

August 5, 2004

MEMORANDUM TO: J. E. Dyer, Director  
Office of Nuclear Reactor Regulation

Roy P. Zimmerman, Director  
Office of Nuclear Security and Incident Response

THRU: R. William Borchardt, Deputy Director/*RA*/  
Office of Nuclear Reactor Regulation

FROM: William D. Reckley, Senior Project Manager/*RA*/  
Office of Nuclear Reactor Regulation, Information Review Team

SUBJECT: CONTROL OF SENSITIVE UNCLASSIFIED (NON-SAFEGUARDS)  
INFORMATION RELATED TO NUCLEAR REACTOR LICENSEES

The purpose of this memorandum is to provide a status of the activities of the Office of Nuclear Reactor Regulation (NRR) regarding the control of sensitive unclassified (non-safeguards) information. There has been increased interest in this subject since the issuance of staff requirements memoranda (SRMs) by the Commission related to proposals by NRR for maintaining or clarifying current practices and guidance related to the withholding of information about nuclear power reactors.

#### Background

Shortly after the events of September 11, 2001, the Nuclear Regulatory Commission began to reexamine its policies on the release of information routinely provided to the public. The agency shut down its Internet web site in October 2001 and the NRC staff began its reviews of information for possible sensitivity concerning threats of terrorism. The development of revised policies and practices related to the control of sensitive information following September 11, 2001, involved several iterations between the Commission and NRC staff. The current policies and criteria for considering when information should be withheld are described in the attached COMSECY-02-0015, "Withholding Sensitive Homeland Security Information from the Public," dated April 4, 2002, and the associated SRM dated May 28, 2002.

A working group of representatives from the NRC's major program offices helped to prepare the guidance and continued to meet for some time after the guidance was issued to discuss issues and problems encountered using the guidance. As described in COMSECY-02-0015, each program office is responsible for performing reviews and developing procedures and guidance for identifying and controlling sensitive unclassified (non-safeguards) information.

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The rationale for assigning this function to the program offices was and remains that effective document control needs to be performed as close as possible to the points of receipt or transmittal; and it is not practical for the Office of Nuclear Security and Incident Response (NSIR) to review the large number of documents coming in and out of NRR and the other program offices. The NRR Information Review Team (NRR\_INFOREVIEW) was created shortly after September 11, 2001, and its members participated in the development of the existing guidance and subsequent activities. The team routinely discusses issues associated with policies, practices, and guidance with NSIR and other program offices.

### Ongoing Activities

The decisions to withhold or release documents to the public that are submitted to the NRC are generally made by the NRC Document Control Desk (DCD). Guidance used by the DCD staff and their contractors was revised after September 11, 2001, to withhold some documents that were traditionally made available to the public (e.g., emergency plans and updated final safety analysis reports). The NRR team has worked with the Office of the Chief Information Officer (OCIO) to review specific documents (primarily major applications such as early site permits and license renewal applications) and to adjust the general guidance for profiling incoming documents. With the OCIO, the NRR team has revised the guidelines to withhold additional document types in response to questions or concerns raised by the NRC staff or stakeholders, for example, fire protection plans and emergency plan implementing procedures (EPIPs). The changes in profiling EPIPs resulted from a recent case where a member of the public identified an EPIP in the public records that contained sensitive unclassified information. Although the existing system has worked relatively well since September 11, 2001, a possible weakness in this process, which has been recognized from the start, is that the criteria for deciding to release or withhold documents involves an assessment of document types and not necessarily document content. The NRR team believes that the current process will be improved when the NRC provides guidance to the licensees. In turn, the licensees may be more consistent in identifying potentially sensitive content within documents and recommending to the NRC that specified information be withheld from public disclosure (e.g., a process similar to the handling of commercial or proprietary information).

The control of documents generated by the NRC staff has relied on a combination of reviews of specific documents and judgements regarding the low probability that routine work products contain sensitive unclassified information. The NRR team has incorporated its reviews into the most prominent of the information-related processes associated with nuclear reactors. These include review of information before it is posted on the external NRC web site, before publication as an NRC report, and before its release in response to a request under the Freedom of Information Act. The NRR team has also established a process with the Public Document Room (PDR) involving our review of documents before they are provided to requesters. The availability of the NRR team to assist the staff in determining the appropriate handling of documents has been announced in several e-mails, newsletters, training sessions, and NRR office instructions. The team has attempted to achieve an appropriate balance between information control and other established goals such as avoiding inefficiencies or wasting resources. We acknowledge, however, that this has resulted in the NRR team maintaining a relatively low profile and probably contributed to recent questions about our activities.

Members of the NRR team are currently participating in the agency's task force on controlling sensitive unclassified non-safeguards information, which is being coordinated by the OCIO. The report and related recommendations from that task force will be issued in the near future. The task force did not specifically address criteria for designating information as sensitive but instead focused on controls, such as document markings and the appropriate use of cover sheets.

### Plans and Challenges

As directed in the SRM dated May 7, 2004, the NRR team is revising the guidance provided in COMSECY-02-0015, and the proposed clarifications to that guidance, which were provided to the Commission in COMSECY-03-0036, "Update on the Withholding from Public Disclosure of Sensitive, Unclassified Information Related to Power Reactors," dated July 17, 2003. The NRR team plans to prepare the proposed revision to the guidance related to controlling information about nuclear reactors, coordinate reviews of the proposal by affected organizations, and provide it to the Commission in late August 2004. Even when considering recent Commission direction to revise the general guidance on withholding information, the primary issue to resolve about designating information as sensitive in the reactor arena remains the handling of risk-insights about plant designs and operations (i.e., risk-insights about non-security related issues). The team will address this issue, as we did in COMSECY-03-0036, when we provide the Commission the proposed changes to the guidance documents. The staff may subsequently need to develop similar guidance for other types of licensees.

Following a response from the Commission regarding the proposed guidance, the NRR team will either begin another iteration to refine the guidance or work with others to issue the approved guidance to the NRC staff, agency stakeholders, and the licensees. The guidance is expected to address several key points, including:

- A general reminder regarding the NRC processes for controlling documents and specifically the controls for sensitive unclassified (non-safeguards) information.
- The general and specific guidance and criteria for designating information about nuclear reactors as sensitive unclassified (non-safeguards) information because of our increased concerns about possible terrorist attacks. This will include a discussion on the use of the withholding provisions of 10 CFR 2.390(d), which addresses information related to physical protection that is not otherwise designated as safeguards information.
- The relationship of NRC controls to those of other federal agencies (e.g., Critical Infrastructure Information, Critical Energy Infrastructure Information, Homeland Security Information) and our attempts to be consistent with their regulations and guidance.

Issuance of guidance to the NRC staff and the licensees should also reduce the inadvertent release of sensitive unclassified (non-safeguards) information to the public. Although the occurrence of such releases has been relatively rare, our interactions with the NRC staff, the licensees and other stakeholders have reinforced the need for issuing additional guidance soon

after our policies and criteria have been approved by the Commission. We have discussed these issues with our stakeholders during public meetings and are currently trying to improve the communications with the licensees through discussions with individual licensees and industry groups. Our goal is to issue the guidance within approximately 60 days of receiving the SRM on the policy paper going to the Commission in August, 2004.

Attachment: As stated

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Attachment: As stated

Distribution: See next page

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April 4, 2002

MEMORANDUM TO: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

FROM: William D. Travers */RA by William F. Kane Acting For/*  
Executive Director for Operations

SUBJECT: WITHHOLDING SENSITIVE HOMELAND SECURITY  
INFORMATION FROM THE PUBLIC

This memorandum responds to the Staff Requirements Memorandum - COMSECY-01-0030, dated January 25, 2002, which requested the staff to revise the criteria for withholding information from the public and submit it for Commission approval.

Background

Since the events of September 11, the staff has re-examined existing policies on the dissemination of information routinely provided to the public. Once the agency decided to shutdown its web site in October of 2001, the staff began formulating a process for the review of information previously made publicly available that may be considered sensitive from the standpoint of potential terrorist activity.

The staff developed proposed interim criteria for use in deciding what information should not be released to the public and submitted it to the Commission on October 29, 2001. The Commission subsequently provided general comments and discussion and requested the staff to submit revised guidance and criteria, which are contained in this memorandum. We believe the attached guidance and criteria is consistent with Commission direction in the SRM.

We also believe that the guidance and criteria contained in this memorandum comport with the draft definition that the Office of Homeland Security has developed for Sensitive Homeland Security Information (SHSI). We will ensure this information remains consistent with any final OHS definition.

ATTACHMENT

### General Discussion:

The guidance and criteria have been developed to assist the staff in making decisions on when to withhold certain documents from the public, which includes not posting them to the NRC web site or making them available in the ADAMS public library.

The guidance and criteria propose a practical approach to screening documents with the intent of ensuring that the staff does not release information that can be misused against NRC-regulated activities and facilities. The criteria may be adjusted in the future based on our experience gained in using them. To the extent uncertainties exist about whether a particular document should be made publicly available, senior office management will make the final decision.

Information will be withheld only if its release could provide a clear and significant benefit to an adversary in a potential attack and the information must be that which is generated by the NRC, our licensees, or our contractors. Information of a general nature or of marginal relevance will not be withheld.

### Guidance on Availability of Documents

In accordance with Commission direction in the SRM, guidance and criteria will be issued to the staff which contain the following instructions on availability of documents:

- Information that is currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against the criteria;
- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, will be reviewed against the criteria before being released again; and
- All new documents generated after the issuance date of this memorandum will be reviewed against the criteria.

Because documents in the PDR are widely available through other sources (GPO, NTIS, local libraries, etc.), we do not intend to have the PDR staff review requests for archived documents. If the technical staff identifies individual documents that contain sensitive information, the PDR staff will no longer make them available. This may require removing a document in its entirety, such as an archived FSAR that is stored on microfiche, even though only several pages are considered sensitive. Licensees who submit more current updates to FSARs on CD-ROM can more easily separate sensitive material from that which is non-sensitive. Additionally, because NRC does not control archival collections external to the agency, documents may continue to be made publicly available through other sources.

Any decision by the staff to withhold information will be guided by balancing the costs and benefits of withholding. If the outcome of balancing of the costs and benefits of withholding the information is uncertain, the information will be released.

Staff will consider providing alternate means for the release of relevant information on important public subjects in a fashion that would not provide significant assistance to a terrorist, i.e. by redacting details or rewriting important documents to eliminate sensitive information.

The web site will be rebuilt by applying the attached criteria to posted information. We are aware that external organizations have material on their web sites that may be considered sensitive under the criteria. When such information is brought to our attention, we have been contacting the owners of these sites requesting that they voluntarily remove such information. We will continue to satisfy our legal obligations to make certain information publicly available.

Records captured by Freedom of Information Act (FOIA) requests are subject to specific laws and statutes. We will continue to handle and process all FOIA requests in the same manner as before, but will separately identify documents that fall within the attached criteria. In October, 2001, the Attorney General issued a new policy indicating that the Department of Justice will defend agency decisions to withhold records that rest on a sound factual and legal footing.

Certain categories of information have been restored to the public domain because they attracted a large amount of public interest. These include: performance indicators and inspection findings, OSRE findings that have been corrected, the plant status report (minus "reasons and comments" column), and specific locations of licensed facilities.

#### Review Process:

Program offices will be responsible for assigning certain staff to act as points of contact for the identification of SHSI. The staff will be issued more specific guidance and training materials concerning the identification, control, and protection of SHSI. Pending the development of revised Management Directives and office-level guidance documents, the staff will continue to use the approaches set forth in this memorandum.

The review process for SHSI will be incorporated into existing procedures for document management and control that are similar to those already existing for proprietary and other types of protected information.

Agency and office-level procedures will contain a process for final disposition where differences of opinion exist among the staff regarding release of information.

We will work with licensees to enable them to identify and mark their documents that meet the criteria for SHSI so that their information can be appropriately controlled and protected when received by NRC staff. The criteria will be shared with Agreement States for their information and appropriate use.

Recommendation:

We recommend the Commission approve the guidance and criteria contained in this memorandum. We plan to issue information contained in this memorandum to the staff once Commission approval is received. When the final definition for Sensitive Homeland Security Information is issued by the Office of Homeland Security, our guidance and criteria may need to be revised.

The major program offices will work with OCIO and others to integrate the identification and control of SHSI into the routine activities performed by the agency.

**CRITERIA TO BE USED WHEN DECIDING WHETHER TO WITHHOLD  
INFORMATION FROM THE PUBLIC**

- Information currently widely available to the public via ADAMS as of the issuance date of this guidance should not be systematically reviewed against these criteria. If a document is found to contain sensitive information, it should be carefully reviewed against these criteria while considering the cost of its removal from the public domain.
- However, documents that were on the NRC external web page, the public library of ADAMS, or in the public document room, but were withdrawn in response to 9/11 events, should be reviewed against these criteria before being released again.
- Similarly, all new documents generated after the issuance date of this guidance should be reviewed against these criteria.

The NRC staff should continue to withhold information such as proprietary, privacy, safeguards or classified information consistent with established guidance and procedures. In addition, staff should limit public release of information if it contains one or more elements from the following criteria:

1. Plant-specific information, generated by NRC, our licensees, or our contractors, that would clearly aid in planning an assault on a facility. An example might be drawings depicting the location of certain safety equipment within plant buildings. Examples may include portions of Final Safety Analysis Reports (FSARs), Individual Plant Examination (IPE) material, and other risk and facility vulnerability information.
2. Physical vulnerabilities or weaknesses of nuclear facilities which would clearly be useful to terrorists, such as site-specific security measures, access controls, or personnel security clearance procedures.
3. Construction details of specific facilities, such as wall thicknesses or specific barrier dimensions, detailed diagrams, schematics, or cutaways of specific plant designs where

such information would be of clear and significant benefit to a terrorist in a potential attack. Where appropriate, general descriptions instead of exact numbers (i.e. "several feet, several inches, layers of concrete") should be used for general public information.

4. Information which clearly would be useful to defeat or breach key barriers at nuclear facilities.
5. Information in any type of document (e.g. plant status report, press release) that provides the current status or configuration of systems and equipment that could be used to determine facility vulnerabilities if used by an adversary. This does not include general conditions such as 100 percent power or shutdown.

SECY please track.

cc: SECY  
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May 28, 2002

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

Karen D. Cyr  
General Counsel

FROM: Annette L. Vietti-Cook, Secretary **/RA by Andrew L. Bates  
Acting For/**

SUBJECT: STAFF REQUIREMENTS - COMSECY-02-0015 -  
WITHHOLDING SENSITIVE HOMELAND SECURITY  
INFORMATION FROM THE PUBLIC

The Commission has approved the proposed criteria for withholding certain sensitive homeland security information from the public, subject to the following comments.

1. The staff should review our processes and procedures for implementing Section 147 of the Atomic Energy Act for controlling safeguards information to ensure that information falling into this category is clearly defined and then is carefully protected. OGC should work to refine and expand the existing criteria to protect information under Section 147 of the Atomic Energy Act as safeguards information.
2. After applying these criteria to those documents withdrawn from the NRC external web page, the public library of ADAMS, and in the public document room (second bullet in COMSECY-02-0015), the staff should perform a limited audit of the public library of ADAMS to provide reasonable assurance that information deemed sensitive is not publicly available in ADAMS. The staff can perform this review by selecting a few sensitive words or phrases from those documents withheld in searching the public library of ADAMS.
3. The staff will need to re-evaluate this guidance and these criteria as the Office of Homeland Security continues to further clarify the definition of "Sensitive Homeland Security Information." This guidance and these criteria should continue to be viewed as part of a work-in-progress.
4. OGC should remain fully involved in the process to provide insight and consistency regarding use of the phrases and terminology such as "clearly would", "could be expected to", "could reasonably be foreseen to cause significant harm", and "clear and significant" as these terms bear on the release of information.
5. Upon the completion of item 1 above, the staff should work with our licensees to explain how this new homeland security classification differs from the safeguards classification contained within our regulations.

cc: Chairman Meserve  
Commissioner Dicus  
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Commissioner McGaffigan  
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