

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NEW REACTORS
WASHINGTON, DC 20555-0001

December 13, 2013

**U.S. NRC REGULATORY ISSUE SUMMARY 2013-19
REMOVAL OF SAFEGUARDS INFORMATION DESIGNATION
FROM ATTACHMENT 2 TO ORDER EA-02-261, "ORDER FOR COMPENSATORY
MEASURES RELATED TO ACCESS AUTHORIZATION"**

ADDRESSEES

All holders of an operating license or construction permit for a nuclear power reactor under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities."

All holders of and current and future applicants for a nuclear power reactor early site permit, combined license, standard design certification, standard design approval, or manufacturing license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants."

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform the addressees that effective March 20, 2013, the Safeguards Information (SGI) designation has been removed from Order EA-02-261, in accordance with 10 CFR Part 73.22(h), "Removal from Safeguards Information category." This RIS requires no action or written response on the part of the addressees. Licensees may follow the guidance stated in NRC Regulatory Guide 5.79, "Protection of Safeguards Information," Section C, paragraph 9(d), to ensure that the document in their possession is properly marked.

BACKGROUND INFORMATION

On January 7, 2003, the NRC issued Order EA-02-261. The Order included Attachment 2, "Compensatory Measures for Access Authorization," which was designated as SGI, in accordance with Section 147 of the Atomic Energy Act of 1954, as amended, and the NRC's applicable regulations set forth in 10 CFR Part 73.21, "Protection of Safeguards Information: Performance requirements."

On March 27, 2009 (74 FR 13926), the NRC published the Final Rule, "Power Reactor Security Requirements," in the Federal Register. The Final Rule amended 10 CFR Parts 50, 52, 72, and 73.

ML13150A135

This rulemaking became effective on May 26, 2009. Licensees were required to be in compliance with the final rule no later than March 31, 2010.

The NRC staff determined that the nuclear power reactor security rulemaking incorporated all of the requirements set forth in Order EA-02-261. Accordingly, on November 28, 2011, all recipients of the Order were informed that the requirements of Order EA-02-261 were rescinded in their entirety.

SUMMARY OF ISSUE

On October 12, 2012, the NRC staff received a request to address whether the access authorization criteria in a licensee's security procedures, when developed as part of its overall physical security plan, constitute SGI. The licensee's security procedures incorporated information that was designated as SGI from Attachment 2 to the Order. The NRC reviewed Attachment 2 of the Order and determined that the information in Attachment 2 no longer constituted SGI, as defined by Section 147 of the Atomic Energy Act of 1954 or by 10 CFR 73.2.

In a letter dated March 20, 2013, the NRC informed all holders of nuclear power reactor licenses about the removal of the SGI designation from Attachment 2 to the Order (Agencywide Documents Access and Management System Accession No. ML13074A789). This letter informed licensees to follow the guidance in NRC Regulatory Guide 5.79, "Protection of Safeguards Information," Section C, paragraph 9(d), to ensure that the document in their possession is properly marked.

BACKFITTING AND ISSUE FINALITY DISCUSSION

This RIS (i) informs the addressees that the SGI designation has been removed from Attachment 2 to Order EA-02-261 and (ii) directs addressees to NRC Regulatory Guide 5.79, "Protection of Safeguards Information," so they may ensure that copies of Attachment 2 to Order EA-02-261 in their possession are properly marked. Because the NRC has removed Attachment 2 from the Safeguards Information category, licensees must properly mark Attachment 2 as required by 10 CFR 73.22(h). Requiring licensees to remove an SGI marking from a licensee-held document does not constitute backfitting as defined in 10 CFR § 50.109, nor is it otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. For these reasons, the NRC did not prepare a backfit analysis for this RIS or further address the issue finality criteria in Part 52.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because it is informational. This RIS references a previously issued NRC letter to power reactor licensees.

CONGRESSIONAL REVIEW ACT

The NRC has determined that this RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. §§ 801–808) and, therefore, is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing information collection requirements were approved by the Office of Management and Budget, approval number 3150-0002.

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

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

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ADAMS Accession No.: ML13150A135

*concurring via e-mail

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