

WILLIAM GROSS
Director, Incident Preparedness

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8123
wrg@nei.org
nei.org



August 8, 2018

Ms. Marissa Bailey
Director, Division of Security Operations
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Improvements to Security Clearances Programs

Project Number: 689

Dear Ms. Bailey:

In a letter dated April 5, 2018 the Nuclear Energy Institute (NEI)¹, on behalf of its members, provided comments regarding National Industrial Security Program Operating Manual (NISPOM) changes and identified challenges to the implementation of the voluntary program. By letter dated June 4, 2018 the NRC responded to NEI's letter. That response stated that the NRC is currently reviewing internal processes to identify ways in which the NRC can streamline the facility clearance reviews, required under NISPOM, to be more efficient and less burdensome. Further, the NRC indicated the intent to hold a public meeting to discuss these matters.

This letter provides input to inform the NRC's preparations for the public meeting discussed in its June 4 letter. The requirements of 10 CFR Part 95 apply to NRC licensees, certificate holders and others who require access to National Security Information (NSI) or Restricted Data. Part 95 has been applied to a voluntary program for non-possessing NSI facilities. Notably, Part 95 currently specifies the same requirements for facility clearances regardless of the approved use of such national security information (i.e., only allowed to attend briefings that discuss NSI versus allowed to store, reproduce and transmit NSI). NEI, in conjunction with our member task force, has identified proposed improvements to the

¹The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on 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/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

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implementation of Part 95 that would maintain an appropriate level of protection while also customizing regulatory requirements to be commensurate with the specific approved use of NSI involved. There are three areas of proposed improvements the industry wishes to discuss and resolve. Two of the three issues involve Foreign Ownership, Control, or Influence (FOCI) requirements, and the third involves the identification of key management personnel (KMP). We appreciate the opportunity to discuss these issues at the public meeting, and we request the NRC consider scheduling the public meeting without delay.

Enclosures to Facility Clearance Approval Letters

When the NRC approves the initial and subsequent updates to the Facility Clearance, the NRC's notification letter to the facility includes an enclosure specifying applicable reporting requirements. In some cases these NRC letters misstate the relevant NRC (10 CFR Part 95) and NISPOM reporting requirements. This creates confusion and often unnecessarily increases licensee commitments. To address this concern, the NRC should a) promptly eliminate the practice of including these enclosures to NRC correspondence; and, b) promptly notify NRC licensees that requirements in previously transmitted enclosures no longer apply. As these clarifications do not require amending the language of 10 CFR Part 95, they could be accomplished in a very short time.

FOCI Reporting Requirements

The requirements in 10 CFR 95.17 drive significant correspondence from the facilities, including those covered by the voluntary program, to the NRC. We believe this degree of correspondence is unnecessarily burdensome, particularly for those facilities that are not allowed to possess NSI. Currently §95.17(a)(1) partially defines significant event or changes as "changes in the required form that identifies owners, officers, directors, and executive personnel." For facilities that have multiple companies, all with different business units within those companies, this could be a significant number of people who neither possess, have access to, nor have the capability to undermine the protection of national security information. In addition, the licensee time and effort that must be dedicated to answering FOCI questions for those companies that have no relation to NSI (and no influence with those companies that do possess NSI) appears to be a misuse of resources, with no increase in safety benefit. We believe this is precisely the type of regulatory over-reach the NRC staff seeks to eliminate in the ongoing Transformation Team initiative.

The overly burdensome FOCI reporting requirements could be addressed in several ways:

- NRC could discontinue the practice of requiring facility clearances for facilities in the voluntary program (as described in NEI's April 5, 2018 letter).
- Facilities in the voluntary program could, as provided for in 10 CFR 95.11, each submit individual requests for exemption from the requirements in 10 CFR 95.17.

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- NRC could issue a generic communication clarifying what is expected of facilities that do not possess NSI to satisfy the reporting requirement relating to significant events or changes that may affect their status.

For reasons that NEI will be prepared to discuss at the upcoming NRC public meeting, we believe the third option would be the most efficient to implement for both the NRC and the industry.

Identification of Key Management Personnel

When approving a facility security clearance, Key Management Personnel (KMP) are identified that must be cleared in connection with the facility clearance. In some cases, KMPs are identified that may not have a nexus to the protection of NSI, and accordingly, could be removed from the KMP list. For example, given the limited exposure to NSI for facilities in the voluntary program, it may be appropriate for only the Facility Security Officer to be identified as KMP. This will reduce the burden on licensees to maintain clearances for individuals who may not otherwise require access to classified information.

If you have any questions or require additional information, please contact me directly at (202) 739-8123; wrg@nei.org.

Sincerely,



William R. Gross

c: Mr. Darryl Parsons NSIR/DSO
NRC Document Control Desk