

**From:** [TSCHILTZ, Michael](#)  
**To:** [RulemakingComments\\_Resource](#)  
**Cc:** [Berrios, Ilka](#); [Reckley, William](#)  
**Subject:** [External\_Sender] NEI Comments on Draft Regulatory Basis, "Rulemaking for Physical Security for Advanced Reactors"  
**Date:** Thursday, August 15, 2019 4:53:52 PM  
**Attachments:** [08-15-2019\\_NRC\\_Industry\\_Comments\\_on\\_Reg\\_Basis\\_for\\_Physical\\_Security\\_for\\_Advanced\\_Reactors.pdf](#)

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**THE ATTACHMENT CONTAINS THE COMPLETE CONTENTS OF THE LETTER**

August 15, 2019

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
ATTN: Rulemakings and Adjudications Staff

*Submitted via Regulations.gov*

**Subject:** NEI Comments on Draft Regulatory Basis, "Rulemaking for Physical Security for Advanced Reactors" [Docket ID: NRC-2017-0227]

**Project Number: 689**

On behalf of our members, the Nuclear Energy Institute (NEI) appreciates the opportunity to provide comments on Draft Regulatory Basis, "Rulemaking for Physical Security for Advanced Reactors." Our comments are attached to this letter and recommend several changes to improve the completeness and clarity of the document. The attachment also contains NEI's responses to the questions in Section III, "Specific Request for Comment," and Section IV, "Cumulative Effects of Regulation," of the Federal Register Notice.

If you have questions concerning this letter or the attached comments, please contact me or David Young at (202) 739-8127 or [dly@nei.org](mailto:dly@nei.org).

Sincerely,

Michael D. Tschiltz  
Senior Director,  
New Reactors

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Sent through [www.intermedia.com](http://www.intermedia.com)

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August 15, 2019

Secretary  
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On behalf of our members, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on Draft Regulatory Basis, "Rulemaking for Physical Security for Advanced Reactors." Our comments are attached to this letter and recommend several changes to improve the completeness and clarity of the document. The attachment also contains NEI's responses to the questions in Section III, "Specific Request for Comment," and Section IV, "Cumulative Effects of Regulation," of the Federal Register Notice.<sup>2</sup>

The Draft Regulatory Basis states that the reason for proposing the rulemaking is to provide a clear, alternate, optional set of physical security requirements for advanced reactors that would reduce the need for exemptions to current physical security requirements. NEI and our members agree that current security regulations do not adequately address the advances in reactor designs and reactor safety research, and the expected attributes of Small Modular Reactors (SMRs) and non-Light Water Reactor (LWR) designs. Therefore, the industry believes the proposed rulemaking is necessary to eliminate unwarranted regulatory burden on advanced reactor applicants and licensees, and will lead to greater regulatory stability and predictability in the licensing process.

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<sup>1</sup> 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.

<sup>2</sup> 84 Fed. Reg. 33,861 (July 16, 2019)

Rulemakings and Adjudications Staff

August 15, 2019

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If you have questions concerning this letter or the attached comments, please contact me or David Young at (202) 739-8127 or [dly@nei.org](mailto:dly@nei.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Tschiltz". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Tschiltz".

Michael D. Tschiltz

Attachment

C: Ilka T. Berrios, NMSS, NRC  
William Reckley, NRO, NRC

**NEI Comments on Draft Regulatory Basis -  
Rulemaking for Physical Security for Advanced Reactors**

The Nuclear Energy Institute (NEI) offers the following comments for consideration by the NRC staff.

<b>Affected Section</b>	<b>Comment/Basis</b>	<b>Recommendation</b>
1. General/ Overall Comment	NEI and our members support this rulemaking. We believe the performance-based approach described in the draft regulatory basis is technically sound and will lead to security requirements sufficient to establish reasonable assurance of adequate protection of public health and safety. Codification of this approach will achieve the staff's goals for the rulemaking.	N/A
2. 4 <sup>th</sup> paragraph of executive summary and other locations	<p>The draft regulatory basis states, "Specifically, it would provide a voluntary, performance-based alternative to the prescriptive requirements in Title 10 of the Code of Federal Regulations (10 CFR) 73.55(k)(5)(ii) related to the required minimum number of armed responders and 10 CFR 73.55(i)(4)(iii) related to onsite secondary alarm stations for those advanced reactors that could demonstrate the ability to meet the performance criteria."</p> <p>Development of alternative requirements should also consider ways to increase flexibility in the assignment of duties to security personnel and duty locations.</p>	<p>New requirements should allow security personnel to have additional duties and/or be located outside the Protected Area provided the NRC-approved security plan can be effectively implemented.</p> <p>More broadly, there are likely other security requirements that could benefit from a performance-based regulatory approach. We support staff's stated willingness to identify requirements that may be eliminated or modified to reduce the potential number of exemptions that would need to be processed for this class of facilities.</p>
3. Section 1.1 "Scope of Document"	The draft regulatory basis states, "The scope of this regulatory basis is limited to physical security for advanced reactors and does not include large LWRs; fuel cycle facilities; research and test reactors; and other nonpower, noncommercial facilities."	Consider the merits of developing a completely technology-neutral approach to consequence-based security.
4. Section 4.5, "Staff Recommendation"	The last sentence of the third possible performance measure states, "Facility recovery and mitigation strategies may, where feasible, include support from offsite resources."	The rule requirements and guidance for reliance upon offsite resources to support recovery and mitigation strategies will need to be clearly articulated.
5. Section 5.1 – End of first paragraph	<p>The draft regulatory basis states, "If the NRC continues with this rulemaking, the staff will provide a more detailed evaluation of the benefits and costs during the regulatory analysis included in the proposed rule (see Section 7.1 of this document)."</p> <p>There is no Section 7.1 in the document.</p>	Correct the reference to Section 7.1.

**NEI Comments on Draft Regulatory Basis -  
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As requested in 84 Fed. Reg. 33,863 (July 16, 2019), NEI provides the following answers to the NRC staff's questions in Section III, "Specific Request for Comment."

The NRC is seeking comments and supporting rationale from the public on the following questions:

1. Is it feasible to define performance criteria related to offsite consequences for advanced reactors with attributes as defined in the Policy Statement on the Regulation of Advanced Reactors, that could be used to determine the applicability of alternative, performance-based physical security requirements while maintaining adequate protection of plant equipment and personnel by the overall physical security program?

NEI Response: Yes. We believe the performance-based approach and criteria discussed in the Draft Regulatory Basis are aligned with Commission policy and consistent with recent Congressional direction to the agency. The proposed approach and criteria will support a final rule with security requirements sufficient to establish reasonable assurance of adequate protection of plant equipment and personnel, and by extension, public health and safety.

2. If feasible to define performance criteria to determine the applicability of alternative, performance-based requirements for a limited scope of physical security regulations, are the possible criteria, as proposed in Section 4.5 of the regulatory basis, reasonable and sufficient to ensure that the resultant physical security programs provide reasonable assurance of adequate protection of public health and safety or would other criteria be more appropriate? (Respondents should describe suggested alternatives.)

NEI Response: Yes. The NRC staff has suggested reasonable performance-based requirements that are sufficient to ensure that the resultant physical security programs provide reasonable assurance of adequate protection of public health and safety. The staff's proposed criteria are based on maintaining offsite doses below the reference values in 10 CFR 50.34 and 52.79; this approach is consistent with findings of reasonable protection applicable to the safety aspects of a design/facility.

3. It is anticipated that engineered safety features may result in a slow accident progression that could allow for reliance on offsite licensee response to support the prevention of offsite consequences for advanced reactors with attributes as defined in the policy statement. The staff expects that future discussions will involve evaluating the feasibility of reliance on these resources for security response and to help recover facilities and mitigate events. What types of engineering, administrative, and programmatic controls should be considered in any future evaluations of this approach?

NEI Response: Controls to be considered include a programmatic document describing expected resources and how they will be employed; establishment and periodic reviews of letters of agreement (memoranda of understanding), contracts and purchase orders with resource providers; design change and configuration management controls to ensure that the plant will maintain the

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ability to integrate offsite resources; implementing procedures for the facility staff; a training and drill program to develop and maintain response proficiency; and provisions for timely licensee and NRC notification if an expected resource capability is significantly degraded or lost.

NEI is also providing the following answers to the NRC staff's questions in Section IV, "Cumulative Effects of Regulation."

The cumulative effects of regulation (CER) describes the challenges that licensees or other impacted entities (such as state agency partners, Tribal and local governments) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comments on the cumulative effects that may result from this proposed rulemaking. In developing comments on the regulatory basis, consider and provide comments on the following questions:

1. In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any proposed requirements, including changes to programs, procedures, and the facility?

NEI Response: It is anticipated that some applicants will be seeking exemptions from, or employing alternative methods to meet, existing NRC security requirements. The final regulatory basis should provide clarity with regard to the processing of applications submitted before the rulemaking is complete, and address the integration of approved alternate methods and exemptions with the requirements of the final rule. The final regulatory basis should also recognize that existing applicants, entities with applications in progress prior to the final rule effective date, will adhere to their committed compliance dates established through a licensing process (e.g., Part 50 or Part 52) since these dates may be different from those specified in the final rule.

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for subsequent implementation of the new requirements, what period of time is sufficient?

NEI Response: We are not aware of any CER challenges associated with this rulemaking.

3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) influence the subsequent implementation of the proposed rule's requirements?

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NEI Response: Subsequent implementation of the proposed rule's requirements could be influenced by the Commission response to SECY-19-0055, "Crediting Options for Operator Actions and Law Enforcement Response."

4. Are there unintended consequences? Does the regulatory basis create conditions that would be contrary to the regulatory basis' purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

NEI Response: We have not identified any unintended consequences.