UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, DC 20555-0001

April 30, 2003

NRC REGULATORY ISSUE SUMMARY 2003-08 PROTECTION OF SAFEGUARDS INFORMATION FROM UNAUTHORIZED DISCLOSURE

ADDRESSEES

All holders of operating licenses for nuclear power reactors, decommissioning reactor facilities, independent spent fuel storage installations, research and test reactors, large panoramic and underwater irradiators, and fuel cycle facilities.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) and the attached Summary of Safeguards Information Requirements to inform addressees of the importance of protecting Safeguards Information from inadvertent release and unauthorized disclosure. The need to protect sensitive security information from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities is heightened since the events of September 11, 2001. Addressees, including all cognizant personnel, have a continuing obligation to be mindful of their responsibilities in protecting such security information. Although many addressees have extensive experience in complying with applicable regulations related to handling and protection of Safeguards Information, additional licensees and individuals with limited or no experience in this area may now or soon will be covered by these requirements. This RIS is intended to serve as a consolidated source of information to reinforce the overall knowledge of Safeguards Information requirements as well as to highlight the serious consequences for failure to control and protect it.

Licensees are encouraged to broadly disseminate this information to affected employees and to post the attached Summary of Safeguards Information Requirements in areas where employees who handle Safeguards Information are located.

BACKGROUND

Several recent events involving published articles or comments to the media demonstrate the need for the NRC to reemphasize the importance of protecting Safeguards Information from inadvertent release and unauthorized disclosure. The release of this information, for example, could result in harm to the public health and safety and the Nation's common defense and security, as well as damage to the Nation's critical infrastructure, including nuclear power plants and other facilities licensed and regulated by the NRC.

SUMMARY OF ISSUE

Safeguards Information is a special category of sensitive unclassified information authorized by Section 147 of the Atomic Energy Act of 1954, as amended (the Act), to be protected. While Safeguards Information is considered sensitive unclassified information, it is handled and protected more like classified confidential information than like other sensitive unclassified information (e.g., privacy and proprietary information). Access to Safeguards Information is controlled by a valid need-to-know and an indication of trustworthiness normally obtained through a background check. The criteria for designating special nuclear material and power reactor information as Safeguards Information and associated restrictions on access to and protection of Safeguards Information are codified in Section 73.21 of Title 10 of the *Code of Federal Regulations* (10 CFR 73.21). Part 73 applies to licensees of operating power reactors, research and test reactors, decommissioning facilities, facilities transporting irradiated reactor fuel, fuel cycle facilities, and spent fuel storage installations. Examples of the types of information designated as Safeguards Information include the physical security plan for a nuclear facility or site possessing special nuclear material, the design features of the physical protection system, operational procedures for the security organization, improvements or upgrades to the security system, and vulnerabilities or weaknesses not yet corrected, and such other information as the Commission may designate by order. An example of additional information designated by order is the January 7, 2003 order to operating power reactor licensees concerning access authorization programs. That order made the details of NRC's enhanced access authorization requirements and licensee response to these requirements Safeguards Information. Another example is the April 29, 2003 order to operating power reactor licensees concerning security force training requirements.

In addition to the licensees subject to the Safeguards Information requirements of Part 73, and the types of information designated as Safeguards Information under those regulations, the Commission has authority under Section 147 to designate, by regulation or order, other types of information as Safeguards Information. For example, Section 147 allows the Commission to designate

> . . . a licensee's or applicant's detailed . . . security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security . . .

to be Safeguards Information. The Commission also may, by order, impose Safeguards Information handling requirements on these other licensees. An example of this type of order is the March 25, 2002 order to Honeywell International, a uranium conversion facility. Violations of Safeguards Information handling requirements, whether those of Part 73 or those imposed by order, are equally subject to the applicable civil and criminal sanctions, as discussed below and in the attached Summary of Safeguards Information Requirements.

Employees, past or present, and all persons who have had access to Safeguards Information have a continuing obligation to protect Safeguards Information against inadvertent release and unauthorized disclosure. The NRC staff and licensees have discovered several cases where Safeguards Information was inadvertently included in uncontrolled plant documents and documents intended for distribution to the public. Documents or other forms of communication

that include discussions about plant security should be reviewed carefully to ensure that Safeguards Information is not physically included or that plant security is not otherwise being compromised. Attachment 1 to this RIS further explains licensee and individual responsibilities under current regulations, issued Orders, and future Orders regarding the protection of Safeguards Information, and addresses penalties for inadequate protection and unauthorized disclosure.

Licensees are reminded that information designated as Safeguards Information must be withheld from public disclosure and must be physically controlled and protected. Physical protection requirements include (1) secure storage, (2) document marking, (3) access restricted to authorized individuals, (4) limited reproduction, (5) protected transmission, and (6) enhanced automatic data processing system controls. Changes are being proposed to NRC regulations applicable to Safeguards Information as a result of ongoing evaluations. Personnel security controls, including background checks and other means, are in effect for individuals authorized access to Safeguards Information, as is the strict adherence to the need-to-know principle.

Inadequate protection of Safeguards Information, including inadvertent release and unauthorized disclosure, may result in civil and/or criminal penalties. The Act explicitly provides in Section 147a that any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of the Act. Furthermore, willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both, as prescribed in Section 223 of the Act. The specific penalties associated with such violations will be determined by the staff in its implementation of the NRC Enforcement Policy, and the discretion of the Commission based on the details and significance of any violation. Statutory maximum penalties are addressed in Attachment 1.

The NRC will continue to evaluate its requirements, policies and guidance concerning the protection and unauthorized disclosure of Safeguards Information. Licensees and other stakeholders will be informed of proposed revisions or clarifications.

BACKFIT DISCUSSION

The RIS and the attachment do not request any action or written response; therefore, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register*.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

If you have any questions about this matter, please contact the person listed below.

/RA/
Charles L. Miller, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Materials Safety
and Safeguards

/RA/
William D. Beckner, Program Director
Operating Reactor Improvements Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Contact: Bernard Stapleton, NSIR
(301) 415-2432
E-mail: bws2@nrc.gov

Attachments: 1. Summary of Safeguards Information Requirements
2. List of Recently Issued NRC Regulatory Issue Summaries

SUMMARY OF SAFEGUARDS INFORMATION REQUIREMENTS

I. AUTHORITY

The Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.* (Act), grants the Nuclear Regulatory Commission broad and unique authority to prohibit the unauthorized disclosure of Safeguards Information upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. Section 147 of the Act, 42 U.S.C. § 2167.

For licensees and any other person, whether or not a licensee (primarily 10 C.F.R. Part 50 reactor licensees, 10 C.F.R. Part 70 licensees for special nuclear material, and their employees and contractors) subject to the requirements in 10 C.F.R. Part 73, Safeguards Information is defined by NRC regulation as follows:

> *Safeguards Information* means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

10 C.F.R. § 73.2.

Specific requirements for the protection of Safeguards Information are contained in 10 C.F.R. § 73.21. Access to Safeguards Information is limited as follows:

> (c) *Access to Safeguards Information.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:
>
> (i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57;
>
> (ii) A member of a duly authorized committee of the Congress;
>
> (iii) The Governor of a State or designated representatives;
>
> (iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

> (v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or
>
> (vi) An individual to whom disclosure is ordered pursuant to § 2.744(e) of this chapter [10 CFR 2.744(e)].
>
> (2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

10 C.F.R. § 73.21(c).

The "need to know" requirement is specified by NRC regulation as follows:

> *Need to know* means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

10 C.F.R. § 73.2.

Thus, unless otherwise authorized by the Commission, NRC regulations limit access to Safeguards Information to certain specified individuals who have been determined to have a "need to know," i.e., specified individuals whose access has been determined to be necessary in the performance of official, contractual or licensee duties of employment.

Furthermore, except as otherwise authorized by the Commission, no person may disclose Safeguards Information to any other person unless that other person is one of the specified persons listed in 10 C.F.R. § 73.21(c)(1) and that person also has a "need to know." 10 C.F.R. § 73.21(c)(2). These regulations and prohibitions on unauthorized disclosure of Safeguards Information are applicable to all licensees and all individuals:

> This part [10 C.F.R. Part 73] prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

10 C.F.R. § 73.1(b)(7).

The Commission's statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information is even broader than is reflected in these regulations. Section 147 of the Act grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information . . . ." This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities.

The Act explicitly provides: "Any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act." Section 147a of the Act. Section 234a of the Act provides for a civil monetary penalty not to exceed $120,000 for each violation. *See* 10 C.F.R. § 2.205(j) (2003). Furthermore, a willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. *See* Sections 147b and 223a of the Act.

The NRC Enforcement Policy outlines potential NRC actions against both licensees and individuals for violations of the regulations and Orders using criteria that evaluate both the details and severity of the violation.

II. DISCUSSION

All licensees and all other persons who now have, or in the future may have, access to Safeguards Information must comply with all applicable requirements delineated in regulations and Orders governing the handling and unauthorized disclosure of Safeguards Information. As stipulated in 10 C.F.R. § 73.21(a), licensees and persons who produce, receive or acquire Safeguards Information are required to ensure that Safeguards Information is protected against unauthorized disclosure. To meet this requirement, licensees and persons subject to 10 C.F.R. § 73.21(a) shall establish and maintain an information protection system governing the proper handling and unauthorized disclosure of Safeguards Information. All licensees should be aware that since the requirements of 10 C.F.R. § 73.21(a) apply to all persons who receive Safeguards Information, they apply to all contractors whose employees may have access to Safeguards Information and they must either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own information protection system, but the licensees remain responsible for the conduct of their contractors. The elements of the required information protection system are specified in 10 C.F.R. § 73.21(b) through (i). The information protection system must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; inspections, audits and evaluations; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

As noted above, in addition to the responsibility of each licensee to ensure that all of its employees, contractors and subcontractors, and their employees comply with applicable requirements, all contractors, subcontractors, and individual employees also are individually responsible for complying with applicable requirements and all are subject to civil and criminal sanctions for failures to comply. The NRC considers that violations of the requirements applicable to the handling of Safeguards Information are a serious breach of adequate protection of the public health and safety and the common defense and security of the United States.

As a result, the staff intends to use the NRC Enforcement Policy, including the discretion to increase penalties for violations, to determine appropriate sanctions against licensees and individuals who violate these requirements. In addition, the Commission may use its discretion, based on the severity of the violation, to further increase the penalty for any violation up to the statutory maximum. Willful violations of these requirements will also be referred to the Department of Justice for a determination of whether criminal penalties will be pursued.

LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2003-07	Issuance of Regulations Revising Filing Requirements for Advance Notification of the Shipment of Spent Nuclear Fuel and Special Nuclear Material	04/23/2003	All U.S. Nuclear Regulatory Commission (NRC) power reactor licensees, research and test reactor licensees, independent spent fuel storage installation licensees, and special nuclear material licensees who ship spent nuclear fuel and special nuclear material.
2003-06	High Security Protected and Vital Area Barrier/Equipment Penetration Manual	03/20/2003	All power reactor (including decommissioning reactor) licensees, independent spent fuel storage installation licensees, the conversion facility licensee, gaseous diffusion plant licensees, and Category I fuel cycle facility licensees.
2003-05	Issuance of Orders Imposing Additional Physical Protection Measures For Independent Spent Fuel Storage Installations Using Dry Storage	03/19/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees who hold general licenses for independent spent fuel storage installations (ISFSIs) using dry storage pursuant to 10 CFR Part 72 and all applicants for site-specific licenses for ISFSIs pursuant to 10 CFR Part 72.
2003-04	Use of the Effective Dose Equivalent in Place of the Deep Dose Equivalent in Dose Assessments	02/13/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees.

Note: NRC generic communications may be received in electronic format shortly after they are issued by subscribing to the NRC listserver as follows:

To subscribe send an e-mail to <listproc@nrc.gov >, no subject, and the following command in the message portion:

subscribe gc-nrr firstname lastname

OL = Operating License
CP = Construction Permit