

REQUEST REPLY BY: 11/30/05

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

October 26, 2005

*Approved, subject to
 the attached comments*

*E. H. Jeffrey
 12/14/05*

MEMORANDUM TO: Those on the Attached List
 FROM: *Luis A. Reyes*
 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 McGaffigan's Comments on COMSECY-05-0054

I approve of the staff's revised policy on Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information, subject to the following comments. I believe the staff has done a good job in attempting to clarify the requirements and guidance for dealing with SUNSI, but would note that this is only the first step in creating an efficient, cohesive and coherent policy for protecting SUNSI. Additional modifications to the policy will be necessary to include new categories of information, such as UCNI and NNPI that will be subject to more restrictive requirements as noted in the Chairman's vote, and to incorporate comments from the staff's training sessions and lessons learned through actual practice.

I agree with the Chairman's vote that the staff should not eliminate the use of cover sheets for all but Allegations and Investigation Information. Cover sheets serve as a valuable reminder of the need to carefully protect sensitive information from intentional or inadvertent unauthorized disclosure. Therefore, cover sheets should remain in use for sensitive information, the unauthorized disclosure of which could result in civil or criminal penalties. At a minimum this would add a *Proprietary Information cover sheet*. The cover sheet should include a discussion of the potential civil or criminal penalties for unauthorized disclosure. I also agree with the Chairman's vote to follow other Federal agencies' requirements governing the use of cover sheets for sensitive information originating in those agencies.

It should also be noted that the staff continually refers to the 'requirements' for handling, marking and protecting the various categories of SUNSI. However, in some cases these are not in fact requirements, but are internal procedures or guidance provided by the staff as a means to prevent unauthorized disclosure. In order to avoid any potential confusion amongst the public and other agencies, the staff should review and revise this policy, and any future modifications to the policy, to clearly distinguish those provisions for handling, marking, and protecting SUNSI that are in fact requirements, derived from statutory or regulatory authority, as distinct from guidance or internal procedures.

I share the concern of Commissioner Jaczko regarding the potential inconsistent application of the 'sensitive' label for predecisional information, and would go further to emphasize the overall necessity of consistent implementation of this SUNSI policy, in particular assiduously categorizing and labeling documents.

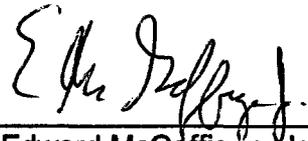
The staff should clarify the meaning of 'need to know' required for access to various categories of SUNSI. The staff should determine whether this is the same need to know determination that would be used in gaining access to Safeguards Information under Part 73. I doubt it is for many SUNSI categories. In particular, the staff notes that for access to SGI, an individual must (1) have an authorized need to know, and (2) the information is for the conduct of official agency business. The staff should clarify whether the second requirement, that the information is for the conduct of official agency business, is in fact an element of the need to know determination and is thus redundant. Furthermore, the staff should clarify responsibility for making this need to know determination, i.e. the originator of the document.

In cases where there is doubt about granting access to SUNSI originating from outside the NRC, the staff should clarify whether the consultation suggested by the staff is for the purpose of mere notification or involves an element of deference to an originating agency's determination whether to grant access. If the staff is suggesting deference be given to the

originating agency's determination on access, the staff should clarify the level of deference it proposes. These same concerns also apply to the policy that other Government and International agencies be consulted before documents bearing restrictive markings or containing SUNSI of primary interest to them are released to the public. Again, the staff should clarify whether this consultation is for notification purposes, or whether the determinations of other Government and International agencies should be given some deference in making our own determination on granting access.

In cases where NRC employees are contacted about SUNSI that appears in the public domain, the staff has applied the 'no comment' policy, noting that if there are any questions, the employee should consult with his or her supervisor or the originator of the information. I am not sure that this is the right policy for at least one of the categories of SUNSI, the "sensitive internal information" category. We have had documents, such as the EDO's June 14, 2005 memo on GSI-189 or the annual decommissioning plan, that were considered sensitive, but should not have been. To try and impose a "no comment" policy in cases where the right answer is that the document should have been released, may lead to the agency just looking silly.

Finally, I join with the Chairman in encouraging participation in the staff's SUNSI training, noting that the comments in response to the training may prove a valuable resource in assisting in additional revisions to this policy. In addition the staff should make the necessary edits to the Communication Plan proposed by the Chairman.


Edward McGaffigan, Jr.

12/14/05
(Date)