

10 CFR 73.5

TMI-23-018

November 22, 2023

ATTN: Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001Three Mile Island Nuclear Station, Unit 1
Renewed Facility Operating License No. DPR-50
NRC Docket Nos. 50-289 and 72-077**Subject:** Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation

On March 14, 2023, the U.S. Nuclear Regulatory Commission (NRC) noticed Final Rule entitled, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," in the Federal Register (i.e., 88 FR 15864). This final rule became effective April 13, 2023, with a compliance date of January 8, 2024.

In response to the publication of the final rule, Constellation Energy Generation, LLC (CEG) performed a gap analysis to compare the new rule against current requirements, NRC endorsed documents, and other guidance documents published by the NRC. CEG also evaluated the broad impact across multiple organizations and the change management scope.

In accordance with 10 CFR 73.5, Three Mile Island Nuclear Station, Unit 1 (TMI-1) is requesting an exemption from the specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(c)(1) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

TMI-1 is requesting an exemption from using the definitions for the terms "Contraband," and "Time of Discovery," as recently revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions.

TMI-1 is not requesting an extension to the compliance date for specific requirements in Title 10 of the Code of Federal Regulations (10 CFR) Part 73, Subpart B, "Enhanced Weapons,

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Preemption, and Firearms Background Checks," described in 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.17, "Firearms Background Checks for Armed Security Personnel."

Based on NRC's projected timeline for completion of revision to the applicable Regulatory Guides associated with this final rule, and the time necessary for TMI-1 to go through the change management processes adequately to include the number of training weeks that will be required, TMI-1 is requesting a new compliance date of December 31, 2024, or 180 days after publication of final Regulatory Guides, whichever is later.

The attachment to this letter provides the justification and rationale for the exemption request. The requested exemption from the specific requirements in 10 CFR Part 73, is permissible under 10 CFR 73.5 because it is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

TMI-1 requests approval of this exemption by December 15, 2023, so that actions can be taken to ensure consistent and reliable reporting procedures.

There are no regulatory commitments contained in this submittal.

If you have any questions or require additional information, please contact Richard Gropp at 1-267-533-5642.

Respectfully,



David P. Helker
Sr. Manager, Licensing
Constellation Energy Generation, LLC

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cc: w/ Attachment
Regional Administrator - NRC Region I
Decommissioning, ISFSI and Reactor Health Physics Branch – NRC Region I
Project Manager, NMSS – Three Mile Island, Unit 1
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A. BACKGROUND

On March 14, 2023, the U.S. Nuclear Regulatory Commission (NRC) issued a Final Rule entitled, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications."¹ This final rule became effective April 13, 2023, with a compliance date of January 8, 2024. The final rule contains several new elements such as:

- New terminology and associated requirements covering "conditions adverse to security"
 - New definitions of the terms "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 events
- To:
- 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

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

- 5.62, "Physical Security Event Notifications, Reports, and Records," Revision 2
- 5.86, "Enhanced Weapons Authority, Preemption Authority, and Firearms Background Checks," Revision 0
- 5.87, "Suspicious Activity Reports," Revision 0

During the August 23, 2023, public meeting, the NRC recognized that there are ambiguities and inconsistencies contained by the final rule language and associated guidance. The discussed revision date for clarifying guidance publication was April 2024, which is 3 months after the compliance date of January 8, 2024. Additionally, the NRC recognized the need for rulemaking to address the issues with the final rule language.

Accordingly, Three Mile Island Nuclear Station, Unit 1 (TMI-1) is requesting an exemption from the specific requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(c)(1) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a)(1) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a)(1) through 10 CFR 73.1210(h), "Recordkeeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity

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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Reports," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides.

TMI-1 is requesting an exemption from using the definitions for the terms "Contraband," and "Time of Discovery," as recently revised in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after publication of the final Regulatory Guides. The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions.

TMI-1 is not requesting an extension to the compliance date for specific requirements in Title 10 of the Code of Federal Regulations (10 CFR) Part 73, Subpart B, "Enhanced Weapons, Preemption, and Firearms Background Checks," described in 10 CFR 73.15, "Authorization for Use of Enhanced Weapons and Preemption of Firearms Laws," and 10 CFR 73.17, "Firearms Background Checks for Armed Security Personnel."

B. BASIS FOR EXEMPTION REQUEST

10 CFR 73.5 allows the NRC 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 provided in Section 73.5.

Constellation Energy Generation, LLC (CEG) has identified several issues in the final rule and the supporting Regulatory Guides that require clarification from the NRC in order for TMI-1 to successfully implement the requirements. As mentioned above, the NRC is currently developing a resolution for code language issues and addressing guidance revisions. The NRC plans to issue revised guidance in April 2024, 3 months after the compliance date of January 8, 2024. Without additional guidance, enforcement relief, or the approval of this exemption, it is likely that TMI-1 will need to make changes to its Security Plan and processes twice – once to come into compliance with its own interpretation of the final rule (without the benefit of the additional guidance being developed by NRC), and again once the additional guidance is issued. The ambiguity and conflict created by the final rule language and existing guidance, which is described below, could result in unnecessary confusion and distraction that detract from the current high level of assurance provided by TMI-1's existing physical security program. Thus, implementation of the final rule prior to issuance of additional clarifying guidance, at a minimum, is not in the best interest of the public. The following are several issues that have been identified as examples:

1. CONDITIONS ADVERSE TO SECURITY

The introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined, and ambiguous. CEG has established, as required, a formal Corrective Action Program in accordance with 10 CFR Part 50, Appendix B, Criterion XVI. NEI 16-07, "Improving the Effectiveness of Issue Resolution to Enhance Safety and Efficiency," provided recommended approaches to the industry to enhance corrective actions, and facilitate a better organizational focus on conditions affecting safety and reliability. As a result, CEG has developed procedures/processes to determine

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conditions adverse to quality as it relates to the security organization, (e.g., Condition Adverse to Regulatory Compliance.)

- PI-AA-125, "Corrective Action Program (CAP) Procedure," defines specific events, situations or occurrences that result in a condition adverse to quality. Security-related items are included.

Given the robust nature of the Corrective Action Program (CAP), the additional duplication of procedures and/or revision of procedures to accommodate a new term is unnecessary, adds burden, and provides no increased value, safety margin or improvements to the security programs or the CAP.

2. DEFINITIONS IN 10 CFR 73.2

New definitions in Section 73.2 expand existing definitions provided 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." TMI-1 has used the existing definitions to design its Security Plan and associated programs and procedures. Examples of the issues include:

- *Contraband*: Specifically, the *exempli gratia* or "e.g.," parenthetical describing "other dangerous materials" as specifically including "disease causing agents" requires licensees to protect against circumstances beyond the current Design Basis Threat (DBT) as described in 10 CFR 73.1. The application of this expanded definition will require changes to TMI-1's methods of compliance with the requirements of 10 CFR 73.55(g)(1)(ii)(B). Paragraph (g)(1)(ii)(B) requires (emphasis added):

Section 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 Section 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.

Section 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

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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.

Section 73.55(g) uses the term contraband, while Section 73.55(h) uses terminology consistent with that found in 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 TMI-1 to modify its programs and procedures describing the methods of compliance with Section 73.55(g). CEG understands that the NRC is looking at potential resolutions for this issue, but until further guidance is issued, or rulemaking occurs, TMI-1 is unable to come into compliance with this requirement as written without making significant changes to its physical security program.

- *Time of Discovery*: Specifically, the term "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." Currently, security plans incorporate the definition for Time of Discovery, that is found in NEI 03-12 and RG 5.76 being, "...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 a security related event.

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 broader nature and lower threshold for recognition of something that simply "adversely impacts security," versus "recognition of verified degradation of a security safeguards measure or a contingency situation" contributes to the expansion of pool of

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personnel. CEG is confident that the term used in NEI 03-12 and RG 5.76, is the appropriate threshold for T=0 for security related events.

The application of this expanded definition will require TMI-1 to expand current security programs to incorporate the expanded and revised training modules onsite for general plant employees (potentially with INPO and the NANTeL course they facilitate), and the responsibility for implementation of the expanded training across a broad spectrum of personnel at the station.

3. REGULATORY GUIDES

Examples of clarification needed in the supporting RG 5.62, Revision 2, "Physical Security Event Notifications, Reports, and Records," include:

4-hour vs. 15-minute notification requirement:

- Section 73.1200(e)(1)(iii) and (iv) requires a 4-hour notification for contraband attempted or actual introduction of contraband into a Protected Area (PA), Vital Area (VA), or Material Access Area (MAA).
 - The definition of contraband contains the term "incendiaries."
- Section 73.1200(a) required a 15-minute notification for hostile actions.
 - RG 5.62, Revision 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 code 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 notification conflict the regulatory guide introduced between a 15-minute and 4-hour notification is burdensome, confusing, and makes the consistency and success for this notification unpredictable. Station personnel are trained and fluent in referencing published RGs, station procedures and guidance, and other industry documents, as a best practice, to support the accuracy of determination of notification events.

The inconsistency created by RG 5.62 unnecessarily creates the potential for confusion and human performance error.

4-hour notification vs. 24-hour recording of "lost or uncontrolled weapon."

- Section 73.1200(e)(1)(v) requires a 4-hour notification for a lost or uncontrolled weapon.
- Section 73.1210(f) requires recording within 24-hours "physical security events or conditions that decreases the effectiveness of the physical security program."

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- RG 5.62, Revision 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 Controlled Access Area (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. 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 in order to support the implementation of notifications and recordkeeping in a consistent and successful manner.

Malevolent intent discussion:

- 10 CFR 73.1200 only refers to the term "malevolent intent" in Section 73.1200(q)(2) as *exempli gratia* or "e.g.," parenthetical describing a circumstance where a licensee may desire to retract a previous physical security event notification.
 - RG 5.62, Revision 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.
 - Within the "NRC Response to Public Comments," [ML16264A004](#),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.
 - Based on the current publication of Section 73.1200 on March 2023, the discussion focuses on the 15-minute notification requirements, and not across all security related events.
- CEG is aligned that in certain circumstances, external government agencies would be the most appropriate to determine malevolent intent, (e.g., credible bomb threat, credible threat). However, CEG's position on the capability to determine intent as it relates to identifying Human Performance errors, as well as determining whether individuals are trustworthy and reliable for Access purposes remains with TMI-1.
- The lack of clarity of the scope and/or intent of when it is appropriate for external government officials to determine malevolent intent creates

² NRC Response to Public Comments, "Enhanced Weapons, Firearms Background Checks, and Security Event notifications Rule", NRC-2011-0018; RIN 3150-AI49

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ambiguity. Final clarity is needed to prevent TMI-1 having to unnecessarily change security programs and procedures, such as access authorization, to incorporate a process to await investigation results from NRC's Office of Investigations (OI), the intelligence community, or a Federal, State, or local law enforcement agency.

C. CONSIDERATIONS FOR EXEMPTION

As highlighted in the selected examples above, TMI-1 moving towards a compliance date of January 8, 2024, without full clarity on key parts of the final rule would result in an inadequate implementation. Unknown success path towards compliance of the final rule, as written, in current code language, along with the conflict and confusion the published, publicly available, stated positions of the NRC, are key elements for this request. TMI-1 would find themselves in a situation where the modification to security plans and procedures would be required at least twice, based on interpretation of this new rule. TMI-1 is requesting the following considerations be taken into account during review of this request:

- TMI-1's current site Security Plan implements the requirements of 10 CFR 73.71, "Reporting of Safeguards Events" for reporting the suspension of security measures.
- TMI-1 will continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events" and Appendix G to Part 73, "Reportable Safeguards Events."
- TMI-1 will use the definitions for the terms "Contraband" and "Discovery (time of)," in its current site Security Plan consistent with how these terms are currently defined in Regulatory Guide 5.76, Revision 1, "Physical Protection Programs at Nuclear Power Reactors."
- CEG is currently implementing a formal CAP process and has identified Conditions Adverse to Quality as they relate to Security Programs and items that are Conditions Adverse to Regulatory Compliance.
- TMI-1 is currently capable of making voluntary reports of suspicious activities, and this will not change in the interim until the new compliance date and final RG issuance.
 - SY-TM-732, Security Assessment and Response to Unusual Activities
 - SY-TM-732-1003, Responding to an Unmanned Aerial System (UAS) Unmanned Aerial Vehicle (UAV)
- CEG is in the process of implementing the new 2022 10 CFR Part 26 Fitness for Duty Rule (87 FR 71422, November 22, 2022). The cumulative effect of multiple rule changes is extremely significant on station resources, especially when the multiple rules impact the same organization on site.
- The burden associated with rework for CEG is unnecessary while awaiting final clarity with publication of 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 schedule(s). With TMI-1 decommissioning staffing numbers, unnecessary work could delay the SAFSTOR dormancy milestone.
- The re-training of impacted station personnel with updated information contained within the revised guidance documents:
 - Security
 - Regulatory Assurance
 - Emergency Response
 - Radiation Protection

D. JUSTIFICATION FOR EXEMPTION

Based on NRC's projected timeline for completion of revision to the applicable RGs associated with this final rule, TMI-1 is requesting a new compliance date of December 31, 2024, or 180 days after publication of final RGs, whichever is later.

As stated above, TMI-1 will continue to implement the Security Plan as currently reviewed and approved by the NRC. Since it has been reviewed and approved by the NRC, the TMI-1 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 Security Plan and will ensure that the final rule is effectively implemented. Thus, granting of this exemption will not endanger 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 Security Plan. Therefore, it is in the public's interest that TMI-1's Security Plan and associated procedures/processes comprehensively and accurately implement the regulation and guidance documents once resolution is obtained of identified issues.

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

Thus, issuance of this exemption request is consistent with 10 CFR 73.5 because 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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E. ENVIRONMENTAL ASSESSMENT

TMI-1 is requesting an exemption from the specific requirements for the 2023 Security Rule, "Enhanced Weapons, Firearms Background Checks, and Security Event Notifications," effective as of April 13, 2023. The following information is provided in support of an environmental assessment and finding of no significant impact for the proposed exemption. TMI-1 has determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Accordingly, the proposed one-time exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.