



Nuclear Fuel Services, Inc.

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November 20th, 2023

Director, Office of Nuclear Material Safety & Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Document Control Desk

Reference: Docket No. 70-143; SNM License 124

Subject: Request for Exemption from Enhanced Weapons, Firearms Background Checks, and Security Event Notifications Implementation

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

In response to this final rule, Nuclear Fuel Services (NFS) performed a gap analysis comparing the new requirements against current regulations, and other guidance documents endorsed or published by the NRC. NFS evaluated the broad impact across the organization and the change management scope.

In accordance with 10 CFR 73.5, NFS is requesting an exemption from the specific 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)(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". Additionally, NFS 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,". The exemption would not apply to the definitions of those terms that were in effect prior to the issuance of the 2023 revisions. Based on NRC's projected timeline to revise the applicable Regulatory Guides associated with this final rule, and the time necessary for NFS to go through the change management processes adequately to include the number of training weeks that will be required, NFS 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 justification for the exemption request. The exemption requested 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.

NFS requests expedited review and approval of this exemption on or before December 15th so actions can be taken to ensure consistent and reliable reporting procedures.

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NMSSOI

Anthony P. Wood 11-20-2023
Reviewed By Date

UNCLASSIFIED

There are no regulatory commitments contained in this submittal.

If you or your staff have any questions, require additional information, or wish to discuss this, please contact Ms. Natalie Willis, Security Director, at (423) 743-1720 or me. Please reference our unique document identification number (24G-23-0022) in any correspondence concerning this letter.

Respectfully,
Nuclear Fuel Services Inc.

A handwritten signature in cursive script that reads "Tim Knowles".

Tim Knowles
Safety and Safeguards Director

Attachment: Request for Exemption from Specific Requirements in New 2023 Security Rule.

Attachment
Request for Exemption from Specific Requirements in New 2023 Security Rule.

A. 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 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:

- Terminology and associated requirements covering "conditions adverse to security"
- Definitions for the terms "contraband" and "time of discovery".
- 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 to a new 15-minute notification.

Concurrently with the publication of the final rule, NRC issued the following Regulatory Guides to support 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 there are ambiguities and inconsistencies contained in 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, NFS is requesting an exemption from the specific 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)(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.

NFS 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.

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

B. BASIS FOR EXEMPTION REQUEST

10 CFR 73.5 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 provided in section 73.5.

NFS identified several issues in the final rule and supporting Regulatory Guides that require clarification from the NRC in order for NFS 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 additional guidance in April 2024, 3 months after the January 8, 2024 compliance date. Without additional guidance, enforcement relief, and/or the approval of this exemption, it is likely that NFS will need to make changes to its physical security plans, operating procedures, training modules, 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 NFS's existing physical security program. Thus, implementing 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 term "conditions adverse to security" in 10 CFR 73.1210 is undefined, and ambiguous. NFS has established a formal Corrective Action Program and developed procedures/processes to ensure security events resulting in a failure to meet regulatory compliance are identified and resolved.

- NFS-CAP-009, "The NFS Corrective Action Program"
This document identifies the management organization, procedures, and key personnel necessary to achieve the objectives of the Nuclear Fuel Services, Inc. (NFS) Corrective Action Program (CAP). The objective of the Corrective Action is to provide and administer a program which enables NFS to report, investigate, correct, and track events and conditions adverse to safety. At NFS, Safety is used in a broad sense to include Security.

Given the robust nature of the Corrective Action Program, the additional undefined terminology is unnecessary, provides no increased value, safety margin and improvements to security and/or corrective actions programs and creates the potential for inconsistent regulatory enforcement due to differing interpretations of the undefined term.

2. DEFINITIONS IN 10 CFR 73.2

New definitions in § 73.2 expand existing search requirements beyond those identified in 10 CFR 73.46(d)(4)i – ii, and 73.46(d)5 – 9,

Contraband:

- Unlike 10 CFR 73.55, 10 CFR 73.46 does not require a search for “contraband”. All search requirements established in Part 73.46 specifically state searches must be conducted for “firearms, explosives, and incendiary devices”. The inclusion of contraband in 73.2, 73.55, and 73.1200, and failure to include the new terminology in 73.46 is confusing and creates the potential of inconsistent implementation and regulatory enforcement due to differing interpretations of the omitted term.
- 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, and Guidance for Implementation of the April 2003 Supplemented Requirements to the Design Basis Threat for Category I Fuel Cycle Facilities (October 22, 2004). The application of this expanded definition requires drastic and potentially unknown modifications to the equipment and methodology to reach compliance with the requirements.
- Inclusion of “unauthorized electronic devices or unauthorized electronic media that are capable of facilitating acts of espionage; unauthorized communication, transmission, disclosure, or receipt of RD; or tampering with RD” for “licensees that possess or conduct activities involving classified national security information or classified Restricted Data (RD)” within the expanded definition discounts the agreement established via letter, in October, 2000, assigning responsibility to NR for the protection of classified information at NFS. This action convolutes the previously established regulatory oversight paradigm for information protection at the site. NFS recommends capturing the regulatory responsibility for information protection oversight in the site security plan.

Time of Discovery:

- Specifically, the exemption request applies to the term “cognizant individual” and “is considered anyone who, by position, experience, and/or training, is expected to understand that a particular condition or event adversely impacts security.”. Currently, NFS has adopted the definition for “time of discovery”, in NEI 03-12, being “a supervisor or manager makes a determination that a verified degradation of a security safeguards measure or a contingency situation exists,” and RG 5.62, Section 3 (Rev 1) that states “the determination for reporting events should be made by onsite security management or their equivalent, 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

recognizing something that simply “adversely impacts security,” versus “recognition of verified degradation of a security safeguards measure or a contingency situation” contributes to the expanded population. NFS is confident, the definition in NEI 03-12 is the appropriate threshold for T=0 for security related events. The application of this expanded definition will require NFS to significantly expand security event training to plant employees, and increases the responsibility for implementation of the expanded training across a broad spectrum of personnel, resulting in inconsistent implementation.

3. REGULATORY GUIDES

Clarifications needed in the supporting Regulatory Guide 5.62, Revision 2, “Physical Security Event Notifications, Reports, and Records” include:

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 code language requires a 4-hour notification for an incendiary device at or inside the PA, VA, or MAA. The reg guide drives the licensee 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. Security management and Licensing personnel are trained in referencing published Regulatory Guides, operating procedures and other industry guidance 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”:

- § 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 regulatory guide 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. As a best practice, and to support accurate determination of notification events, Security management and Licensing personnel are trained in referencing published Regulatory Guides, operating procedures other industry guidance documents as a best practice, to support the accuracy of determination of notification events. 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 § 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, 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.
 - Government officials are then defined as the NRC’s Office of Investigations (OI); the intelligence community; or a Federal, State, or local law enforcement agency.
 - 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.
 - 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.
- NFS is aligned that in certain circumstances, external government agencies would be the most appropriate to determine malevolent intent, (e.g., credible bomb threat). However, NFS’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 NFS.
- NFS also operates a private police department, recognized by the State of Tennessee, granted full police authority, employing law enforcement officers certified by TCA 38-3-120 and acting within TCA 39-11-611. The NFS Police Department is not a government agency however, NFS is confident the certified police officers employed by the company have the necessary qualifications and resources to make determinations relating to malevolent intent.

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

- The lack of clarity of the scope and/or intent of when it is appropriate for external government officials to determine malevolent intent creates ambiguity. Final clarity is needed to prevent NFS unnecessarily modifying 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, NFS 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. NFS would be required to modify physical security plans, operating procedures, and training modules at least twice, based on interpretation of this new rule. NFS is requesting the following considerations be considered during review of this request:

- NFS will continue to comply with security event reporting, as previously required in 10 CFR Part 73, Appendix G, "Reportable Safeguards Events."
- NFS will reach full compliance with revised sections, 10 CFR 73.15 & 73.17 no later than January 8, 2024.
- NFS currently complies with *Time of Discovery* as defined in the 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]", and RG 5.62 Revision 1.
- NFS currently has plans, policies and procedures that identify items within the security program considered to be adverse to regulatory compliance.
- The burden associated with rework for NFS is unnecessary while awaiting final clarity with publication of associated Regulatory Guides. Several examples of where rework 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 coordination and re-training of impacted personnel with updated information contained within the revised guidance documents:
 - Senior Management
 - Licensing/Compliance
 - Security Management and Compliance
 - Security Training and Operations
 - Transportation

D. JUSTIFICATION FOR EXEMPTION

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

As stated above, NFS will continue to implement the Security Plan as documented. Since it has been reviewed and approved by the NRC, NFS's 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 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 Security Plan. Therefore, it is in the public's interest that NFS'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, 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 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."

E. ENVIRONMENTAL ASSESSMENT

NFS 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. NFS 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.