



November 16, 2023
L-2023-160
10 CFR 73.5

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

RE: Seabrook Station
Docket No. 50-443
Renewed Facility Operating License No. NPF-86

Part 73 Exemption Request Regarding Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Final Rule

Pursuant to 10 CFR 73.5, NextEra Energy Seabrook, LLC (NextEra), hereby requests an exemption from the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications final rule (hereto known as "final rule") for Seabrook Station Unit 1 (Seabrook). In accordance with *Federal Register* notice 88 FR 15864, compliance with the final rule requirements must be achieved by January 8, 2024. The proposed exemption would relieve final rule compliance at Seabrook until December 31, 2024, or 180 days following publication of the Regulatory Guides (RGs) described in 88 FR 15864, whichever is later.

On March 14, 2023, the Nuclear Regulatory Commission (NRC) noticed in the *Federal Register* the Enhanced Weapons, Firearms Background Checks, and Security Event Notifications final rule (hereto known as the "final rule") with an April 13, 2023, effective date and a January 8, 2024, compliance date. In response, NextEra performed a preliminary gap analysis of the new versus current requirements, applicable regulatory guidance, and Seabrook security policies and procedures, including security and operations personnel training. Based on its review, NextEra determined that a temporary exemption from the final rule will be necessary to provide sufficient time to achieve full compliance at Seabrook. The proposed compliance date of December 31, 2024, or 180 days following publication of the RGs described in 88 FR 15864, whichever is later, is based on the NRC's projected timeline for issuing revised regulatory guidance and the time to complete the requisite change management processes. During the period of exemption, NextEra will continue to implement the Seabrook security plan consistent with RG 5.62, Revision 1 (ADAMS Accession No. ML003739271) and Generic Letter 91-03 (ADAMS Accession No. ML031140131).

The enclosure to this letter provides an evaluation of the proposed exemption. The evaluation demonstrates that the proposed exemption will not present an undue risk to public health and safety, is not inimical to the common defense and security, and is in the public interest, and is thereby permissible under 10 CFR 73.5.

NextEra requests approval of the requested exemption by November 30, 2023, to assure continued regulatory compliance and uniformity in Seabrook security program procedures and practices.

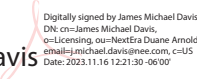
This letter contains no or revised regulatory commitments.

Should you have any questions regarding this submission, please contact Mr. Kenneth Mack, Fleet Licensing Manager, at 561- 904-3635.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 16th day of November 2023.

Sincerely,

James
Michael Davis  , for

Digitally signed by James Michael Davis
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Dianne Strand
General Manager, Regulatory Affairs

Enclosure:

Request for Exemption from Final Rule Compliance Date

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1. BACKGROUND

On March 14, 2023, the Nuclear Regulatory Commission (NRC) issued a Final Rule entitled “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications”¹ (hereto known as the “final rule”). As specified in the *Federal Register* [88 FR 15864], the final rule has an effective date of April 13, 2023, and a compliance date of January 8, 2024. The final rule contains new elements such as:

- New terminology and associated requirements covering “conditions adverse to security”.
- New definitions of the term “contraband” and “time of discovery” in 10 CFR 73.2
- New point of contact requirements with the Federal Aviation Administration (FAA)
- Changes reporting requirements applicable to security events from:
 - 1-hour notifications and 24-hour recording of security eventsTo become:
 - 1-hour, 4-hour, 8-hour notifications and 24-hour recording of security events
 - Codifies the accelerated call to the NRC from NRC Bulletin 2005-02

Concurrent with the publication of the final rule, the NRC issued the following Regulatory Guides (RG) to support the implementation requirements set forth in the final rule:

- RG 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 2 (ADAMS Accession Nos. ML17131A285, ML23229A152)
- RG 5.86, “Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks,” Revision 0 (ADAMS Accession No. ML17131A296)
- RG 5.87, “Suspicious Activity Reports,” Revision 0 (ADAMS Accession No. ML17138A384)

During an August 23, 2023, public meeting (ADAMS Accession No. ML23223A083), the NRC staff acknowledged ambiguities and inconsistencies in the final rule and associated guidance and proposed a revision date for clarifying the guidance through publication by April 2024, which is three months after the January 8, 2024, compliance date specified in *Federal Register* 88 FR 15864. Additionally, the NRC acknowledged the need for rulemaking to address identified issues with the final rule language.

2. BASIS FOR EXEMPTION REQUEST

10 CFR 73.5, Specific Exemptions, allows the Commission to grant exemptions from the requirements of Part 73 “as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.” As explained below, this exemption request meets the criteria set forth in 10 CFR 73.5.

The industry has identified several issues in the final rule and the supporting Regulatory Guides that require clarification from the NRC for NextEra to successfully implement the requirements at Seabrook. As mentioned above, the NRC is currently developing a resolution for the code language issues and addressing guidance revisions. As discussed in the August 23, 2023, public meeting, the NRC plans to issue additional guidance in April 2024, which is three months after the compliance date of January 8, 2024. Without additional guidance, enforcement relief, or a temporary exemption, it is likely that NextEra will need to make changes to its physical security plans and processes twice - once to achieve compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC), and again following issuance of the revised regulatory guidance. The ambiguity and conflict created by the final rule language and existing guidance, some of which are

¹ “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications; Final rule and guidance,” 88 Fed. Reg. 15864 (March 14, 2023).

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described below, could result in unnecessary confusion that will detract from the current high level of assurance provided by the existing Seabrook physical security program. Accordingly, NextEra does not believe implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is in the best interest of the public. Listed below are examples of issues with the final rule which necessitate a temporary exemption for Seabrook. The examples are not all encompassing and an exemption from the entirety of the final rule is requested to complete NextEra's analysis of the new requirements, revisions to applicable regulatory guidance, and the impact to Seabrook physical security plan policies and procedures, including security and operations personnel training. During the proposed period of exemption, NextEra will continue to implement the Seabrook security plan consistent with RG 5.62, Revision 1 (ADAMS Accession No. ML003739271) and Generic Letter (GL) 91-03 (ADAMS Accession No. ML031140131).

2.1 Conditions Adverse to Security

The introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined, and ambiguous. NextEra has established, as required, a formal Corrective Action Program in accordance with 10 CFR Part 50 Appendix B, Criterion XVI. As a result, NextEra has developed procedures and processes to determine conditions adverse to quality as it relates to the security organization, (e.g., Condition Adverse to Regulatory Compliance.)

- NextEra Nuclear Fleet procedure, PI-AA-104-1000, Condition Reporting, defines specific events or situations that result in a condition adverse to quality (CAQ), including security-related CAQs and significant conditions adverse to quality (SCAQs).

Given the robust nature of NextEra's Corrective Action Program, the additional duplication of procedures and/or revision of procedures to accommodate the new term "conditions adverse to security" adds an unnecessary administrative burden with no improvement to the Corrective Action Program, the Seabrook security plan, or to overall public health and safety.

2.2 Definitions in 10 CFR 73.2

The new § 73.2 definitions expand definitions specified in NRC endorsed, NEI 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]", Revision 7, and RG 5.76, "Physical Protection Programs at Nuclear Power Reactors". The existing definitions were applied to design security plans and procedures. Examples of issues the new definitions present include:

- Contraband: Specifically, the parenthetical describing "other dangerous materials" to include disease causing agents requires NextEra to protect against perceived threats beyond the Design Basis Threat (DBT) described in 10 CFR 73.1. Without the proposed exemption, application of this expanded definition will challenge Seabrook security plan methods of complying with § 73.55(g)(1)(ii)(B) and § 73.55(h), which state (emphasis added):

§ 73.55(g) Access controls.

- (1) *Consistent with the function of each barrier or barrier system, the licensee shall control personnel, vehicle, and material access, as applicable, at each access control point in accordance with the physical protection program design requirements of §73.55(b).*
- (ii) *Where vehicle barriers are established, the licensee shall:*
 - (B) *Search vehicles and materials for contraband or other items which could be used to commit radiological sabotage in accordance with paragraph (h) of this section.*

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§ 73.55(h) Search programs.

(1) *The objective of the search program is to detect, deter, and prevent the introduction of firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage. To accomplish this the licensee shall search individuals, vehicles, and materials consistent with the physical protection program design requirements in paragraph (b) of this section, and the function to be performed at each access control point or portal before granting access.*

(2) *Owner controlled area searches.*

(iv) Vehicle searches must be accomplished through the use of equipment capable of detecting firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage, or through visual and physical searches, or both, to ensure that all items are identified before granting access.

(3) *Protected area searches. Licensees shall search all personnel, vehicles and materials requesting access to protected areas.*

(i) The search for firearms, explosives, incendiary devices, or other items which could be used to commit radiological sabotage shall be accomplished through the use of equipment capable of detecting these items, or through visual and physical searches, or both, to ensure that all items are clearly identified before granting access to protected areas. The licensee shall subject all persons except official Federal, state, and local law enforcement personnel on official duty to these searches upon entry to the protected area. Armed security officers who are on duty and have exited the protected area may re-enter the protected area without being searched for firearms.

Of note, § 73.55(g) uses the term contraband, while § 73.55(h) uses terminology consistent with the definition of contraband in NEI 03-12 (and RG 5.76). The specific inclusion of “disease causing agents” in the new regulatory definition of contraband will require NextEra to modify its security plan procedures for compliance with paragraph § 73.55(g) in ways that are unclear at this time. NextEra understands that the NRC is looking at potential resolutions for this issue, but without further guidance or rulemaking, compliance with this requirement cannot be reliably achieved within the expected compliance period.

- *Time of Discovery:* Specifically, the new definition specifies that a cognizant individual “is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.” At Seabrook, NextEra applies the definition in NEI 03-12 and RG 5.76 whereby “a supervisor or manager makes a determination that a verified degradation of a security safeguards measure or a contingency situation exists,” to establish T=0 for security related events.

The new definition expands the pool of personnel previously used by licensees to determine T=0 for an event, due to the undefined nature of “position, experience, and/or training.” Additionally, the lower threshold for recognition of “adversely impacts security,” versus “recognition of verified degradation of a security safeguards measure or a contingency situation” contributes to the expansion of the personnel pool. NextEra believes the definition in NEI 03-12 and RG 5.76 is the appropriate threshold for T=0 for security related events.

Without the proposed exemption, and clarification from new or revised guidance, the application of this new definition will require NextEra to implement immediate changes to the Seabrook security program which revise training modules for general plant employees,

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(potentially including applicable NANTeL training), to expand responsibility for establishing time of discovery across a broad spectrum of station personnel as cognizant individuals.

2.3 Federal Aviation Administration (FAA) Local Control Tower Point of Contact

10 CFR 73.1215 establishes requirements for reporting suspicious activities involving aircraft to a licensee's local FAA control tower. Specifically, NextEra would be required to:

- Establish a point of contact with the local FAA control tower, and
- Document the point of contact in written communication procedures.

Given the January 8, 2023, compliance date, NextEra may not be able to timely establish a memorandum of understanding or similar agreement with the local FAA authority, without which credence may not be given to a suspicious activity call from Seabrook operators. NextEra security procedures specify an 800-number contact with the FAA; however, this same number is shared with NextEra's other nuclear sites throughout the United States and it is unclear whether this general contact information satisfies the local FAA control tower requirements specified in the final rule. Without the proposed exemption to provide time for revised regulatory guidance or rulemaking, NextEra cannot confidently assess its compliance with this final rule requirement.

2.4 Regulatory Guides

In March 2023, to support the implementation of the final rule, the NRC issued RG 5.62, "Physical Security Event Notifications, Reports, and Records," Revision 2. As stated above, during the August 23, 2023, public meeting, the NRC acknowledged ambiguities and inconsistencies in the final rule language and associated guidance. Below are examples of identified issues with the regulatory guidance which necessitate the proposed exemption for Seabrook:

(1) 4-hour vs. 15-minute notification requirement:

- § 73.1200(e)(1)(iii) and (iv) requires a 4-hour notification for contraband attempted or actual introduction of contraband into a PA, VA, or MAA.
 - The definition of contraband contains the term "incendiaries".
- § 73.1200(a) required a 15-minute notification for hostile actions.
 - RG 5.62, Rev 2, Section 7.1, page 24, provides examples of hostile actions:
 - (4) The discovery of unauthorized explosive materials, incendiary materials, or an improvised explosive device within the licensee's site boundary.
- The final rule language requires a 4-hour notification for an incendiary device at or inside the PA, VA, or MAA. The RG drives licensees to a 15-minute notification for an incendiary device at the site boundary, which is further away from safety related equipment.

The disparity RG 5.62, Revision 2, introduces regarding 15-minute versus 4-hour notification for the discovery of incendiary materials warrants regulatory clarification. Station personnel are trained and fluent in station procedures and applicable regulatory guidance to support timely and accurate security event reporting. However, the notification inconsistency described above can lead to reporting errors and potentially enforcement action. The proposed exemption would provide time for revised regulatory guidance on this issue.

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(2) 4-hour notification vs. 24-hour recording of “lost or uncontrolled weapon”:

- § 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
- § 73.1210(f) requires recording within 24-hours “physical security events or conditions that decreases the effectiveness of the physical security program.”
 - RG 5.62, Rev 2, Section 18.2, page 38, provides examples of the “Recordable Events and Conditions Regarding Decreases in Effectiveness”, that 73.1210(f) requires. The RG includes an event involving the loss of control of an authorized security weapon within a PA, VA, MAA, or CAA.

The conflict between the notification and recording of a lost or uncontrolled weapon only exists because of the regulatory guidance in RG 5.62, Revision 2. As a best practice, and to support accurate determination of notification events, station personnel are trained and fluent in referencing published RGs, station procedures and guidance, and other industry documents. Additional clarity is needed to support the implementation of notifications and recordkeeping in a consistent and successful manner. The proposed exemption would provide time for the revised regulatory guidance and/or rulemaking on this issue.

(3) Malevolent intent discussion:

- 10 CFR 73.1200 only refers to the term “malevolent intent” in § 73.1200(q)(2) as *exempli gratia* or “e.g.” parenthetical describing a circumstance where a licensee may desire to detract a previous physical security event notification.
 - RG 5.62, Rev 2, Section 2, page 21, titled, “Malevolent Intent and Credible Bomb Threat Considerations,” states the NRC’s position that only government officials have the necessary resources and qualifications to determine whether malevolent intent was present in a security event.
 - During the May 2023, and August 2023, public meetings, the NRC was unable to consistently describe when licensees were capable of this determination, and when licensees were required to have government officials make this determination.
 - In “NRC Response to Public Comments”² comment K-21 contains the discussion regarding “credible”, and puts into context, the circumstances of the NRC’s position, as it relates to the determination of malevolent intent.
 - It is clear, that as of the publication date of March 2023, the discussion revolves around the 15-minute notification requirements, and not blanketly across all security related events.

NextEra believes that in certain circumstances, external government agencies are best suited to determine malevolent intent, (e.g., credible bomb threat, credible threat). However, NextEra’s position on the capability to determine intent as it relates to identifying Human Performance errors, as well as determining Trustworthy and Reliability for Access purposes, remains with NextEra.

² NRC Response to Public Comments, “Enhanced Weapons, Firearms Background Checks, and Security Event notifications Rule”, NRC-2011-0018; RIN 3150-AI49 (ADAMS Accession No. ML16264A004)

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The lack of clarity of when it is appropriate for external government officials to determine malevolent intent creates confusion. Clarification is needed to prevent unnecessary changes to Seabrook security plan procedures, such as access authorization procedures, to await investigation results from NRC's Office of Investigations (OI), the intelligence community, or a federal, State, or local law enforcement agency. The proposed exemption would provide time for revised regulatory guidance on this issue.

As stated earlier, the above examples of ambiguities and inconsistencies in the final rule are not all encompassing and NextEra's gap analysis of the final rule against current requirements is not yet complete. Accordingly, an exemption from the entirety of the final rule is requested until December 31, 2024, or 180 days after publication of the applicable RGs, whichever is later. During the proposed period of exemption, NextEra will continue to implement the Seabrook security plan consistent with RG 5.62, Revision 1, and GL 91-03.

3. CONSIDERATIONS FOR EXEMPTION

As highlighted in the selected examples above, the lack of clarity on key parts of the final rule may result in inadequate implementation and potential non-compliance and could result in modification to existing Seabrook security plans and procedures at least twice, based on interpretation of the final rule and regulatory guidance. Accordingly, NextEra requests the following be taken into consideration during review of this request:

- At Seabrook, NextEra implements a formal Corrective Action Plan (CAP) and enters into the CAP, conditions adverse to quality as they relate to security programs and items that are conditions adverse to regulatory compliance.
- At Seabrook, NextEra complies with the definition of *Contraband* and *Time of Discovery* as they are defined in RG 5.76, "Physical Protection Programs at Nuclear Power Reactors", Revision 1, and in NEI 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]".
- NextEra will contact the local FAA control tower authority to establish a notification agreement for suspicious aircraft activity and upon finalization, will document the local FAA control tower authority contact information in Seabrook security communication procedures. During the period of exemption, NextEra will continue to use the FAA contact procedures and phone number currently in place.
- At Seabrook, NextEra complies with the security event reporting requirements consistent with RG 5.62, Revision 1, and GL 91-03 and will continue implementation in this manner during the proposed period of exemption.
 - This includes the accelerated call to the NRC as it pertains to NRC Bulletin 2005-02
- At Seabrook, NextEra remains capable of making voluntary reports of suspicious activities and will continue implementation in this manner during the proposed period of exemption.
- NextEra is in full compliance with the new Fitness for Duty Rule promulgated in 2022.
- NextEra believes the burden associated with rework is unnecessary while awaiting clarity in the final rule with revision of the associated RGs. Several examples of where rework will be required are:

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- Revisions of associated procedures/processes, job aids, training materials and lesson plans that are used to describe and elaborate on reporting requirements.
- Coordination of work management and resources to align with station outage schedule(s).
- The re-training of impacted station personnel with updated information contained within the revised guidance documents, including:
 - Security
 - Regulatory/Compliance
 - Emergency Preparedness
 - Radiation Protection
 - Operations, including the Accredited Training Program requirements for the Systematic Approach to Training (SAT) process. Examples of elements that drive the number of available weeks to train operators within a year are:
 - NextEra executes 5 (6 for non-outage years) cycles per year.
 - NextEra requires 7 (6 crews plus pilot crew) weeks for each cycle of training, based on the number of operating crews and licensed operators at Seabrook.
 - NextEra is required to administer an exam cycle for licensed operators each year.
 - NextEra is required to incorporate certain elements within the 2-year training cycle, that include outage applicable objectives, (including, but not limited to: core changes, plant modifications, lower plant Mode operations).

4. JUSTIFICATION FOR EXEMPTION

Based on NRC's projected timeline for completion of revision to the applicable RGs associated with the final rule, and the time necessary for NextEra to undergo change management processes adequately to include the number of training weeks that will be required, NextEra is requesting a compliance date for the final rule of December 31, 2024, or 180 days after publication of final RG, whichever is later.

As stated above, during the proposed period of exemption, NextEra will continue to implement the Seabrook Security Plan as currently documented. Since Seabrook has been licensed by the NRC, the NRC has deemed that the Seabrook Security Plan provides reasonable assurance of safety and security. The delay in implementation of the final rule will not impact proper implementation of the current Seabrook Security Plan and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger the life or property or common defense and security.

Implementation of the final rule without further interface, clarity, and refined guidance may result in unintended consequences which could reduce the effectiveness of the current Seabrook Security Plan. Therefore, it is in the public's interest that the Seabrook Security Plan and associated procedures and processes comprehensively implement the final rule regulations consistent with the applicable regulatory guidance once resolution of identified issues has been achieved.

The granting of this exemption would not violate the Atomic Energy Act (AEA), as the compliance date for the final rule is not required nor specified in the AEA as amended, any provisions of the Commission's regulations, or any other legally binding requirements imposed by the Commission.

Thus, issuance of this exemption request would be consistent with 10 CFR 73.5 since it is "authorized by law and will not endanger life or property or the common defense and security and [is] otherwise in the public interest."

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5. ENVIRONMENTAL CONSIDERATION

NextEra has evaluated the proposed exemption for environmental considerations and determined that the proposed exemption would change a requirement with respect to installation or use of a facility component located within the restricted area, as defined in 10 CFR 20, or would change an inspection or surveillance requirement. However, the proposed exemption does not involve (i) a significant hazards consideration, (ii) a significant change in the types or significant increase in the amounts of any effluents that may be released offsite, or (iii) a significant increase in individual or cumulative occupational radiation exposure. Accordingly, the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(9) is met and, pursuant to 10 CFR 51.22(b), an environmental impact statement or environmental assessment is not required in connection with the proposed exemption.