

May 8, 2020

Ms. Andrea Kock
Director, Division of Fuel Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Industry Concerns on Supplement to SECY-18-0058, "Draft Final Rule Enhanced Weapons, Firearms Background Checks, and Security Event Notifications (RIN-3150-AI49; NRC-2011-0014, NRC-2011-0015, NRC-2011-0017, and NRC-2011-0018)"

Reference No: 689

Dear Ms. Kock,

This letter is sent on behalf of the Nuclear Energy Institute¹ (NEI) and its affected fuel cycle facility members. We appreciate the NRC's willingness to discuss the Supplement to SECY-18-0058 (herein referred to as the "Supplemental SECY"), dated February 04, 2020, at a public meeting held on April 22, 2020, with fuel cycle industry representatives and NEI. This letter and attachments: 1) describe a few areas where there is not alignment between the staff's stated intent in the Supplemental SECY including the helpful "Applicability Table" and the actual near final rule language; and 2) discuss industry concerns with the lack of an articulated technical basis for imposing new requirements on Category III Special Nuclear Materials (SNM) facilities licensed under 10 CFR Part 70. We hope to gain near-term clarity on these issues, given that the package is currently with the Commission for approval.

Lack of Consistency Between Supplemental SECY and Revised Draft Final Rule Language and Applicability Table

Industry raised two examples during the April 22, 2020 public meeting, which are described in greater detail in Attachment 1. We believe these two examples to be errors in the drafting process, which could easily be corrected through internal means. We look forward to further communication from the NRC on how these two items will be dispositioned, in order to align the intent of the Supplemental SECY with the rule language and applicability table.

¹The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

Lack of Technical Basis for New Requirements Proposed for Category III SNM Licensees

The supplemental SECY imposes many new “event notification” requirements on Category III SNM facilities (under § 73.1200) that are not in place today. These new requirements are described in greater detail in Attachment 2. Despite repeated attempts, dating back to 2018², to gain clarity from the NRC staff as to the technical and security basis of these new requirements, staff has not provided a sound rationale for imposing new requirements. We are also not confident that NRC fully understands that several new event notification requirements are being imposed on Category III SNM facilities. In the past several public meetings in response to industry comment and inquiry, staff has not independently identified or justified the new requirements. We acknowledge that this rulemaking is complex, it has a decade-plus long history, and staff turnover of key subject matter experts has posed challenges.

Simply put, the new security event notification requirements are not necessary. As NRC staff knows, the information that would be collected by such reports is already being shared by NRC licensees with appropriate security and intelligence-related Federal, State and local law enforcement agencies, e.g., the Federal Bureau of Investigation. NRC licensees have established and maintained effective working relationships with such officials to help ensure that any perceived or actual security threat to a facility is promptly analyzed and responded to. NRC staff has stated that the new reporting requirements are for the purpose of “cross-sector information sharing” with agencies. However, those agencies would already be in possession of such information. Clearly, sharing of security or threat information between NRC and its partners is necessary and desirable. However, requiring NRC licensees to report information that is already provided to other agencies is duplicative, it represents an unnecessary burden and cannot be justified from a regulatory perspective. This, and other duplicative aspects of the rule, such as background checks when many users already have an active federal security clearance, are counter to the NRC’s current efforts under the Retrospective Review of Administrative Requirements, and the NRC’s Principles of Good Regulation.

We also wanted to clarify that, based on our interpretation of the Supplemental SECY, Vehicle Barrier Systems are not required for Category III SNM facilities. This assumption is made based on the NRC’s use of the word “Protected Area Boundary” (specific references to this terminology can be found on Pages 120, 123, and 125 of the redline rule text). Of note, the term “Controlled Access Area” is not included, as this term is attributed to Category III SNM Facilities. Rather, specific references in the current rule to Vehicle Barrier Systems are §73.46 (c), which applies to Category I SSNM Facilities, and §73.55 (e)(10) which applies to power reactors.

We also have several concerns with NRC’s updated Regulatory Analysis, of which the most recent version is dated 2018. There is no incremental cost information or analysis for Category III SNM facilities in Section 3, **Identification of Affected Attributes and Analytical Method**, which begins on Page 7, and is summarized on Page 25 (Table 4 - *Industry Implementation Costs by Cost Category per Site*). Category III SNM facilities are completely omitted from this cost implementation table, despite the fact that they will be

² There were 2 public CER meetings held in 2018 that discussed the subject SECY (April 11, 2018 and September 25, 2018). Furthermore, on May 30, 2019 the staff conducted a public meeting to discuss the draft final rule text.

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subject to multiple new Physical Security Event Notifications. This again, leads industry to believe that there is a misunderstanding amongst NRC staff of the rule language and how it applies to Category III SNM facilities.

We can assure you that safe and secure operations of commercial nuclear facilities and protection of workers, the public and the environment is the industry's highest priority. We would be open to a public meeting at your convenience to discuss the matters listed in this letter and attachments. If there are any further questions or comments, please do not hesitate to contact me or Hilary Lane at hml@nei.org.

Sincerely,



Janet Schlueter

c: John Lubinski, NMSS
John Tappert, NMSS/DREFS
Annette Vietti-Cook, SECY

Attachment 1: Two Areas of Misalignment between NRC's Stated Intent and Rule Language, Supporting Documentation

Attachment 2: Industry Concerns regarding § 73.1200 Notification of Physical Security Events

Attachment 1: Two Areas of Misalignment between NRC's Stated Intent and Rule Language, Supporting Documentation

1) § 73.1210(h) [Recordkeeping of Physical Security Events] explicitly exempts Category III SNM Facilities from Recordkeeping requirements as outlined below in Page 140 of the redline version:

(h) Recordkeeping—exemptions. Licensees subject to § 73.67 who possess or transport SSNM or special nuclear material (SNM) in the following categories are exempt from the provisions of this section:

(1) Category III quantity of SSNM;
(2) Category II quantity of SNM; or
(3) Category III quantity of SNM.

However, § 73.1210(c)(2) (Page 138 redline version), does not have a strikeout through the term “controlled access area (CAA),” as does the rest of the recordkeeping section. The term “CAA” is specifically attributed to Category III SNM Facilities. We believe this to be an error and should be corrected. This is also not consistent with Page 5, Section 2.2 of the Supplemental SECY, which states Category III SNM Facilities are exempt from these recordkeeping requirements.

(c) Compensated security events. Any failure, degradation, or discovered vulnerability in a security or safeguards system for which compensatory measures were established within the required timeframe and for which the following could have resulted in—

(1) Undetected access of unauthorized explosives beyond a required vehicle barrier;
(2) Unauthorized personnel gaining access ~~to~~into a protected area (PA), vital area (VA), material access area (MAA), or controlled access area (CAA);
(3) Undetected access of contraband into a PA, VA, or MAA, ~~or CAA~~;
(4) Unauthorized personnel ~~int~~accessing a vehicle transporting a Category I or II quantity of strategic special nuclear material (SSNM), ~~Category II or III special nuclear material (SNM)~~, spent nuclear fuel (SNF), or high-level radioactive waste (HLW);

- 2) § 73.1215 (c) [Suspicious Activity Reports] highlights on Page 141 of the redline version that Category III SNM facilities are not subject to paragraphs (d), (e), or (f) and therefore do not have to report suspicious activities. However, in Enclosure 5 “Enhanced Weapons Rule Applicability Table by Facility and Activity Type,” there is a “Y” mark for Category III SNM Facilities under Suspicious Activity Reporting (Page 1). We find this to be incongruent with the rule text and believe this to be an error. This could be corrected by inserting “N/A” to reduce confusion.

We note that the Applicability Table is a helpful tool to licensees and the public in understanding a complex rule, while recognizing it is not considered regulation. However, given the high likelihood that it will continue to be utilized and referenced by multiple stakeholders, we encourage correcting this document such that there is not incorrect interpretation.

Attachment 2: Industry Concerns regarding § 73.1200 Notification of Physical Security Events

The following reporting requirements listed under § 73.1200 are currently not in place today for Category III SNM facilities, and we do not believe have been considered in NRC's revised Regulatory Analysis (most recent version dated 2018). Additional clarification from NRC is requested related to the technical and security basis for the following requirements.

New Event Notifications – 10 CFR Reference	Event Notification Title	Page Number (Redline Rule Version)
73.1200(d)(1)(i)(A)	One-hour notifications – shipments	Pg. 121
73.1200(e)(1)(i); 73.1200(e)(1)(ii); 73.1200(e)(2); 73.1200(e)(3)(i); 73.1200(e)(4)	Four-hour notifications – facilities	Pg. 122, 123
73.1200(f)(2)	Four-hour notifications – shipments	Pg. 123, 124, 125
73.1200(g)(1)(i)(A)	Eight-hour notifications – facilities	Pg. 125

Table 1. New Event Notifications for Category III SNM Facilities. This also assumes that Category III SNM facilities are not required to have Vehicle Barrier Systems protecting their facilities. This assumption is made based on the NRC's use of the word "Protected Area Boundary" and not "Controlled Access Area" (Pages 120, 123, and 125 on redline rule text).

To the contrary, the current event notifications requirements subject to Category III SNM facilities are:

§ 73.71 (a)(1)

Each licensee subject to the provisions of 73.67(g) shall notify the NRC Operations Center within one-hour after discovery of the loss of any shipment of SNM and within one hour after recovery of or accounting for such lost shipment; and

§ 73.71(b)(1)

Each licensee subject to the provisions of 73.67 shall notify the NRC Operations Center within one-hour of discovery of the safeguards events described in paragraph I(a)(1) of appendix G to this part.

Appendix G

(I) Events to be reported within one hour of discovery, followed by a written report within 60 days.

(a) Any event in which there is reason to believe that a person has committed or caused, or attempted to commit or cause, or has made a credible threat to commit or cause:

(1) A theft or unlawful diversion of special nuclear material

Additional § 73.1200 Rule Language Concerns for Category I SSNM Facilities

§73.1200(g)(1)(iii), Page 126 of redline version, states:

- |
 - (iii) The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's ~~controls or~~ SSCs that does not result in the interruption of normal operation of the facility or an accidental criticality ~~or~~

As we have stated to staff in past public meetings, including the May 30, 2019 public meeting, structures, systems and components (SSCs) are required by Parts 50 and 72 and not usually used by Part 70 licensees unless described in a site-specific physical security plan. As such, the use of this term is inappropriate in this context and could likely be interpreted incorrectly.

Rather, additional references to this term seem to be written in a more specific fashion, which leads to greater clarity. For instance, §73.1200(e)(1)(vi), Page 122, reads:

- (vi) The unauthorized operation, manipulation, or tampering with any ~~Category II or III SNM facility's controls or~~ ~~SSCs that results in the interruption of normal operation of the facility;~~
- _____ (vii) The unauthorized operation, manipulation, or tampering of any nuclear ~~reactor's~~ ~~nuclear reactor~~ or Category I SSNM facility's controls or SSCs that could prevent the implementation of the licensee's protective strategy for protecting any target set;

Therefore, it is clear the SSCs are related to security.

However, the rule language for §73.1200(g)(1)(iii) could be improved as follows: "The unauthorized operation, manipulation, or tampering with any Category I SSNM facility's **security or safeguard systems that causes a failure or degradation of the system** that does not result in the interruption of normal operation of the facility or an accidental criticality."