

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555-0001

November 7, 2005

**NRC REGULATORY ISSUE SUMMARY 2005-26
CONTROL OF SENSITIVE UNCLASSIFIED NONSAFEGUARDS
INFORMATION RELATED TO NUCLEAR POWER REACTORS**

ADDRESSEES

All holders of operating licenses for nuclear power reactors and holders of and applicants for certificates for reactor designs.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform the addressees of the appropriate handling of information that warrants controls because of continuing concerns about terrorist attacks against the critical infrastructure of the United States. The NRC intends to balance its responsibility to preserve public access to information and support meaningful participation in NRC's regulatory processes against its responsibility to withhold information that might unnecessarily compromise the security of nuclear facilities. Licensees for operating nuclear power plants and reactor facility designers may need to assess their document control procedures to ensure they protect sensitive information. Although no specific action or written response is required, the NRC encourages the addressees for this RIS, vendors and contractors, and others who may possess sensitive information to destroy, mark, or otherwise control the information to avoid inadvertently providing assistance to those who might use the information for malevolent acts.

BACKGROUND INFORMATION

NRC traditionally has given the public access to a significant amount of information about the facilities and materials the agency regulates. Openness has been and remains a cornerstone of NRC's regulatory philosophy. The Atomic Energy Act, subsequent legislation, and various NRC regulations have given the public the right to participate in the licensing and oversight process for nuclear power reactors and other NRC licensees. To participate in a meaningful way, the public must have access to information about the design and operation of regulated facilities and use of nuclear materials. However, NRC and other Government agencies have always withheld some information from public disclosure for reasons of security, personal privacy, or commercial or trade secret protection. In light of increased terrorist activity worldwide, NRC reexamined its document disclosure policies.

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Since the events of September 11, 2001, NRC has issued advisories and taken specific actions regarding the security of its licensed facilities. NRC has also assessed and revised its policies and practices for control of information so that information that could reasonably be expected to be useful to terrorists in planning or executing an attack against nuclear power plants or other NRC-licensed facilities will be withheld from public disclosure. The most recent and detailed guidance on the control of information related to operating nuclear power plants is provided in the Commission paper SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors From Public Disclosure," dated October 19, 2004, and the associated staff requirements memorandum dated November 9, 2004. Also see SECY-05-0091, "Task Force Report on Public Disclosure of Security-Related Information," dated May 18, 2005, and the associated staff requirements memorandum dated June 30, 2005. The NRC staff is preparing similar guidance for materials licensees and expects to make it available to the public in early 2006.

SUMMARY OF ISSUE

Considering the various reviews, legislation, and other changes since September 11, 2001, the NRC staff believes that clarifying NRC's current procedures and policies regarding the control of information will be beneficial to stakeholders. NRC will continue to make available to the public most of the information that the agency receives from or sends to its licensees. In addition, the public will have access to a large amount of information included in various reports produced by the NRC staff. Much of NRC's information also will be readily available to the public via the NRC Web site (www.nrc.gov) and the NRC's electronic document management system (ADAMS) (www.nrc.gov/reading-rm/adams.html). In addition, other information may be released to the public in response to formal or informal requests. The exceptions for certain information to be withheld from public disclosure for reasons other than security (e.g., privacy, proprietary, and pre-decisional information) have not changed as a result of recent events. The appropriate handling of Safeguards Information (SGI) is discussed in RIS-2003-08, "Protection of Safeguards Information From Unauthorized Disclosure," dated April 30, 2003, and more specific SGI designation guidance documents.

NRC withheld from public disclosure some information related to protecting operating nuclear power plants although it does not meet the existing criteria for designation as SGI. This type of information was recognized before September 11, 2001, and, when submitted to NRC by a licensee, was withheld from public disclosure according to the provisions of 10 CFR 2.390(d)(1). This regulation states:

(d) The following information is considered commercial or financial information within the meaning of §9.17(a)(4) of this chapter and is subject to disclosure only in accordance with the provisions of §9.19 of this chapter.

(1) 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 Information or classified as National Security Information or Restricted Data.

NRC expects that licensees will continue to request NRC withhold some information citing 10 CFR 2.390(d)(1) and that the volume of material requested to be withheld from public disclosure under this provision will increase as the NRC staff and licensees implement the guidance in this RIS. NRC changed its procedures shortly after September 11, 2001, to withhold from public disclosure various categories of documents likely to include individual records that warrant withholding under 10 CFR 2.390. The NRC staff will assess the need to withhold such document categories if licensees routinely identify specific documents containing sensitive information. The NRC staff will interact with licensees on a case-by-case basis regarding the use of the provisions of 10 CFR 2.390(d)(1) to assure that information is properly controlled, under either Section 2.390(d)(1) or one of the other Freedom of Information Act (FOIA) exemptions that might be applicable. Licensees that identify information to be withheld from public disclosure in accordance with 10 CFR 2.390(d)(1) or other provision in the regulation should use the same general practices as used for proprietary commercial or financial information. As shown on the attached diagram, the cover letter should clearly state that the document includes sensitive information and the affected pages should include the marking "Security-Related Information — Withhold Under 10 CFR 2.390." Unlike the requirements for withholding proprietary information, licensees are not required to provide an affidavit for sensitive information withheld under 10 CFR 2.390(d) and related to (1) physical protection or (2) material control and accounting.

Most information received and generated by NRC deals with design, operations, or other matters not directly related to the physical security of nuclear facilities or radioactive materials. This information, if not protected as proprietary or under another exception, is generally made available to the public. After September 11, 2001, NRC and other Government agencies responded to concerns that some information easily available on public Web sites or by other means might be useful to terrorists. SECY-04-0191 provides the primary NRC guidance on whether information related to operating nuclear power plants should be withheld from public disclosure in light of the post-September 11 concerns. The NRC staff has posted the guidance and related material within the public reading room (<http://www.nrc.gov/reading-rm.html>) on the NRC Web site, and stakeholders can ask questions or make suggestions about the guidance and the examples.

As discussed in SECY-04-0191, other Government agencies have issued regulations or guidance for protecting information that could be reasonably expected to be useful to terrorists in planning or executing an attack on critical infrastructure.

- Protected critical infrastructure information (PCII) is information related to the security of critical infrastructure that is voluntarily provided to the Department of Homeland Security (DHS).
- Critical energy infrastructure information (CEII) is defined in Federal Energy Regulatory Commission (FERC) regulations as information related to energy-related infrastructure (e.g., hydroelectric dams and electric transmission systems).
- Sensitive security information (SSI) is defined in Transportation Safety Administration (TSA) and Department of Transportation (DOT) regulations as information about the security of transportation assets, including pipelines.

Licensees may need to assess and revise their procedures for handling sensitive unclassified nonsafeguards information in their normal activities and interactions with parties other than NRC. During discussions of existing practices with various licensees, the NRC staff discovered that licensees vary in how they treat and protect information that was previously unprotected but now is considered sensitive. Some licensees have instituted more restrictive controls. Some have determined that their routine business practices provide an appropriate level of protection for the sensitive information.

As described in 10 CFR 2.390, information deemed sensitive because it relates to physical protection or material control and accounting is protected in much the same way as commercial or financial information. As with proprietary information, licensees are expected to have sufficient internal controls to keep the information confidential. Possible methods to prevent the inadvertent release of sensitive unclassified nonsafeguards information include marking documents as described in 10 CFR 2.390, restricting access to electronic recordkeeping systems, and controlling the reproduction, distribution, and destruction of potentially sensitive records. NRC uses the marking "Security-Related Information — Withhold Under 10 CFR 2.390" and encourages the use of this marking by licensees and others possessing information deemed sensitive using the guidance in SECY-04-0191. Licensees should ensure that similar controls are in place when sensitive information is provided to outside parties such as contractors or other Government agencies. The NRC staff posted information on NRC's Web site (<http://www.nrc.gov/reading-rm.html>) and included a feedback form for questions or suggestions on how to effectively control sensitive information.

BACKFIT DISCUSSION

This RIS requires no action or written response. Any action on the part of addressees to assess and revise their document control procedures in accordance with the guidance contained in this RIS is strictly voluntary and, therefore, is not a backfit under 10 CFR 50.109. Consequently, the NRC 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* because it is informational and pertains to a staff position that does not represent a departure from current regulatory requirements and practice. NRC intends to work with the Nuclear Energy Institute, industry representatives, members of the public, and other stakeholders in modifying related guidance documents.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

The NRC has determined that this action is not a rule and thus is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

PAPERWORK REDUCTION ACT STATEMENT

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

CONTACT

Please direct any questions about this matter to the technical contacts listed below or to the appropriate Office of Nuclear Reactor Regulation (NRR) project manager.

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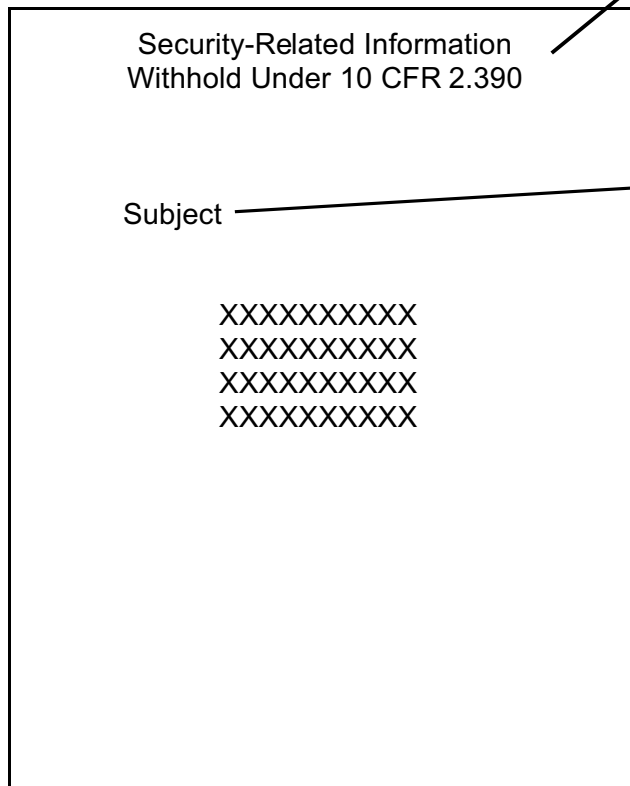
Attachment: Marking diagram for documents withheld under 10 CFR 2.390

Note: NRC generic communications may be found on the NRC public Web site, <http://www.nrc.gov>, under Electronic Reading Room/Document Collections.

SUGGESTED MARKINGS

Withhold From Public Disclosure In Accordance With 10 CFR 2.390

Overall page marking on the top of all pages



Ensure Subject Line is non-sensitive

Appropriate Controls

- Access: Need-to-know in order to perform official licensee functions.
- Storage: Openly within licensee facilities with electronic or other access controls, for example, key cards, guards, alarms.
- Mail: U.S. Postal Service first class mail, single opaque envelope with no markings to indicate 10 CFR 2.390 contents.
- Electronic Transmission: Over encrypted phone, facsimile, computer, if available; otherwise over non-encrypted circuits where recipient will be present to receive the transmission.