



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 10, 2020

Ms. Janet Schlueter
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

SUBJECT: RESPONSE TO INDUSTRY CONCERNS ON SUPPLEMENT TO
SECY-18-0058, "DRAFT FINAL RULE ENHANCED WEAPONS, FIREARMS
BACKGROUND CHECKS, AND SECURITY EVENT NOTIFICATIONS"

Dear Ms. Schlueter:

I am responding to your letter dated May 8, 2020, raising concerns about the supplement to SECY-18-0058, "Draft Final Rule Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," (Agencywide Document Access and Management System (ADAMS) Accession No. ML16264A000). Your letter is available in ADAMS under Accession No. ML20132A234. We appreciate the industry's effort to ensure a common understanding of the rule requirements and the NRC's basis for the proposed requirements in the draft final rule.

Responses to your specific questions and concerns are enclosed. Regarding concerns about consistency between the rule language and the Applicability Table included as an enclosure to SECY-18-0058, the staff developed the table as a high level summary of the applicability of specific requirements to broad categories of licensees. A footnote in the table directs licensees to consult the draft final rule language to determine the applicability of individual provisions of the draft final rule to a specific licensee. As such, while the table may indicate that specific requirements apply broadly to licensees possessing a Category III quantity of special nuclear material, this does not necessarily mean that the requirement applies to each specific licensee within this category.

Regarding the technical basis for new requirements, we found that most of the industry's concerns involve requirements that were published for comment in the proposed enhanced weapons rule (76 FR 6200, dated February 3, 2011). The graded approach for expanding the applicability of those new requirements was discussed in the proposed rule and has not changed, although the reporting timeframes were relaxed in some cases in response to public comments. Additionally, the staff has corrected an error in the draft final rule that is with the Commission.

J. Schlueter

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Please let me know if you have questions about our attached responses.

Sincerely,

Andrea Kock, Director
Division of Fuel Management
Office of Nuclear Material Safety and
Safeguards

Enclosure:

NRC Responses to Concerns in NEI
Letter Dated May 8, 2020

cc: J. Lubinski, NMSS

SUBJECT: RESPONSE TO INDUSTRY CONCERNS ON SUPPLEMENT TO SECY-18-0058,
"DRAFT FINAL RULE ENHANCED WEAPONS, FIREARMS BACKGROUND CHECKS, AND
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DATED: July 10, 2020

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***via email**

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NRC Responses to Concerns in NEI Letter Dated May 8, 2020

Issue Cover Letter-1: There is a lack of consistency between in the draft final rule language and the Applicability Table values (Enclosure 5 to the Supplement to SECY-18-0058) for some of the facility or Category types.

Staff Response: The staff reviewed the draft final rule language and the Applicability Table values and found them to be consistent. The Applicability Table provides a high-level overview of the applicability of the draft final rule requirements to a broad range of licensees. The staff never intended the Table to be a formal regulatory guidance document or a comprehensive discussion of the specific applicability for each regulatory provision and the corresponding type of licensee.

Where a requirement does not apply to any licensee in a broad category of licensees, then the Table is marked "NA" for not applicable. For example, consistent with § 73.1210(h) there is no requirement for licensees possessing or shipping a Category III quantity of special nuclear material (SNM) to do physical security event recordkeeping. Therefore, the appropriate cell in the Applicability Table is marked "NA."

Where a requirement applies to all or at least some of the licensees in a broad category of licensees, then the Table is marked "Y." For example, § 73.1200(c)(1)(i)(A) in the draft final rule requires a 1-hour notification of the theft or diversion at a range of facilities, including those licensees possessing Category III quantities of SNM. The next paragraph, § 73.1200(c)(1)(i)(B), requires a 1-hour notification if a person causes significant damage to a range of facilities, but does not apply to those licensees possessing Category III quantities of SNM. Accordingly, the appropriate cell in the Applicability Table is marked "Y." The staff stated, both at public meetings and in a note on the Applicability Table, that interested entities should refer to the appropriate rule language to determine the applicability of a specific requirement to their specific facility. The note states, "This regulatory requirement may apply to this type of facility or transportation method. See rule text for specific applicability."

Issue Cover Letter-2: The technical basis for multiple new requirements that would apply to Category III SNM fuel fabrication facilities were not described in detail in the draft final rule nor the supplement to the draft final rule.

Staff Response: While a detailed technical basis for these provisions was not reiterated in the draft final rule or the supplement to SECY-18-0058, the staff's rationale for these new requirements was set forth in the proposed enhanced weapons rule (76 FR 6200) made available for public comment on February 3, 2011.

Issue Cover Letter-3: NEI requested clarification that vehicle barrier systems (VBS) are not required for Category III SNM facilities.

Staff Response: The security requirement for a facility to have a VBS is not within the scope of the draft final rule. Those requirements can be found in the security orders for the individual facilities. The draft final rule does not impose a requirement for a VBS at facilities possessing Category III quantities of SNM.

Issue Cover Letter-4: The Regulatory Analysis supporting the draft final rule did not provide incremental cost information or analysis for Category III SNM facilities.

Staff Response: The Regulatory Analysis did account for the costs of physical security event notifications and suspicious activity reporting for facilities possessing Category III quantities of

SNM. The discussion of the cost of notifications for these facilities is in Section 3.2.2, “Affected Entities,” of the Regulatory Analysis. In addition, Table 4, “Industry Implementation Costs by Cost Category per Site,” provides an average cost per Category I, II or III site.

Issue Attachment 1-1: The use of the term “controlled access area” (CAA) in § 73.1210(c)(2), physical security event recordkeeping requirement [compensated instances where an unauthorized person could have accessed a CAA], is in conflict with the exemption in § 73.1210(h)(3).

Staff Response: The language in § 73.1210(c)(2) covers multiple licensees that have CAAs, including power reactors and facilities possessing Category I quantities of strategic special nuclear material (SSNM). However, the NRC recognized that the term “CAA” also applies to licensees possessing Category III quantities of SNM. Therefore, the language in § 73.1210(h)(3) provides an exemption for licensees possessing Category III quantities of SNM from the regulatory requirement established in § 73.1210(c)(2). As such, the staff does not believe there is a conflict in the requirement.

Issue Attachment 1-2: The language in § 73.1215(c) exempts Category III SNM facilities from the provisions of § 73.1215(d), (e) and (f). This language is inconsistent with the “Y” entry (yes applicable) for Category III SNM licensees in the supporting Enclosure 5, “Applicability Table,” to the Supplement to SECY-18-0058. The Applicability Table is a helpful tool and this inconsistency should be corrected.

Staff Response: Where a requirement applies to some or all of a specific class of facilities, the Applicability Table contains a “Y” showing that a class of facilities are subject to the requirement. As discussed above, this does not necessarily mean that the requirement applies to every licensee within that specific class of facilities. With respect to the § 73.1215 suspicious activity reporting requirement referenced in the NEI letter, the draft final rule exempts some, but not all, licensees possessing Category III quantities of SNM from the suspicious activity reporting requirement. For example, certain Category III licensees possessing greater than critical mass quantities would be required to report suspicious activities. This would include a medical isotope production facility or a university conducting experiments with a subcritical assembly. The footnote below the Table directs the reader to check the rule language to determine if their specific facility is covered or provided with an exemption.

Issue Attachment 2-1: The 1-hour notification in § 73.1200(d)(1)(i)(A) is a new requirement for Category III SNM facilities [involving the actual, attempted, or threatened theft or diversion of SNM during shipping activities] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: This requirement in the current regulations applies to licensees possessing Category III quantities of SNM. When we issued the proposed rule, we retained this requirement in the proposed revision to Appendix G to Part 73, Section I(a)(1) and did not change the requirement. NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications. The draft final rule language relocated the requirement in Appendix G, Section I(a)(1), to new § 73.1200(d)(1)(i)(A) and is consistent with the current requirement.

Issue Attachment 2-2: The 4-hour notification in § 73.1200(e)(1)(i) is a new requirement for Category III SNM facilities [involving the actual entry of unauthorized personnel into a CAA] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: This 4-hour notification requirement in § 73.1200(e)(1) is a new requirement for licensees possessing Category III quantities of SNM that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule's revised Appendix G to Part 73, Section I(b)(1), under the 1-hour event notification requirement. Because certain licensees are required under § 73.67(f)(2) to "detect unauthorized penetrations" the staff considers the actual entry of an unauthorized person into a CAA as an event warranting a physical security event notification. NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications.

Issue Attachment 2-3: The 4-hour notification in § 73.1200(e)(1)(ii) is a new requirement for Category III SNM facilities [involving the attempted entry of unauthorized personnel into a CAA] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: This 4-hour notification requirement in § 73.1200(e)(1)(ii) is a new requirement for licensees possessing Category III quantities of SNM that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule's revised Appendix G to Part 73, Section I(b)(3), under the 1-hour event notification requirement. However, as discussed above in Issue A2-2, the same language in § 73.67(f)(2) to "detect unauthorized penetrations" equally applies to attempted access of unauthorized persons into a CAA. NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications.

Issue Attachment 2-4: Industry believes the 4-hour notification in § 73.1200(e)(2) is a new requirement for Category III SNM facilities [involving the licensee's notification to local, State, or Federal law enforcement officials related to the licensee's implementation of their security program] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: The 4-hour notification requirement in § 73.1200(e)(2) is a new requirement for licensees possessing Category III quantities of SNM that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule's revised Appendix G to Part 73, Section II(d)(1), under the 4-hour event notification requirement. The staff modeled this requirement on the similar event notification requirements for power reactor licensees under § 50.72(b)(2)(xi) regarding issuance of a press release or notification to another government agency (external to the NRC) that is related to the health and safety of the public or onsite personnel. This notification was retained in the draft final rule and renumbered as § 73.1200(e)(2). NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications.

Issue Attachment 2-5: Industry believes the 4-hour notification in § 73.1200(e)(3)(i) is a new requirement for Category III SNM facilities [involving a law enforcement response to the facility that could reasonably be expected to result in public or media inquiries] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: The 4-hour notification requirement in § 73.1200(e)(3)(i) is a new requirement for licensees possessing Category III quantities of SNM that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule's revised Appendix G to Part 73, Section II(d)(2), under the 4-hour event notification requirement. NEI commented on this provision in the proposed rule that law enforcement's response to minor incidents like traffic accidents should not be within the scope of the requirement. The NRC agreed and provided an exception to the reporting requirements for law enforcement's response to minor incidents.

Issue Attachment 2-6: The 4-hour notification in § 73.1200(e)(4) is a new requirement for Category III SNM facilities [involving a licensee’s suspension of security measures, e.g., during a hurricane or tornado] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: The new physical security event notification requirement for licensees possessing Category III quantities of SNM was not in the proposed rule. NRC did not receive any comments related to including this requirement in the final rule. The draft final rule that is with the Commission should have only included this requirement for power reactors. Therefore, the staff has modified the language in § 73.1200(e)(4) of the draft final rule that is with the Commission to only apply the requirement to licensee’s subject to the provisions of § 73.55. Consistent with the current regulations, this regulatory requirement would only apply to power reactors.

Issue Attachment 2-7: The 4-hour notification in § 73.1200(f)(2) is a new requirement for Category III SNM licensee shipping activities [involving the licensee’s notification to local, State, or Federal law enforcement officials related to the licensee’s implementation of their shipping security program] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: This 4-hour notification requirement in § 73.1200(f)(2) is a new requirement for licensees possessing Category III quantities of SNM facilities that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule’s revised Appendix G to Part 73, Section II(d)(1), under the 4-hour event notification requirement. The staff modeled this requirement on the similar event notification requirements for power reactor licensees under § 50.72(b)(2)(xi) regarding issuance of a press release or notification to another government agency (external to the NRC) that is related to the health and safety of the public or onsite personnel. NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications.

Issue Attachment 2-8: The 8-hour notification in § 73.1200(g)(1)(i)(A) is a new requirement for Category III SNM facilities [involving a failure, degradation or vulnerability, for which compensatory measures were not employed within the require timeframe, that have allowed the unauthorized or undetected access of unauthorized personnel into a CAA] and requests NRC clarification on the technical and security basis for this requirement.

Staff Response: The 8-hour notification requirement in § 73.1200(g)(1)(i)(A) is a new requirement for licensees possessing Category III quantities of SNM that was published in the proposed rule for public comment. Specifically, this requirement was included in the proposed rule’s revised Appendix G to Part 73, Section I(f)(2), under 1-hour event notification requirement. As discussed above in Issue Attachment 2-2, the same language in § 72.67(f)(2) to “detect unauthorized penetrations” also applies to failures to implement compensatory measures within the required time limits when systems to detect unauthorized access were not functional; and therefore, attempted access of unauthorized persons into a CAA might also occur undetected. NEI comments on the proposed rule on these reporting requirements were limited to issues associated with the timing of required notifications. The reporting time was increased to 8 hours in response to NEI comments.

Issue Attachment 2-9: For Category 1 SSNM facilities under § 73.1200(g)(1)(iii), the term “structures, systems, and components (SSCs)” are not usually used by Part 70 licensees. Therefore, the use of this term in this context is inappropriate and could be confusing. Industry

suggested that the event be modified to use language similar to § 73.1200(e)(1)(vi) [which refers to actions that could prevent the implementation of the licensee's protective strategy for protecting target sets].

Staff Response: The staff's intent was not to give the term SSC any new meaning in the draft final rule. The intent was to require notification of unauthorized operation, manipulation, or tampering of any SSCs, not just "safety-related SSCs" as that term is defined in Part 50 or "items relied on for safety" as that term is defined in Part 70. The intent of the use of this term in the rule will be clarified in the guidance document that will accompany the rule to avoid confusion. This terminology was included in the proposed rule's revised Appendix G to Part 73, Section III(2), under 8-hour event notification requirements. Industry did not address this specific terminology in their comments on the proposed rule.