if applicable.	Clarification	
18.	Pg 3, section 4.2.2	<p>CNSC has proposed that immediate reporting may be required should a Peace Officer no longer meet the eligibility requirements:</p> <p><i>“The NSR will be amended to include clauses in the NSR requiring licensees to immediately notify the Commission of:</i></p> <ul style="list-style-type: none"> <i>• the failure of any NSO/NRF member designated as Peace Officer to maintain any of the criteria listed in 3.2.1.; and,</i> <i>• any changes that may result in an NSO/NRF member no longer being eligible to perform the Peace Officer duties.”</i> <p>However, Bill C-21 does not specify that immediate reporting is required. While we support a requirement to report to the Commission, we believe that immediate reporting should be reserved for situations in which the individual in question posed or could have posed a risk to the security of the facility. This is consistent with the current intent of the NSRs.</p> 	<p>We request that CNSC ensure that <u>immediate</u> reporting requirements are focused on issues directly relevant to the security of nuclear facilities.</p> <p>The notification and revocation process listed adds an administrative layer that should be managed by the Licensee in line with the Public Agent requirements in REGDOC-2.12.1 section 11.4.</p> <p>We recommend aligning the process for Peace Officer reinstatement to the current requirement for Public Agent status.</p>	MAJOR	Immediate reporting requirements should be reserved for the events of significant consequence to avoid unnecessary reporting.
19.	Pg 3, sections 4.2.2 - 1st bullet & 4.2.3 - 1st bullet	The 1 st bullet of each section incorrectly references section text.	<p>Correct references to:</p> <p><i>“the failure of any NSO/NRF member designated as Peace Officer to maintain any of the criteria listed in 3.2.1 4.2.1.; and”</i></p> <p><i>“Existing licensees will be expected to supply the Commission with a list of NSOs/NRF members along with documentation supporting the criteria listed in 3.2.1 4.2.1. ... “</i></p>	Editorial	
20.	Pg 3, sections 4.2.2 & 4.2.3	<p>For the Granting of Peace Officer status and how Licensees request this status, we recommend using a similar model to that used for certification of authorized staff.</p> <p>One concern is the turnaround time for the status to be granted. In certifications, there is an expectation of a turnaround time to get the certificates back to the station so the employees can assume their roles.</p>	<p>We recommend changing “<i>the Commission</i>” to also include a CNSC delegate:</p> <p>“4.2.2</p> <p><i>The NSR will be amended to include clauses in the NSR requiring licensees to immediately notify the Commission or designated officer.</i></p> <p>...</p>	MAJOR	As written, the requirement to have the Commission grant Peace Officer status is not in alignment with the similar process in REGDOC-2.2.3 Vol III for certifying Authorized (Nuclear Station) Staff which allows a designated officer in addition to

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		<p>The language in the discussion paper requires the “Commission” to sign off on every designation, and this raises potential concerns regarding timeliness, impartiality and process. In alignment with the process for authorized staff (REGDOC-2.2.3 Volume III), the NSRs should allow for delegating the accountability for the granting of Peace Officer status from the Commission to a designated officer (i.e., within the Nuclear Security Division).</p>	<p><i>Peace Officer designations may be reinstated once the licensee has demonstrated to the Commission or designated officer that the NSO/NRF member has fulfilled all criteria.”</i></p> <p>“4.2.3 ...</p> <ul style="list-style-type: none"> • <i>Existing licensees will be expected to supply the Commission or designated officer with a list of NSOs/NRF members ...</i> • <i>CNSC Registrar staff will review the applications and provide recommendations to the Commission or designated officer to either grant or deny the applicant(s) Peace Officer status</i> • <i>The Commission or designated officer will consider the applications and the recommendations</i> • <i>• The CNSC’s Registrar will inform licensees (in writing) of the Commission’s or designated officer’s decision and ... “</i> 		<p>the Commission to approve Nuclear Power Plant certified status.</p> <p>Limiting the authority to the Commission can create unnecessary delays.</p>
21.	Pg 4, section 4.2.3	<p>This section does not identify what type of document an officer who is granted Peace Officer authority will receive. Will the officers be issued a Peace Officer Card, in addition to their public agent’s authorization?</p>	<p>We seek clarity regarding what documentation officers who have been granted Peace Officer status will be provided for identification purposes.</p>	Clarification	
22.	Pg 4, section 5	<p>The complaint investigation process will be handled by a party that is not the employer of the employee being investigated. For unionized employees, the employer will have its own investigatory process and collective agreement obligations. The Licensee may also have obligations under the <i>Occupational Health and Safety Act</i> to conduct a timely and thorough investigation and take remedial action.</p> <p>It is unclear how these would interact with an investigation by an external party. Delays caused by an external investigation could jeopardize any potential disciplinary or remedial efforts required by the employer.</p>	<p>We recommend allowing the Licensee to first conduct its own investigation of the complaint to enable compliance with any collective agreement requirements, obligations under the <i>Occupational Health and Safety Act</i>, or obligations under common law. The Licensee can then communicate the findings and outcome to the Office of Values and Ethics (OVE).</p> <p>In many circumstances, this could make any further investigation by the OVE unnecessary and avoid incurring the risk of an OVE investigation causing delays that could jeopardize any future employer's disciplinary/remedial actions.</p>	MAJOR	<p>An investigation by the OVE will likely not be compliant with collective agreement obligations for unionized employees (e.g., timing, process, representation, etc.). This could jeopardize corrective actions and result in scenarios where Peace Officer status has been revoked but corrective actions cannot be implemented due to delay and/or prejudice caused by the OVE investigation.</p> <p>Further, an employer may not be able to rely on an investigation conducted by the</p>

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					<p>OVE to impose discipline on a unionized employee.</p> <p>Licensees have obligations to non-unionized employees to conduct timely investigations and have obligations under the <i>Occupational Health and Safety Act</i> toward both unionized and non-unionized employees to conduct timely investigations in certain circumstances.</p> <p>There is a greater likelihood of success if the Licensee first conducts its own investigation and then reports the outcome and corrective actions to OVE, which can then assess whether the original complaint has been satisfactorily resolved or requires further involvement by the OVE.</p>
23.	Pg 5, section 5	<p>With respect to item 5: <i>" ... Suspension and/or revocation of Peace Officer designations ..."</i> Are these the only two conditions in which we must provide notification to the CNSC -- Suspension/Termination?</p>	Clarify notification requirements.	Clarification	
24.	Pg 5, section 5 (4)	<p>It is unclear what "it" refers to in the language below (i.e., are the corrective actions determined by the OVE or the Licensee?). <i>"In this phase, the OVE will transmit the assessment report to the complainant as well as the licensee to address the recommendations and/or implement any corrective actions <u>it</u> deems fit.</i></p> <p><i>The licensee will be expected to notify the CNSC if corrective actions involve suspension / termination of NSOs/NRF members."</i></p>	<p>We recommend revising to: <i>"In this phase, the OVE will transmit the assessment report to the complainant as well as the licensee to address the recommendations and/or implement any corrective actions itthe licensee deems fit.</i></p> <p><i>The licensee will be expected to notify the CNSC if corrective actions involve suspension/termination of NSOs/NRF members."</i></p>	Clarification	
25.	Pg 5, section 5.1	<p>With respect to: <i>" ... 5.1 Appeals ..."</i> Where will the official appeal process and guidance be captured?</p>	Clarify the appeals process.	Clarification	

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26.	Pg 6, section 6 (5) pg. 6	<p>Clarification is required as to whether the Licensee is required to report firearms inventory, etc. to the CNSC as well as the <i>Registrar of Firearms</i>, RCMP.</p> <p>The Licensee should only have to report inventory, etc. to the <i>Registrar of Firearms</i> as per <i>Public Agent Firearm Regulations</i> (PAFR) and compliance with the <i>Firearms Act</i> once the Licensee is issued a PAIN (Public Agency Identification Number).</p>	We seek clarity on the wording in the regulations relating to who the Licensee must report inventory, etc. to.	MAJOR	<p>To report to two (2) different agencies the same information when the PAIN # has been approved and issued to the Licensee is redundant and would increase the regulatory burden.</p> <p>CNSC has the authority to inspect for compliance whenever necessary to ensure the Licensee complies with the PAFR.</p>
27.	Pg 6, section 6.1, bullets 1-4	The current process for a PAIN application is to apply through the <i>Registrar of Firearms</i> , RCMP, however, the noted section and bullets advise the Licensee must apply through the CNSC and not the regulated process found already in the PAFR through the RCMP. This seems to be an additional regulatory burden that is not required.	Recommend removing bullets 1-4 that provide guidance to go through the CNSC and allow the Licensee to follow the current process for other agencies to apply directly to the RCMP and <i>Registrar of Firearms</i> .	MAJOR	Increased regulatory burden when not required and adds additional steps and processes to a program that is already established within Canada through the RCMP.
28.	Pg 6, section 6.1	The accountable level of authority for the PAIN issued to the Licensee is not clear. Does the accountability fall on the business, individual or designated official within a business?	Clarify the accountable level of authority for the PAIN of the Licensee.	Clarification	
29.	Pg 6, sections 6.1 & 6.4	<p>Section 6.1 talks about the Commission revoking a Licensee’s firearms authorization “for cause” and 6.4 talks about the authority of the Commission to revoke firearm authorizations if there is a lack of proper firearm accounting and reporting. A revocation of firearms would have a significant process around it, or the high-security site would be left defenceless, and thus in a licence violation state (without firearms/weapons). The severity of this impact and the revocation process should be discussed further.</p> <p>Section 6.1 talks about the Commission revoking a Licensee’s firearms authorization “for cause”. It is not clear what “for cause” means or what the criteria are.</p>	<p>We recommend adding information regarding the process for revoking a firearm/weapon authorization, recognizing the severity of the impact to a Licensee (i.e., a licence violation).</p> <p>Also recommend adding clarity regarding what “for cause” means, what are the situations or criteria that meet the definition of “for cause” and clarify who determines “for cause”.</p>	MAJOR	Revoking a Licensee’s firearm authorization would have a severe impact therefore, the revocation criteria and process should be clearly identified.
30.	Pg 7, section 6.3	<p>Will Licensees be subject to all sections of the <i>Storage, Display, Transportation, and Handling of Firearms</i> regulations? Or only the storage-related sections?</p> <p>To provide certainty, it would be helpful if the NSRs identified the specific section of the regulations which apply.</p>	Clarify if the current REGDOC-2.12.1 section 7 requirement for special equipment storage will be removed and replaced with the requirements identified under the <i>Storage, Display, Transportation and Handling of Firearms by Individuals Regulations</i> (SOR/98-209).	Clarification	

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31.	Pg 7, section 7	<p>The Preliminary Impact Analysis section invites Readers to review and provide data on financial impacts, however, there is not enough information in this paper to understand the impacts. This is consistent with what occurred during the first draft of the NSRs -- we were asked to do a costing and impact analysis of the white paper which did not have enough detail to accurately cost out the changes.</p> <p>This would be a good topic for a workshop.</p>	<p>Ensure Licensees have ample opportunity for financial analysis prior to Canada Gazette 1 publication.</p> <p>We also recommend this be discussed at a workshop prior to the Gazette publication.</p>	MAJOR	<p>It is difficult to provide financial impacts when there is limited information on how these impacts will be written in the NSRs and REGDOCs.</p>