

May 15, 2003

Mark J. Wetterhahn, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

Re: Applicability of 10 CFR 2.790 Requirements to Safeguards Information

Dear Mr. Wetterhahn:

I just received your letter inquiring about applicability of requirements imposed by the recent revision to 10 CFR §2.790, Availability of Official Records, to licensee submissions of safeguards material, particularly in light of the revision's silence on the subject. Safeguards Information is protected by statute under Section 147 of the Atomic Energy Act. Your letter correctly notes that such information is governed by 10 CFR §73.21, which contains pertinent standards for protection and transmission of Safeguards Information, including document marking requirements.

The information to which your letter refers, as concerning a licensee's physical protection program under 10 CFR §2.790(d)(1), comes under the rubric of information "not otherwise designated as Safeguards Information." 10 CFR §2.790 coverage has been historically reserved for information of that nature that does not meet the definition of Safeguards Information under the Atomic Energy Act. The revision of 10 CFR §2.790 did not alter this arrangement and should not be interpreted to affect the manner in which Safeguards Information, as defined by the Atomic Energy Act, is marked or submitted, which continues to be governed by 10 CFR §73.21, as always. Please feel free to contact me on (301) 415-1560 if you have any questions about the foregoing.

Sincerely,

/RA/

Catherine M. Holzle
Senior Attorney