

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

November 13, 2002



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- ✓ JMS *[initials]*
- ✓ KLM *[initials]*
- ✓ JES *[initials]*
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JAL *11-14-02*  
- *Adm/Sensitive*  
*Closed Commission*  
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MEMORANDUM TO: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

FROM: William D. Travers  
Executive Director for Operations *[Signature]*

SUBJECT: WITHHOLDING UNCLASSIFIED SECURITY-RELATED  
INFORMATION

This memorandum responds to item number six in a Staff Requirements Memorandum (SRM) dated June 4, 2002 (Attachment 1), in which the Commission asked the staff to recommend whether certain security-related documents should be protected from public disclosure. The Commission specified licensee event reports (LERs), including their cover letters, cover letters to Orders and responses to Orders, as examples of the types of documents we may recommend protecting. The staff is responding separately to item number two of the June 4 SRM which relates to a similar issue -- options and formats for communicating effectively with the general public on security matters.

The staff first addressed the general issue of protecting unclassified "sensitive homeland security information" in a memorandum to the Commission dated April 4, 2002. The Commission subsequently approved the guidance recommended in that memorandum, and it was distributed to Regional Administrators and Office Directors on June 17, 2002 (Attachment 2). In the guidance, the staff was directed to limit public release of information if it contained certain characteristics that pointed to vulnerabilities at specific facilities that could provide a clear and significant benefit to an adversary in a potential attack. These criteria were developed with the cooperation and agreement of representatives from the program offices in order to assess the impact of these criteria on all types of information generated or received by the agency.

After receipt of the June 4 SRM, the staff again reviewed the current criteria against samples of LERs, cover letters to Orders, and other similar documents not specifically mentioned in the SRM. The staff has concluded that NRC-generated documents such as cover letters to Orders and other security-related documents, should continue to be publicly available. These documents receive a thorough review and screening to ensure they contain no sensitive or safeguards information. Furthermore, the release of this information demonstrates to the public that we are responding to issues of safety or security in a timely and responsible fashion. The staff believes that the benefits of maintaining public confidence in this important area far outweigh the remote possibility of negative consequences resulting from such documents' allusions to security-related activities.

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However, we are less confident that licensees are performing a similarly rigorous review of the information they generate that is subsequently sent to the NRC. For LERs, in most cases the information we receive is one or two months after the fact - when corrective action has already been taken. Any LERs that refer to safeguards information are required to be protected against unauthorized disclosure. The cover letters to LERs containing safeguards information may refer to the weakness described in the LER. These cover letters should be appropriately protected. As stated in the April 4 memorandum, the staff intends to work with licensees to enable them to identify and mark their documents that meet the criteria for sensitive homeland security information so that their information can be appropriately controlled and protected when received by the NRC staff. We are preparing one or more Regulatory Issues Summaries directed toward reactor and materials licensees that will contain specific guidance on the control of this information.

The staff believes that certain licensee-generated documents and correspondence can be protected under 10 CFR Part 2.790(d). Under these regulations, certain information is deemed to be commercial or financial information and is subject to disclosure only in limited circumstances. This would include "... correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection or material control and accounting program for special nuclear material not otherwise designated as (Safeguards) or (Classified Information)."

Further, Section 147 of the Atomic Energy Act provides the legislative basis for safeguards information, a category of sensitive unclassified information that is protected from public disclosure. The staff is considering an expansion of the definition of safeguards information via rulemaking or other appropriate means to provide a formal basis for withholding a broader scope of information from public disclosure. *good*

In conclusion, we intend to inform and educate licensees as to the types of correspondence and documents they generate that should be appropriately marked and protected as 2.790(d) information. This could cover the full range of information provided by licensees, either by regulatory requirements or in general information they currently provide to the public. Such information will be consistent with the June 17, 2002, criteria regarding protection of site specific information that could be helpful to a potential terrorist.

Attachments:

1. SRM dtd June 4, 2002
2. Memo to RAs and ODs dtd June 17, 2002

cc: SECY  
OGC  
CFO  
OPA  
OCA