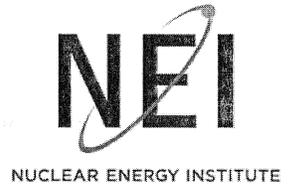


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August 22, 2018

The Honorable Kristine L. Svinicki, Chairman
The Honorable Jeff Baran, Commissioner
The Honorable Stephen G. Burns, Commissioner
The Honorable Annie Caputo, Commissioner
The Honorable David A. Wright, Commissioner
U.S. Nuclear Regulatory Commission Washington, DC 20555-0001

Subject: Docket ID NRC-2011-0018, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications"

Dear Chairman and Commissioners:

On May 22, 2018, the NRC staff forwarded draft final rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,"¹ for Commission approval. This rulemaking amends NRC security regulations to accomplish several objectives including implementation of the Commission's authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), modification of existing requirements related to licensee physical security event notifications, and addition of new requirements for licensees to report suspicious activities. The purpose of this letter is to request, on behalf of the membership of NEI,² that the Commission take the steps necessary within the rulemaking process to remove the new requirements in Part 3 of the draft final rule associated with suspicious activity reporting. The nuclear industry views these requirements as inadequately researched or justified, and not offering any meaningful improvement upon existing reporting mechanisms that have effectively functioned on a voluntary basis since its inception.

Licensees currently report suspicious activities to the NRC and law enforcement agencies on a voluntarily basis. Voluntary reporting was initiated in response to requests from the NRC contained in security advisories and other guidance issued following the events of September 11, 2001. While the

¹ 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)," dated May 22, 2018

² The 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.

comments submitted by the industry in 2011³ were generally supportive of the proposed suspicious activity reporting requirements, we now believe that, with the benefit of seven years of additional operating experience, these requirements would impose an undue burden on licensees without a commensurate improvement in the protection of NRC-licensed nuclear facilities. Our specific concerns with Part 3 of the draft final rule are discussed below.

1. It should be recognized that U.S. homeland security, intelligence and law enforcement agencies have instituted, and continually evolve, measures to detect and deter potential threats directed against our nation's critical infrastructure facilities. One such measure is the Nationwide Suspicious Activity Reporting (SAR) Initiative.⁴ The SAR Initiative aggregates suspicious activity reports from around the country and makes this information available to Federal, State and local agencies. Licensees routinely report suspicious activities to their local law enforcement agencies and these reports are available to the NRC through the SAR Initiative; there is no need to require a separate and redundant reporting channel. Further, given the ongoing improvements in national-level SAR capabilities, elements of Part 3 may, upon issuance or later, be out-of-date with other Federal agencies' expectations.
2. In many instances, the nature of an observed activity may be ambiguous and the determination of it as "suspicious" will be a subjective call made by a licensee's on-shift security supervision. The staff states that "it is not the NRC's intent to dispute a licensee's conclusions about whether an event is considered to be suspicious" and "Accordingly, the NRC intends to focus any inspection and enforcement efforts regarding this new regulation on programmatic aspects (e.g., procedures, training, establishing points of contact, and the reporting process)." From an industry perspective, there is a concern that the staff will substitute its opinion of what constitutes a suspicious activity for licensees' through inspection and enforcement actions related to programmatic aspects. In addition, the creation of a new regulatory requirement centered on programmatic oversight and enforcement runs counter to long-standing NRC emphasis on performance-based regulation.
3. The industry finds the data and trend assessment presented by the staff as justification for imposing mandatory reporting requirements unconvincing.⁵ In particular, the staff implies that the lower number of reports in more recent years represents a reduced diligence in reporting by licensees under the voluntary approach which can only be corrected by imposition of mandatory reporting. We believe the lower number of reports of over time reflects implementation of better standards and guidance for assessing observed events and determining which warrant a suspicious activity report. Moreover, the staff did not explain what alternatives had been explored to address any issues with the existing voluntary scheme short of imposing new requirements.
4. The NRC staff is actively engaged with industry and other stakeholders on standardizing existing

³ NEI letter, "Industry Comments on 10 CFR Part 73 Proposed Rulemaking on Enhanced Weapons, Firearms Background Checks and Security Event Notifications (Federal Register 76 FR 6200, 76 FR 6085, 76 FR 6086 and 76 FR 6087) Docket ID NRC-2011-0018, Kline to Brochman, dated August 2, 2011

⁴ The Nationwide SAR Initiative (NSI) is a joint collaborative effort by the U.S. Department of Homeland Security, the Federal Bureau of Investigation, and state, local, tribal, and territorial law enforcement partners. This initiative provides law enforcement with another tool to help prevent terrorism and other related criminal activity by establishing a national capacity for gathering, documenting, processing, analyzing, and sharing SAR information.

⁵ SECY-18-0058, Enclosure 5, "History of Suspicious Activity Reporting"

NRC reporting requirements, and eliminating those which add little or no value to regulatory processes.⁶ In SECY-18-0058, the NRC staff does not reconcile how the imposition of new reporting requirements in Part 73 is consistent with the efforts to reduce mandatory reporting requirements in other parts of the regulations.

5. The addition of new security requirements should come only after a full and transparent dialogue regarding the nature of the threat or regulatory need being addressed. To date, such dialogue about the proposed imposition of mandatory reporting requirements for suspicious activities has not occurred.
6. Lastly, in NEI's 2011 comment letter, the industry proposed a risk-informed graded approach to recognize the differences between reactors and fuel facilities. This approach should be further applied within the diverse set of fuel facilities such that certain facilities are not subject to the suspicious activity reporting requirements, e.g., Low-Enriched Fuel Facilities. Industry's visibility of how each category of fuel facility would be impacted by the rule has been very limited over the past seven years. In response to an NEI request, we appreciate that the staff has agreed to conduct a brief public meeting on September 25, 2018 to explain how the current draft final rule would affect fuel facilities should it be promulgated.

In summary, should Part 3 of the draft final rule be removed, licensees will continue to voluntarily report suspicious activities that could be indicative of potential preoperational reconnaissance, surveillance, or challenges to security systems by adversaries. As has successfully been done for some time, the staff can use these reports along with information from other sources to perform threat assessments for licensed facilities, materials, and shipping activities.

NEI would be happy to meet with you or your staff and provide additional information as needed.

If you have questions, please contact Sue Perkins-Grew at 202-739-8016 (spg@nei.org) or me at 202-739-8081 (jwp@nei.org).

Sincerely,



Bill Pitesa

c: Ms. Margaret M. Doane, EDO
Mr. Michael Johnson, Deputy EDO
Mr. Brian Holian, NSIR

⁶ Refer to SECY-17-0119, "Retrospective Review of Administrative Regulations," dated November 22, 2017

From: PITESA, Bill
To: [CHAIRMAN Resource](#); [CMRBARAN Resource](#); [CMRBurns Resource](#); [CMRCaputo Resource](#); [CMRWright Resource](#)
Cc: [Doane, Margaret](#); [Johnson, Michael](#); [Holian, Brian](#)
Subject: [External_Sender] Docket ID NRC-2011-0018, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications"
Date: Thursday, August 23, 2018 1:19:45 PM
Attachments: [08-22-2018_NRC_NEI Comments on EWR.PDF](#)

THE ATTACHMENT CONTAINS THE COMPLETE CONTENTS OF THE LETTER

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Sincerely,

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