

SAFEGUARDS EVALUATION REPORT

DOCKET NO.: 70-27

LICENSE NO.: SNM-42

LICENSEE: BWXT Nuclear Operations Group, Inc. – Lynchburg

SUBJECT: LICENSE AMENDMENT 47 – APPROVAL OF SUBMITTAL FOR EXEMPTION FROM IMPLEMENTATION OF SECURITY EVENT NOTIFICATION AND SUSPICIOUS ACTIVITY REPORTING (ENTERPRISE PROJECT IDENTIFIER L-2023-SPR-0013)

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has approved the requested exemption from specific requirements of Title 10 of the *Code of Federal Regulations* (10 CFR), part 73, “Physical Protection of Plant and Materials,” subpart T, “Security Notifications, Reports, and Recordkeeping,” for BWXT Nuclear Operations Group - Lynchburg, Inc. (BWXT NOG-L). This action is in response to the application submitted by BWXT NOG-L, dated November 16, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML23325A038) and supplemented by letter dated February 29, 2024 (ML24065A014). The application requested an exemption from the requirements of 10 CFR 73.1200, “Notification of physical security events,” paragraphs (a) through (t), 10 CFR 73.1205, “Written follow-up reports of physical security events,” paragraphs (a) through (e), 10 CFR 73.1210, “Recordkeeping of physical security events,” paragraphs (a) through (h), and 10 CFR 73.1215, “Suspicious activity reports,” paragraphs (a) through (f). This application also requested an exemption from the current definitions for the terms “Contraband” and “Time of Discovery” in 10 CFR 73.2, “Definitions.”

On March 14, 2023, the NRC issued its notice in the *Federal Register* for the “Enhanced Weapons, Firearms Background Checks, and Security Event Notifications” (EWR) final rule (88 FR 15864). This final rule became effective April 13, 2023, with a compliance date of January 8, 2024.

The requirements for physical security event notifications, and the categories of physical security events and the timeframes by which the licensee must notify the NRC of these events, are set forth in 10 CFR 73.1200(a) through 10 CFR 73.1200(t).

The requirements for how licensees submit written follow-up reports following a licensee’s telephonic notification of a physical security event under 10 CFR 73.1200 are set forth in 10 CFR 73.1205(a) through 10 CFR 73.1205(e).

The requirements for recordkeeping of less significant physical security events and conditions adverse to security are set forth in 10 CFR 73.1210(a) through 10 CFR 73.1210(h).

The requirements for how licensees report suspicious activity to the NRC and other federal agencies within a specified time are set forth in 10 CFR 73.1215(a) through 10 CFR 73.1215(f).

As part of the EWR final rule, the NRC added the definitions for “Contraband” and “Time of Discovery” to 10 CFR 73.2, “Definitions,” to help clarify the physical event notification requirements.

Summary of BWXT NOG-L's Basis for the Requested Exemption

BWXT NOG-L is requesting an exemption from the requirements in Subpart T of the EWR final rule, as described above, that would defer BWXT NOG-L's compliance with those provisions until December 31, 2024, or 180 days after publication of final regulatory guides (RGs), whichever is later. BWXT NOG-L is also requesting an exemption from using the new definitions for the terms "Contraband" and "Time of Discovery" in 10 CFR 73.2, "Definitions," until the later of December 31, 2024, or 180 days after the NRC's publication of the final RGs.

BWXT NOG-L is requesting an exemption from these requirements because of what it asserts are ambiguities and inconsistencies in both the final rule language and the supporting RGs. In support of the exemption request, BWXT NOG-L identified the following issues, among others, as ones that challenge its implementation of the new Subpart T reporting requirements and certain new definitions in 10 CFR 73.2:

- BWXT NOG-L stated that the introduction of the term "conditions adverse to security" within 10 CFR 73.1210 is undefined, and ambiguous, and will have implications for BWXT NOG-L's corrective action program that enables site personnel to report, investigate, correct, and track trends and conditions adverse to safety including security items.
- BWXT NOG-L stated that the new definition for the term "Contraband" in 10 CFR 73.2 is confusing because the current physical protection program searches for firearms, explosives, and incendiary devices in accordance with 10 CFR 73.46, but contraband has not been added to the search requirements in 10 CFR 73.46. The application of this expanded definition that also includes "other dangerous materials," specifically "disease causing agents" and unauthorized electronic devices and media, will require changes to the methods of compliance with the requirements for identifying "contraband."
- BWXT NOG-L stated that the new definition for the term "Time of Discovery" in 10 CFR 73.2 expands on the existing definition provided in NRC endorsed, Nuclear Energy Institute (NEI) 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]. The application of this expanded definition will require changes to the methods of compliance with the requirements for identifying "time of discovery."
- BWXT NOG-L stated that the inconsistencies in RG 5.62, "Physical Security Event Notifications, Reports, and Records," Revision 2, dated March 2023 (ML17131A285) associated with the implementation of 10 CFR 73.1200 for 15-minute and 4-hour notifications related to contraband, and 4-hour and 24-hour event notifications associated with the discovery that an authorized weapon is either lost or uncontrolled, creates the potential for confusion and human performance error.
- BWXT NOG-L further states that due to these concerns it is not clear what it must do to implement certain rule requirements to come into full compliance with the rule. BWXT NOG-L further states that requiring it to come into compliance without full clarity on key parts of the rule would require it to make changes to its physical security plans and processes twice – once to come into compliance with its own interpretation of the final rule (without the benefit of the revised guidance currently being developed by the NRC),

and again when the revised NRC guidance addressing the identified ambiguities and inconsistencies is issued.

Two examples of where BWXT NOG-L asserts this duplicative work will be required are:

- Revisions of associated procedures/processes, job aids, training materials and lesson plans that are used to describe and elaborate on reporting requirements.
- The re-training of impacted station personnel with updated information contained within the revised guidance documents.

BWXT NOG-L believes that the burden associated with this duplication of work is unnecessary while the NRC clarifies these ambiguities and inconsistencies and therefore affects efficient and effective implementation of the rule.

BWXT NOG-L stated that if the exemption is granted, it will continue to comply with the security event reporting requirements as they existed prior to March 2023, consistent with its current NRC-approved security plan and its site security procedures. BWXT NOG-L will continue to use their established formal Corrective Action Program and developed procedures/processes to ensure security events resulting in a failure to meet regulatory compliance are identified and resolved.

Additionally, it will continue to use the definitions for the term “Discovery (time of)” as defined in NEI 03-12, “Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program],” to implement as part of its BWXT NOG-L site security plan. Additionally, BWXT NOG-L will continue to use RG 5.62, “Physical Security Event Notifications, Reports, and Records,” Revision 1, dated November 1987. BWXT NOG-L will continue to implement the requirements in its BWXT NOG-L site security plan as currently reviewed and approved by the NRC. Finally, BWXT NOG-L has stated as part of its basis for justifying the exemption that it agrees to continue making voluntary reports of suspicious activities pending clarification of the EWR final rule.

NRC Staff Evaluation of the Exemption Request

Pursuant to 10 CFR 73.5, “Specific exemptions,” the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR, part 73, when the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

BWXT NOG-L has advanced several bases in support of the exemption request. For example, BWXT NOG-L, in their request, has identified certain examples in 10 CFR 73.1200, 73.1210, and 10 CFR 73.2 to support the technical basis for an exemption from the provisions of these requirements. BWXT NOG-L has not identified any specific ambiguities and inconsistencies with respect to 10 CFR 73.1205 and 73.1215. The various reporting and event notification requirements in Subpart T and the two definitions in 10 CFR 73.2 for which BWXT NOG-L seeks an exemption constitute an integrated framework for reporting and documenting security events, an approach which is both risk-informed and graded. Although BWXT NOG-L has identified only a small number of ambiguities or inconsistencies in 10 CFR 73.1200, 73.1210, and 10 CFR 73.2, it asserts that without clarification on how these ambiguities and inconsistencies will be resolved by the NRC, BWXT NOG-L will have to update its security

program, including procedures, processes, and training, to incorporate its understanding of what is required to come into compliance with the rule. BWXT NOG-L further asserts that once the NRC has implemented revisions to the rule and guidance to address these ambiguities and inconsistencies, BWXT NOG-L will again have to revise its security program to incorporate those clarifications to ensure continued compliance with the rule. This would entail an unduly resource-intensive bifurcation of BWXT NOG-L's otherwise integrated process for coming into compliance with the rule. The updated 73.2 definitions of "Time of Discovery" and "Contraband" are a foundational and cross-cutting concept for implementing the updated notifications, reports, and recordkeeping requirements of revised 10 CFR 73.1200, 73.1205, 73.1210, and 73.1215. Accordingly, the exemption would enable BWXT NOG-L to efficiently consolidate into a single, systematic, process what would otherwise involve partial duplication of efforts to come into compliance with the rule. While not relying on all of BWXT NOG-L's claims in support of the exemption request, and considering that the issuance of the targeted clarifications to the identified regulatory guidance is well underway, the NRC staff agrees with BWXT NOG-L that the requested exemption would avoid unnecessary resource burden and facilitate the effective and efficient implementation of the rule.

The NRC staff agrees that the requested duration for the exemption is appropriate for the licensee to review the revised NRC staff guidance, revise procedures, and to provide training to site personnel that implement the new graded approach for reporting and documenting security events and activities to the NRC and other federal agencies.

During that time, BWXT NOG-L will instead continue to implement its existing NRC-approved security plan, which implements the NRC's security event reporting requirements that existed prior to the publication of the EWR final rule and will also continue making voluntary suspicious activity reports. Because of these actions by the licensee, the NRC staff agrees that BWXT NOG-L's measures, implemented until the later of December 31, 2024, or 180 days after the NRC's publication of the final RGs, will provide high assurance of adequate protection. The NRC staff notes that the proposed revision 3 to RG 5.62 was published for public comment as DG-5080, "Physical Security Event Notifications, Reports and Records," on October 27, 2023 (88 FR 73767), and proposed revision 1 to RG 5.87, "Suspicious Activity Reports Under 10 CFR Part 73," was published for public comment as DG-5082, "Suspicious Activity Reports," on October 27, 2023 (88 FR 73769). For these reasons, and as documented in the findings below, the NRC staff has determined that granting the exemption is appropriate.

The NRC staff has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, in accordance with 10 CFR 73.5, the NRC staff finds that the exemption is authorized by law.

The NRC staff has also determined that BWXT NOG-L will maintain a security posture that continues to ensure safety and security through the implementation of its current NRC-approved physical protection program using the reporting and recordkeeping requirements that existed prior to the publication of the EWR final rule and will also continue making voluntary suspicious activity reports. Therefore, in accordance with 10 CFR 73.5, the NRC staff finds that granting the proposed exemption will not endanger life or property or the common defense and security.

Finally, based on the identified inconsistencies and ambiguities discussed above in the rule text and regulatory guidance, the NRC staff has determined that temporarily delaying compliance with the specified subset of Part 73 requirements will reduce unnecessary burden on site personnel and resources, while still facilitating the effective implementation of the EWR final

rule. Therefore, the NRC staff finds that granting the proposed exemption is in the public interest.

Environmental Considerations

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter I is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: recordkeeping requirements; reporting requirements; inspection or surveillance requirements; equipment servicing or maintenance scheduling requirements; education, training, experience, qualification, requalification or other employment suitability requirements; safeguard plans, and materials control and accounting inventory scheduling requirements; scheduling requirements; surety, insurance or indemnity requirements; or other requirements of an administrative, managerial, or organizational nature.

The NRC staff has determined that the granting of the exemption request involves no significant hazards consideration because deferred compliance for the specific requirements described in the licensee's submittal, as supplemented, does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulations are unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulations are not associated with construction, so there is no significant construction impact. The exempted regulations do not concern the source term (i.e., potential amount of radiation in an accident) nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirements of 10 CFR 73.2, 10 CFR 73.1200, 10 CFR 73.1205, 10 CFR 73.1210, and 10 CFR 73.1215, as described in the licensee's submittal, as supplemented, involve recordkeeping requirements, reporting requirements, safeguard plans, and other requirements of an administrative, managerial, or organizational nature.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

Conclusions

Accordingly, the NRC has determined that pursuant to 10 CFR 73.5, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is

otherwise in the public interest. Therefore, the NRC hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.1200(a) through (t), 10 CFR 73.1205(a) through (e), 10 CFR 73.1210(a) through (h), 10 CFR 73.1215(a) through (f), and the revised definitions for the terms "Contraband" and "Time of Discovery" in 10 CFR 73.2.

A new Physical Protection License Condition SG-6.11 is being added to reflect the exemption as follows:

SG-6.11 Until December 31, 2024, or 180 days after publication of the final Regulatory Guides (specifically, Regulatory Guide 5.62, Revision 3, and Regulatory Guide 5.87, Revision 1), whichever is later, the licensee is exempt from implementation of the revised definitions for the terms "Contraband," and "Time of Discovery," in 10 CFR 73.2, "Definitions," and the recently revised requirements in 10 CFR Part 73, Subpart T, "Security Notifications, Reports, and Recordkeeping," 10 CFR 73.1200(a) through 10 CFR 73.1200(t), "Notification of Physical Security Events," 10 CFR 73.1205(a) through 10 CFR 73.1205(e), "Written Follow-up Reports of Physical Security Events," 10 CFR 73.1210(a) through 10 CFR 73.1210(h), "Record keeping of Physical Security Events," and 10 CFR 73.1215(a) through 10 CFR 73.1215(f), "Suspicious Activity Reports." The licensee shall comply with the commitments captured in its letter dated November 16, 2023, as supplemented by letter dated February 29, 2024. Specifically, the licensee shall:

1. Continue to comply with security event reporting, as previously required in 10 CFR 73.71, "Reporting of Safeguards Events," and 10 CFR Part 73, Appendix G, "Reportable Safeguards Events," and consistent with its current NRC-approved security plan and its site security procedures.
2. Continue to comply with the existing definition for "Discovery (time of)" as defined in Revision 7 of NEI 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Program]."
3. Remain capable of voluntarily reporting suspicious activity to the NRC and other federal agencies for the duration of the requested exemption term.
4. Continue to implement the established Corrective Action Plan that identifies items within the security program considered adverse to regulatory compliance.

Principal Contributors

Vince Williams, NSIR/DPCP
Joe Willis, NSIR/DPCP