

REQUEST REPLY BY: 11/30/05

UNITED STATES  
 NUCLEAR REGULATORY COMMISSION  
 WASHINGTON, D.C. 20555-0001

October 26, 2005

Approved. See attached comments.

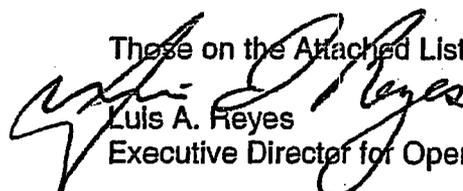
MEMORANDUM TO:

Those on the Attached List

  
 Gregory B. Jaczko

11/22/05  
 Date

FROM:

  
 Luis A. Reyes  
 Executive Director for Operations

SUBJECT:

POLICY REVISION: HANDLING, MARKING, AND  
 PROTECTING SENSITIVE UNCLASSIFIED NON-SAFEGUARDS  
 INFORMATION (SUNSI)

In a memorandum to you dated January 19, 2005, I directed that the recommendations of the SUNSI task force be implemented by a staff working group supported by the offices and chaired by the Office of Information Services. The interoffice working group completed the requested work and identified numerous key changes on how the Agency handles SUNSI. All of those changes are identified in the attached Communication Plan, with the significant changes listed below. The new policy:

- Eliminates the need for all cover sheets except for Allegation Information and Investigation Information;
- Requires marking of header and footer for each type of SUNSI;
- Determines that portion marking of documents is not required; and
- Notes that SUNSI must be encrypted when transmitted electronically.

I am implementing the new policy and procedures effective on the date of this memorandum. The attached "NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information" describes the new policy and procedures which will be incorporated in the next revision of Management Directive 12.6. Additionally, over the next four months, SUNSI awareness training sessions will be held in the Auditorium. Staff should take advantage of these training sessions to become familiar with the new policy. Further training will be incorporated into the Computer Based Learning (CBT) class on Information Computer Security in the spring of 2006.

Attachments: As stated

**Commissioner Jaczko's Comments on COMSECY-05-0054  
Policy Revision: Handling, Marking, and Protecting Sensitive Unclassified  
Non-Safeguards Information (SUNSI)**

There are a variety of reasons I felt that Commission involvement in the Sensitive Unclassified Non-Safeguards Information (SUNSI) project was necessary. First, as I have often stated, public confidence is critical to this agency's success and impossible to garner without transparency and openness. Thus, any project which has as its premise the idea of limiting the public's access to information warrants detailed scrutiny.

Moreover, the Commission has recently provided its perspective on various information screening projects by establishing a recent Task Force to report on the public disclosure of security-related information and through voting on the Sensitive Information Screening Process (SISP). The Commission has not, however, provided its views on the broad policy issues associated with limiting from public availability unclassified, non-safeguards information. Because this is such an important issue, and in light of the Commission's prior involvement in related matters, the staff needs and deserves to have the Commission provide clarity on how it should proceed with this new SUNSI initiative.

Regarding the specifics of the staff's SUNSI proposal, I believe that the staff has, overall, forged a useful approach on a difficult issue, but I am concerned that the current guidance will not ensure consistent implementation. While the SUNSI Policy does an excellent job of reducing the overall number of categories of SUNSI information, I am not convinced that the description of each category will provide the individual authoring the document (and making the SUNSI determination) enough information to appropriately and consistently do so. For example, in the category of "Sensitive Internal Information," one identified document category is "Information submitted to the Commission marked 'sensitive'". The author of a paper for Commission review does not appear to be given any additional guidance on what information should be marked "sensitive", but only that if she marks the document "sensitive" it then falls under this SUNSI category. Defining a category to be anything marked with the category label is unhelpful and confusing.

**I find this particularly troubling given that the current SUNSI process provides the author of the document the labeling authority with no established supervisory review of that decision. This makes the clarity and ease of use of the SUNSI handling requirements absolutely essential. Thus, the staff, in consultation with OGC, should review the definition of SUNSI and the document categories to ensure that the SUNSI handling requirements are written in such a fashion that they are clear, concise and able to be consistently applied. Furthermore, the staff should establish a committee charged with periodically auditing the agency's implementation of SUNSI and reporting to the Commission on an annual basis inconsistencies identified and recommendations to improve the process.**

Furthermore, to the extent this guidance is intended to cover staff documents to the Commission, such as SECY papers, the process should integrate the direction currently outlined in chapter II of the Internal Commission Procedures document. The Commission's procedures explain that if SECY papers involve particularly sensitive matters, they should contain a specific withhold recommendation by the originating office together with supporting justification and the sensitive label. The Commission procedures continue by noting that:

Because the Commission's general policy is to release papers whenever possible, the use of this withholding category should be limited and, when used, requires solid justification for withholding on a case by case basis. The originating office must include in the supporting justification statement reasons which are sufficiently persuasive to set aside the release policy.

**(Internal Commission Procedures, pg. II-3.) There does not appear to be integration of this direction into the SUNSI process. Therefore, this review committee should also ensure that the SUNSI handling requirements effectively capture and integrate the direction provided in the Internal Commission Procedures.**

There is an additional issue regarding documents for Commission review that deserves further thought and clarification in this SUNSI guidance. Staff often marks documents for Commission review with a "sensitive" label simply because the Commission has not acted upon the item and the staff thus considers the documents to be "predecisional." That does not necessarily render the document to be "deliberative". In fact, in many of these instances the staff has no concern with the document being released following Commission action. The current SUNSI guidance does not appear to provide the staff with any alternative, however, except to mark a "predecisional" document as "sensitive." **Therefore, the review committee should address the differing intents of the "predecisional" and "deliberative" labels. For items that are only marked "sensitive" because they are considered "predecisional", the committee should provide the staff with a non-sensitive label that would allow for a more accurate reflection of the staff's intent and trigger the release of the documents upon completion of the Commission's voting process.**

Another aspect of the SUNSI process which merits attention is the lack of a periodic review mechanism to determine the continued need for protection of SUNSI. Classified documents, which are legally protected from disclosure even upon request, are either automatically declassified after a period of time or, at a minimum, periodically reviewed for declassification. I find it puzzling that unclassified NRC documents marked sensitive would appear to be eternally protected - without any automatic periodic release established or without even a periodic review to determine the necessity of the marking and protection of the document. Certainly if *Classified* information is subject to such review, there is little room for argument that SUNSI information should not be subject to, at a minimum, similar reviews. **Therefore, the review committee should also establish and implement an automatic release or review mechanism for documents marked with a sensitive label that ensures release or review at least every two years.**

Finally, I request that the Secretary poll the Commission regarding early release of the COMSECY so that it is made publicly available now, rather than at the end of the voting process.

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Gregory B. Jaczko

Date