

Alternate Views of Some Staff on Suspicious Activity Reporting
Addendum to COMSECY-19-XXXX, Enclosure 6,
“History of Suspicious Activity Reporting”

Position in SECY-18-0058 and COMSECY-19-XXXX, Enclosure 6

Timely suspicious activity reporting (SAR) is seen as an important part of the U.S. government’s efforts to disrupt or dissuade malevolent acts against the nation’s critical infrastructure.

The draft final rule in SECY-18-0058 establishes new SAR requirements for certain NRC licensees. COMSECY-19-XXXX revises the rule to exempt certain classes of licensees from the SAR requirements because of the low risk posed by the form, type and quantity of strategic special nuclear material possessed by these licensees.

As discussed in Enclosure 6 to COMSECY-19-XXXX, the NRC issued guidance on October 8, 2005, requesting various classes to report suspicious activities to the NRC and other entities (IA-04-08, “Reporting Suspicious Activity Criteria” (ADAMS) Accession No. ML090570321 (non-publicly available)). Enclosure 6 indicates that licensees’ voluntary reporting of suspicious activity has been inconsistent in terms of both the types of data reported and the timeliness of reports and that the number of reports has declined. It continues to recommend imposition of new mandatory SAR requirements to increase regulatory clarity by establishing consistent reporting requirements.

Alternate View for Commission Consideration

This addendum does not question the value of SAR and does not propose to eliminate SAR. The issue before the Commission is whether to make SAR reporting mandatory, and this addendum proposes an alternative approach discussed below.

Enclosure 5 to SECY-18-0058 acknowledged that the staff cannot discern whether decreases in SAR reporting are due to differences in the occurrence of suspicious activities or differences in reporting of suspicious activities. In COMSECY-19-XXXX, the staff discusses informal conversations with licensees that indicate that licensees may not be reporting because of the voluntary nature of the program and because of Freedom of Information Act (FOIA) concerns. The staff’s proposal in SECY-18-0058 and COMSECY-19-XXXX intends to address the latter possibility by making such reporting mandatory.

An alternative approach for the Commission to consider to improve SAR consistency and clarity is to issue updated voluntary guidance for SAR. The staff’s position in SECY-18-0050 acknowledges the need for updated guidance in that, as a companion to the rule, the staff developed draft Regulatory Guide (RG) 5.87, “Suspicious Activity Reports under 10 CFR Part 73.”

Another alternative approach for the Commission to consider would be to further evaluate these reporting requirements as part of the petition for rulemaking PRM-50-116, "Elimination of Immediate Notification Requirements for Non-Emergency Events" (Docket ID NRC-2018-0201).

This alternative approach is proposed for consideration based on the following evaluation of the Principles of Good Regulation:

- Regarding the principle of Reliability, requirements should rely on the best available information and not be unjustifiably in a state of transition. The staff's proposal in SECY-18-0058 does not make an explicit case that voluntary SAR is unacceptable, it just indicates that the number of reports have declined (without explicitly ascertaining whether actual suspicious activities are not being reported) and that reporting has been inconsistent (for which revised guidance is planned and may address), thus it is not clear that changing the regulations is justified at this time. Such revised guidance could also clarify FOIA implications.
- Regarding the principle of Efficiency, when several effective alternatives are available, the option which minimizes use of resources should be used. For both approaches, the related implementation guidance needs to be updated. In making SAR mandatory, the staff's proposal acknowledges the need to additionally develop and implement inspection and enforcement guidance, which would not need to be developed if SAR remained voluntary. As the original guidance was issued fourteen years ago and the effectiveness of updating voluntary guidance has not been determined, updating the guidance to determine its effectiveness before deciding that making reporting requirements mandatory should be more efficient.
- Regarding the principle of Clarity, while a rule could provide additional clarity, the difference in clarity between the two approaches could be mitigated by clearly documenting the approach in a revised version of the planned companion guidance in RG 5.87.
- Regarding the principle of Independence, both approaches have considered all available sources of information and viewpoints of interested stakeholders objectively, and the basis for the choice of which approach is chosen will be captured in the documentation for the final rule, thus neither approach offers a significant benefit.
- Regarding the principle of Openness, the rulemaking is being conducted in a public fashion and the basis for making SAR mandatory or leaving it voluntary will be documented in a transparent fashion, thus neither approach offers a significant benefit.