[7590-01-P]

NUCLEAR REGULATORY COMMISSION

POSSIBLE IMPROVEMENTS TO THE LEVEL OF OPENNESS AND TRANSPARENCY OF INFORMATION ASSOCIATED WITH NRC SECURITY INSPECTION AND SECURITY PERFORMANCE ASSESSMENT OF NRC LICENSEES

[NRC-2008-0413]

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is seeking comment from all interested persons on options for improving the level of openness and transparency associated with security-related information obtained from the conduct of NRC inspection and licensee performance assessments.

DATES: Submit comments by September 5, 2008. Comments received after this date will be considered only if it is practical to do so.

ADDRESSES: Comments may be submitted electronically through http://www.regulations.gov or mailed to Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Office of Administration (Mail Stop: T6-D59), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Comments may also be hand delivered to Mr. Lesar at 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Publicly-available documents referenced for this action are available electronically through the NRC's Electronic Reading Room on the Internet at http://www.nrc.gov/reading-rm.html. From this site the public can also access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public

documents. For more information, contact the NRC's Public Document Room (PDR) reference staff at 301-415-4737 or 800-397-4209, or by e-mail at pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Paul W. Harris, Senior Program Manager, Reactor Security Oversight Branch, Division of Security Operations, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC, 20555-0001. Telephone: (301) 415-1169; fax number (301) 415-6077; email: Paul.Harris@NRC.gov.

SUPPLEMENTARY INFORMATION:

Background

The NRC views nuclear regulation as the public's business and, as such, believes it should be transacted as openly and candidly as possible to maintain and enhance the public's confidence in the regulatory process. Ensuring appropriate openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in the NRC's regulatory processes. At the same time, the NRC must also control sensitive information so that security goals are met. This vision is described in the NRC's Strategic Plan for Fiscal Years 2008-2013, NUREG-1614, Volume 4, February 2008 (http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v4/).

The NRC has traditionally given the public access to a significant amount of information about facilities and materials the agency regulates. This information has included, but has not been limited to, licensee performance assessments, inspection findings, and details regarding escalated enforcement actions. To help ensure openness, the agency provides accurate and timely information to the public about the risks associated with radioactive material and the safety performance of the licensees regulated by the NRC. This strategy enables a fair, timely, and meaningful stakeholder involvement in NRC regulated activities without disclosing classified, safeguards, proprietary, and sensitive unclassified information, and results in early communications with stakeholders on issues of substantial interest.

Recent Changes to the Publicly-Available Security-Related Information

Prior to the terrorist events of September 11, 2001, almost all information regarding the inspection and assessment of security activities at NRC licensees was publicly available. Only information specifically requiring protection, such as that described in the background information under "Security Inspection and Licensee Performance Assessment Openness Initiative" located at http://www.nrc.gov/public-involve/doc-comment.html#3, was withheld from the public. Therefore, most security-related licensee performance information was documented in NRC inspection reports, reviews of licensee performance, and enforcement determinations. Most of these documents (that were designated as non-sensitive or non-safeguards information) were made available for public inspection at the NRC's PDR accessible locally in Rockville, Maryland or through the internet via the NRC's electronic reading room at http://www.nrc.gov/reading-rm.html. Furthermore, specific commercial power reactor licensee performance information, such as descriptions of violations, inspection findings, NRC annual assessments of licensee performance, and performance indicators for individual power facilities was publicly accessible at http://www.nrc.gov/reactors/ql-reactors.html#over.

At the preceding NRC Website, non-safeguards information, summaries of all security and non-security inspection findings, and performance assessments for nuclear power plants used to be available for public review. This allowed a member of the public to ascertain specific licensee performance information and compare that performance to other similar facilities. The inspection process also made available NRC inspection schedules and its meetings with licensees involving NRC-regulated activities. Although some security-related information was publicly available, the preponderance of all information that the NRC made available to the public dealt with the design and operation of NRC-regulated facilities, and not with the physical security of these facilities or radioactive materials.

In the aftermath of September 11, 2001, the NRC assessed and revised controls on withholding from public disclosure security-related NRC inspection and licensee performance information that might be useful to persons planning hostile acts against licensees. As a result, the amount of publicly-available security-related information was reduced. Currently, the cover letters to security inspection reports are publicly available providing general information without revealing any specifics regarding any particular inspection finding. This information includes, but is not limited to: the dates of the inspection, whether there was a finding, and whether the finding involved a cross cutting aspect (human performance, problem identification and resolution, and safety conscious working environment). The security-related inspection information that is currently available for public review can be viewed at http://www.nrc.gov/reactors/ql-reactors.html#over.

Staff Options to Enhance Openness and Transparency of Security Inspection Information

To improve stakeholder satisfaction with the way NRC communicates security inspection information, the staff is considering a number of approaches that would increase the public awareness and openness of the NRC's security inspection findings and licensee performance assessment, such as adding additional detail to: (1) the annual public report to Congress on security oversight of operating power reactors and fuel cycle facilities by providing a brief description and significance of security inspection findings; (2) the public cover letters for security inspection reports by providing more details, including significance of security inspection findings; and,(3) the NRC public Website by making more information available, such as some security inspection procedures and inspection manual chapters. Further, similar to that done for NRC safety assessments of licensee performance, the staff is considering whether to conduct public meetings in the vicinity of commercial power reactors, fuel facilities, and any

NRC-regulated facility that had a significant[1] security-related performance problem during the performance review period. These meetings would be held to present NRC's assessment of that particular licensee's security performance (without divulging sensitive information) and respond to public questions regarding licensee performance and regulatory oversight. In other words, the NRC is assessing whether to conduct public meetings on a periodicity commensurate with licensee performance.

Regarding material licensees[2], Agreement States and the Commission cooperated in the development of enhanced security measures and the adoption of a policy in which these licensees would protect certain sensitive information. Agreement States and the Commission have also agreed to withhold the names of the licensees that are implementing these enhanced security requirements – publishing a licensee name could potentially make that entity a target for hostile action. Furthermore, some security inspection results, licensee performance assessments, inspection procedures, and inspection manual chapters will not be available to the public because of special considerations associated with the particular facility; however, the staff endeavors to apply a consistent level of openness to these inspection results as well.

Availability of Inspection-Related Information on NRC Website

The NRC places a large amount of inspection and licensee performance information on its external Website to inform stakeholders and to enable public participation in the regulatory process. Program descriptions detailing how the NRC staff implements its inspection programs are described at http://www.nrc.gov/reading-rm/doc-collections/insp-manual/manual-chapter/index.html. For power reactors, inspection-related information is posted at

[1] As used in this document, the term "significant" means a deficiency or a combination of deficiencies that results in a programmatic increase in NRC regulatory oversight of a facility.
[2] Material licensees are, for examples, large panoramic irradiators, manufacturer and distributor licensees, licensees that transfer large quantities of radioactive material, and materials licensees that possess risk-significant quantities of radioactive material (i.e., hospitals, universities, radiographers, and well loggers).

http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/pim_summary.html, with cover letters for security inspection reports found at http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/listofrpts_body_security.html. The information on these web links is updated every quarter, however, the actual safety report or security cover letter is publicly available in ADAMS shortly after the reports are approved and signed. For NRC inspection and licensee performance assessment of fuel cycle facilities see http://www.nrc.gov/reading-rm.html. Lastly, the NRC continues to enable public access to various reports produced by the NRC staff, public meeting and workshop summaries, and media-type information in ADAMS and may release other information to the public in response to formal or informal requests.

SUMMARY

Considering the various reviews, legislation, and other changes since September 11, 2001, the NRC staff believes that enhancement of its current procedures and policies regarding publicly-available information summarizing security inspection, enforcement results, and licensee performance assessment could serve in the public interest. Therefore, the NRC seeks public comments on ways to improve regulatory openness and transparency of its security oversight activities. Improving openness and transparency will enhance public satisfaction by: (1) enhancing public awareness of the NRC's independent role in protecting public health and safety, the environment, and the common defense and security; (2) providing accurate and timely information to the public about regulatory activities at NRC licensees; (3) providing fair, timely, and meaningful stakeholder involvement in NRC regulated activities without disclosing classified, safeguards, proprietary, or sensitive information; and (4) initiating early communication with stakeholders on issues of substantial interest. To support this endeavor and to better understand public satisfaction in how the NRC communicates security-related information, comments are requested on, but need not be limited to, the topics below:

(1) In addition to the information currently in publicly-available cover letters for the majority of NRC security inspections, what additional information would be effective in informing the public about licensee security performance? For example, what specific details would increase the public's level of satisfaction in NRC regulatory oversight of licensed facilities?

(2) (a) At what stage in the inspection process is interaction with the public most effective and beneficial? For example, immediately upon closure of an inspection when a finding is identified, but may be withheld from public disclosure or some time after licensee correction of the finding, when it may be possible to release additional security-related inspection information?

(b) At what stage in the NRC's licensee performance assessment process is interaction with the public most effective and beneficial? For example, upon NRC determination that licensee performance changed from one Action Matrix column[3] to another or during NRC's mid-cycle or end-of-cycle licensee performance reviews.

(3) What method of public interaction is most preferred? For example, is the conduct of a public meeting, a redacted inspection report, additional information in NRC's annual report to Congress regarding security inspections, or additional information posted on the NRC Website the most beneficial (efficient, effective, or informative) method of informing the public?

(4) How useful are the above methods for communicating NRC security-related inspection and licensee performance information to all stakeholders?

(5) What are the reasons why various stakeholders desire security-related information? For example, is this information necessary to build confidence in NRC regulatory oversight or understand current licensee performance?

(6) What level of public participation in any substantial and future revision of the security oversight process (e.g., changes made to performance indicators, significance determination process, etc.) would be beneficial? What constraints and considerations on such participation would be necessary to protect the details of sensitive security information?

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[3] See NRC Inspection Manual Chapter 0320, "Operating Reactor Security Assessment Program," page E2-1, located at http://www.nrc.gov/reading-rm/doc-collections/insp-manual/.

The public may view background information, express additional thought, comment, and describe other means and methods to enhance openness and transparency at "Security Inspection and Licensee Performance Assessment Openness Initiative" located at http://www.nrc.gov/public-involve/doc-comment.html#3.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman, Director
Office of Nuclear Security and Incident Response

Dated this 22nd day of July 2008, at Rockville, Maryland.