

December 17, 2015

MEMORANDUM TO: Meena K. Khanna, Chief
Plant Licensing IV-2 and Decommissioning
Transition Branch
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

FROM: Carl F. Lyon, Project Manager */RA/*
Plant Licensing Branch IV-1
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT REGULATORY
ISSUE SUMMARY 2015-XX, "REVIEW AND SUBMISSION OF
UPDATES TO FINAL SAFETY ANALYSIS REPORTS,
EMERGENCY PREPAREDNESS DOCUMENTS, AND FIRE
PROTECTION DOCUMENTS" [DOCKET ID NRC-2015-0226]
(CAC NO. MF5828)

A notice of opportunity for public comment on this Regulatory Issue Summary (RIS) was published in the *Federal Register* on September 25, 2015 (80 FR 57884), for a 30-day comment period. Three organizations provided comments, which were considered before issuance of this RIS in final form. Comments were received from the Nuclear Energy Institute (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15310A046), Duke Energy (ADAMS Accession No. ML15310A045), and SHINE Medical Technologies, Inc. (ADAMS Accession No. ML15306A024). Enclosed are the staff responses to the public comments.

Enclosure:
As stated

CONTACT: Fred Lyon, NRR/DORL/LPLIV-1
301-415-2296

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U.S. NUCLEAR REGULATORY COMMISSION STAFF
RESPONSE TO PUBLIC COMMENTS ON
DRAFT NRC REGULATORY ISSUE SUMMARY 2015-XX
“REVIEW AND SUBMISSION OF UPDATES TO FINAL SAFETY
ANALYSIS REPORTS, EMERGENCY PREPAREDNESS DOCUMENTS,
AND FIRE PROTECTION DOCUMENTS,” 80 FR 57884
[DOCKET ID NRC-2015-0226]

Comments on the subject draft regulatory issue summary (RIS) are available electronically at the U.S. Nuclear Regulatory Commission’s (NRC’s) electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC’s public documents. Comments were received from the following individuals or groups:

Submittal No.	ADAMS Accession No.	Commenter Affiliation	Commenter Name
1	ML15310A046	Nuclear Energy Institute (NEI)	B.S. Montgomery
2	ML15310A045	Duke Energy	K. Sheffield
3	ML15306A024	SHINE Medical Technologies, Inc.	J. Costedio

This document lists each public comment by submittal number. For each comment, the NRC has provided a summary of the comment followed by the NRC’s response. Each comment is referred to below by submittal number, and a sequential number for each comment within the submittal.

Comments

Comment No. 1-1: The RIS discusses “security-related” information but does not provide current guidance or specific examples of the criteria a document reviewer would use to identify “security-related” information. The RIS provides no examples of final safety analysis report (FSAR)-level information that should be treated as security-related, and the examples provided for emergency preparedness (EP) security-related information are confusing. It is not evident that the examples share a common attribute regarding a security concern. The RIS should

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contain a clearer definition of “security-related information” and specific examples of such information in FSARs, and fire protection (FP) and EP documents.

NRC Response: The NRC does not agree with the comment. The licensee has the responsibility to determine what information to withhold under Title 10 of the *Code of Federal Regulations* (10 CFR) section 2.390(d)(1). The purpose of the RIS is to remind licensees of this responsibility with regard to FSARs, EP documents, and FP documents, since this information will no longer be presumptively withheld by the NRC. When the Commission directed staff to withhold from public disclosure sensitive unclassified information concerning nuclear power reactors (via Staff Requirements Memorandum (SRM)-SECY-04-0191, available at ADAMS Accession No. ML043140175), it also approved the staff to follow the guidelines of Attachment 1 to the Commission Paper SECY-04-0191 (ADAMS Accession No. ML042310663). Attachment 1 provides a general framework and discussion of sensitive unclassified non-safeguards information (SUNSI) and, specifically, the subset of SUNSI that is now commonly referred to as “security-related information,” as well as a table detailing specific examples of security-related information which should be withheld from public disclosure. This table is organized by categories of information (e.g., plant drawings, hydrological information, plant systems), loosely aligning with a large number of standard sections of FSARs, and provides specific examples of information which should be withheld from public disclosure under 10 CFR 2.390(d)(1). It is important to note that SRM-SECY-15-0032 (ADAMS Accession No. ML15167A090), rescinded the direction in SRM-SECY-04-0191 only to the extent that the SRM approved presumptive withholding of FSARs, EP documents, and FP documents. Therefore, the staff’s use of Attachment 1 to Commission Paper SECY-04-0191 to clearly identify security-related information which should be withheld from public disclosure per 10 CFR 2.390(d)(1) continues, and it is publicly available for use by industry in the same manner. The NRC revised the RIS to include the publicly-available guidance in Attachment 1 to SECY-04-0191 for use in identifying security-related information contained in FSARs, EP documents, and FP documents, which should be withheld from public disclosure.

In addition to the above guidance, the NRC developed its SUNSI Policy (ADAMS Accession No. ML052990146) to provide overarching guidance for sensitive unclassified information handling. Security-related information, which is sometimes referred to as “physical security” information, is a subset of SUNSI in the NRC’s SUNSI Policy. The NRC’s SUNSI Policy defines SUNSI, in part, as information of which the loss, misuse, modification, or unauthorized access can reasonably be foreseen to harm the public interest. Security-related information, as a subset of SUNSI, would be such information defined above, related to the security of NRC-licensed facilities, materials, and other activities regulated by the NRC. The staff has also issued guidance to licensees, certificate holders, applicants, and other entities regarding the withholding of SUNSI, including RIS-2005-026, “Control of Sensitive Unclassified Nonsafeguards Information Related to Nuclear Power Reactors,” dated November 7, 2005 (ADAMS Accession No. ML051430228); RIS-2005-031, “Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material,” dated December 22, 2005 (ADAMS Accession No. ML053480073); RIS-2007-04, “Personally Identifiable Information Submitted to the U.S. Nuclear Regulatory Commission,” dated March 9, 2007 (ADAMS Accession No. ML063470597); and RIS-2012-03, “Reintegration of Security into the Reactor Oversight Process Assessment Program,” dated March 14, 2012 (ADAMS Accession No. ML11326A039).

The guidance cited above provides a common understanding of the definition of SUNSI, the subset of SUNSI referred to as “security-related information,” specific examples of security-related information needed to be withheld, as well as the appropriate means for withholding it. The nuclear industry and the NRC have established operating experience using this guidance to comply with the NRC SUNSI Policy. In order to ensure common understanding of this issue, the NRC staff intends to hold a workshop in the first half of 2016 on the identification and withholding of security-related information, with the goal of providing an enhanced common industry/NRC understanding of the type of information, with examples, which should be withheld from public disclosure, and to provide guidance for future reference.

Comment No. 1-2: The RIS references earlier RISs and a 2004 Commission SRM to communicate the general concern for making certain types of information publicly available, but these documents are not specific enough to ensure consistent document reviews are performed by different reviewers. In addition, these documents do not reflect the physical security enhancements implemented at nuclear power plants since 10 CFR Part 73 was revised in 2010. These enhancements effectively mitigate concerns regarding the usefulness to an adversary of information in the UFSAR related to plant features inside the protected area, so industry does not believe such information in the UFSAR should be withheld from public disclosure. The industry practice is to request that the NRC withhold information in FP documents describing plant areas that contribute to higher risk in fire scenarios, and the industry will continue this practice. The NRC should clarify that the UFSAR does not typically contain any security-related information; alternately, provide clear examples of the types of information that NRC considers security-related, along with a basis.

NRC Response: The NRC disagrees with the comment. Regarding the guidance for identifying security-related information, as well as specific examples, please see the NRC response to Comment No. 1-1. Regarding security enhancements and the protection of plant features inside the protected area, the guidance in Attachment 1 to SECY-04-0191 still applies, in that plant drawings which show pathways, doors, or access to vital plant equipment should be withheld from public disclosure due to their usefulness to an adversary in committing malevolent acts, which could cause harm to the public interest (the definition of SUNSI per the NRC SUNSI Policy). As described in the NRC response to Comment 1-1, Attachment 1 to SECY-04-0191 is publicly available and has been used by the staff for over a decade in the identification and marking of security-related SUNSI, and is available for use by the industry. The NRC staff does consistently identify security-related information in plant FSARs, namely plant drawings to a level of detail described in Attachment 1 to SECY-04-0191. No change was made to the RIS in response to this comment.

Comment No. 1-3: December 15 is not sufficient time for industry to perform reviews and submit complete copies of updated FSAR, EP, and FP documents. The NRC should change the date for when complete copies of these documents should be submitted to NRC to June 1, 2016.

NRC Response: The NRC disagrees with the comment. The RIS does not require industry to perform reviews and submit complete copies of updated FSAR, EP, and FP documents by December 15. December 15 is the date *going forward* when updated FSAR, EP, and FP documents will no longer be presumptively withheld by the NRC, not the date when all of the subject documents will be publicly available. The NRC considers that it would take about three operating cycles until industry-wide updated FSAR, EP, and FP documents would be publicly

available, particularly updated FSARs for the entire industry. No change was made to the RIS in response to this comment.

Comment No. 1-4: In the first full paragraph on page 4 of the draft RIS, the NRC discusses controls for Safeguards Information (SGI) and then comingles this discussion with what appears to be a discussion of security-related examples related to hostile action planning documents. It is unclear whether NRC considers these examples as SGI or security-related, and what levels of controls should be applied. The NRC should clarify the objective of this discussion.

NRC Response: The NRC agrees with the comment, in that the subject text in the draft RIS is not clear on whether SGI or security-related information or both is being discussed. The subject paragraph has been split into two paragraphs, one discussing security-related information in EP documents, and the other discussing SGI in EP documents.

Comment No. 1-5: In the first paragraph of page 5 of the draft RIS, the NRC provides the following example of EP documentation that would be security-related:

“...specific information that would compromise access to or activation/operation of normally secured emergency facilities/areas...”

This example is not sufficiently specific to help a reviewer decide what information is security-related. Additionally, the use of the term “normally secured” is confusing. The NRC should provide examples of the types of information the NRC believes could be used to compromise access to or activation/operation of normally secured emergency facilities/areas. The NRC should also define “normally secured” in the context of a typical emergency plan.

NRC Response: The NRC agrees with the comment, in that specific examples would be more helpful to document reviewers in deciding what information is security-related and that the phrase “normally secured” is ambiguous. The paragraph has been revised to provide some specific examples of information that would compromise access to or activation/operation of emergency plan facilities/areas/equipment/callout systems. Additionally, the extraneous phrase “normally secured” has been removed from the subject paragraph.

Comment No. 1-6: In the first paragraph on page 5 of the draft RIS, the NRC refers to information that could be used to compromise unsecured EP equipment as security-related. What is meant by “unsecured” in this case? Presumably, a siren is unsecured. What types of information does the NRC believe could be used to compromise EP equipment, and would therefore need to be withheld? The NRC should provide a definition of “unsecured” and examples of the types of information that should be withheld from public disclosure.

NRC Response: The NRC agrees with the comment, in that the phrase “unsecured EP-related equipment” is ambiguous. The paragraph has been revised to provide some specific examples of information that would compromise access to or activation/operation of emergency plan facilities/areas/equipment/callout systems. Additionally, the modifier “unsecured” has been removed from the subject paragraph.

Comment No. 1-7: In the last paragraph on page 5 of the draft RIS, the NRC uses the term “malevolent act.” It is assumed the NRC means acts directed at plant vital areas and vital

equipment and not EP facilities and equipment. The NRC should clarify the applicability of the term “malevolent act.”

NRC Response: The NRC agrees with the comment, in that the staff should use a more specific description than the phrase “malevolent act.” The subject paragraph has been revised to remove the general term “malevolent act” and to specify that information should be designated as SGI if, in short, it could be useful to an adversary in planning or executing an attack or radiological sabotage on a nuclear power plant.

Comment No. 1-8: The NRC encourages licensees to submit complete updated copies of documents electronically. NEI is aware that many licensees experience significant difficulty submitting documents using the NRC’s Electronic Information Exchange (EIE) system, due to the system’s inability to accommodate some types of drawings and the strict resolution criteria EIE is designed to accept. Reformatting of documents by licensees to prevent documents from being rejected by EIE is resource-intensive, with no commensurate improvement in the readability of the documents. For these reasons, the NRC should consider changes to the EIE system to improve usability by licensees.

NRC Response: The NRC considers this comment to be beyond the scope of this RIS. No change was made to the RIS in response to this comment.

Comment No. 2-1: The security department at Duke Energy currently has a fleet procedure for the identification of public information to be withheld per 10 CFR 2.390, and the security department did not have any comments on the draft RIS. Duke’s position is that the NRC should identify any information that should be withheld from public disclosure.

NRC Response: The NRC does not agree with the comment. The NRC has responded substantially to this comment in its response to Comment 1-1. No change was made to the RIS in response to this comment.

Comment No. 2-2: Regarding submittal of updates to the FSAR electronically on a total FSAR replacement basis, this is considered best practice for submittal of the Duke Energy FSARs.

NRC Response: As explained in the RIS, licensee submittals of updates to the FSAR electronically on a total FSAR replacement basis not only reduces the amount of time staff needs to review the submittals and thereby reduces fees, but also enables the NRC to have updated plant information in an emergency. No change was made to the RIS in response to this comment.

Comment No. 3-1: SHINE does not clearly understand whether or not the guidance provided in the RIS is intended to supersede the guidance provided in RIS 2005-31 for screening of EP and FP-related documents being submitted to the NRC, including specific screening criteria for identifying security-related information. It appears as if the guidance provided in the draft RIS is intended to replace the screening criteria provided in RIS 2005-31, which states, in part, “Withhold information related to emergency planning, emergency response, and fire protection.” However, Draft RIS 2015-XX does not state which portions of RIS 2005-31 it is intended to supersede. The NRC should explicitly state which section(s) of RIS 2005-31 guidance RIS 2015-17 is intended to supersede, and acknowledge that the remaining portions of RIS 2005-31 should continue to be followed.

NRC Response: The NRC considers this comment to be beyond the scope of this RIS, in that the RIS does not address materials licensees. Additionally, this RIS is not intended to supersede any other NRC guidance including RIS 2005-31. Nonetheless, the Office of Nuclear Material Safety and Safeguards is considering an update to the guidance of RIS 2005-31. No change was made to the RIS in response to this comment.