

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
OFFICE OF NEW REACTORS
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NRC REGULATORY ISSUE SUMMARY 2015-17
REVIEW AND SUBMISSION OF UPDATES TO FINAL SAFETY ANALYSIS REPORTS,
EMERGENCY PREPAREDNESS DOCUMENTS, AND FIRE PROTECTION DOCUMENTS

ADDRESSEES

All holders of and applicants for an operating license or construction permit under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," and those licensees that have permanently ceased operations and have submitted certifications pursuant to 10 CFR 50.82(a)(1), or have submitted applications for license termination pursuant to 10 CFR 50.82(b)(1).

All holders of and applicants for a power reactor early site permit, combined license, standard design approval, or manufacturing license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants." All applicants for a standard design certification, including such applicants after initial issuance of a design certification rule.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to remind licensees of the review and submission requirements of 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding," regarding information that may be withheld from public disclosure, as well as to recommend that the updates to Final Safety Analysis Reports (FSARs) required by 10 CFR 50.71(e) be made electronically on a total FSAR replacement basis, as described in 10 CFR 50.4(b)(6).

Specifically, the NRC is issuing this RIS for the following purposes:

- (1) To remind licensees of the potential for physical protection information, which the NRC is required to protect in the same manner as commercial or financial information for the purposes of withholding from public disclosure pursuant to 10 CFR 2.390(d)(1), to be contained in documents that will be proactively released to the public in accordance with the Commission direction in Staff Requirements Memorandum (SRM)-SECY-15-0032.¹ Specifically, the NRC reminds licensees of the potential for physical protection information to be contained in Preliminary Safety Analysis Reports (PSARs), FSARs,

¹ Staff Requirements Memorandum (SRM)-SECY-15-0032, "Reviewing Documents for Public Release Using Sensitive Unclassified Non-Safeguards Information Guidance," dated June 15, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15167A090).

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FSAR updates, and in emergency preparedness and fire protection documents, which had previously been presumptively withheld by the NRC.

- (2) To recommend a format for submission of FSAR updates for nuclear power reactors. Other Part 50 licensees are not required to update its facility FSARs, unless applying for renewal of the facility license. Licensees have two submission format options regarding FSAR updates: (1) electronically on a total FSAR replacement basis, as described in 10 CFR 50.4(b)(6), or (2) on a paper replacement page basis, as described in 10 CFR 50.71(e). Electronic submission of updates on a total FSAR replacement basis would save billable staff hours since time would not be taken to manually reconstruct sections of the FSAR for various staff reviews. Therefore, the NRC recommends that licensees voluntarily submit updates electronically (via CD or Electronic Information Exchange) on a total FSAR replacement basis. Submission of FSAR updates in this manner will also assist the NRC in its emergency response function by ensuring recently-updated, total FSARs are available to NRC emergency response teams.

This RIS does not transmit or imply any new or changed requirements or staff positions, or require any specific action or written response. However, licensee review of FSAR updates and emergency preparedness and fire protection documents for physical protection information or Safeguards Information (SGI) to be withheld from public disclosure, and submission of updates electronically on a total FSAR replacement basis, will enable the agency to more efficiently and effectively carry out its regulatory functions in an open and transparent manner.

BACKGROUND INFORMATION

After the events of September 11, 2001, the NRC assessed and revised its sensitive information control policies to provide greater assurance against publicly disclosing information that could reasonably be expected to be useful to potential adversaries. On November 9, 2004, the Commission issued SRM-SECY-04-0191,² which approved (among other things) proposed guidance to prohibit proactive release to the public of sensitive unclassified information concerning nuclear power reactors. The SRM approved the staff's recommendation to prohibit proactively making certain documents publicly available, specifically those relating to fire protection and emergency preparedness information, until requested and released under the Freedom of Information Act (FOIA), or disclosed in an adjudicatory or rulemaking proceeding. This direction marked a change from the NRC's usual policy of proactively releasing, to the public, categories of documents prepared by the regulated community or the NRC staff.

In response to the Commission's directions and as a result of the staff's recommendations, the NRC established its Sensitive Unclassified Non-Safeguards Information (SUNSI) Policy as described in COMSECY-05-0054.³ The agency issued this policy to ensure the staff properly handles and protects SUNSI from unauthorized disclosure. SUNSI is considered "any information of which the loss, misuse, modification, or unauthorized access can reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the

² Staff Requirements—SECY-04-0191—"Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure," dated November 9, 2004 (ADAMS Accession No. ML043140175); and Commission Paper SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure," dated October 19, 2004 (ADAMS Accession No. ML042310663).

³ COMSECY-05-0054, "Policy Revision: Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," dated October 26, 2005 (ADAMS Accession No. ML052520181).

personal privacy of individuals.” The policy conformed to the Administrative Procedure Act in that, absent a FOIA request, the NRC is not obligated to proactively disclose the documents covered by the Commission’s decisions. The SUNSI Policy itself does not protect from public disclosure fire protection and emergency preparedness information addressed by SRM-SECY-04-0191. Rather, that information is initially withheld from public release because of Commission direction in the SRM and is not reviewed against the SUNSI Policy.

In recent months, the agency has received FOIA requests seeking large numbers of agency documents that were covered by the agency’s policies post-September 11, 2001. These requests have sought fire protection and emergency preparedness documents, as well as updated FSARs.⁴ In addition, the staff has received requests for the agency to revise its policy prospectively, so that material covered by the prior policy would now be routinely available for review and release to the public, consistent with the NRC’s policy of openness and transparency.

In SRM-SECY-15-0032, the Commission approved the staff’s recommendation to discontinue the presumptive withholding from public release of FSAR updates, emergency preparedness documents, and fire protection-related documents, and to withdraw the direction provided in SRM-SECY-04-0191, to the extent that SRM-SECY-04-0191 approved presumptive withholding of these documents. Moving forward, the staff will proactively review and release FSAR updates and fire protection and emergency preparedness documents to the public, consistent with the NRC’s SUNSI Policy.

In view of the Government-wide transition to the Controlled Unclassified Information (CUI) program, the NRC notes that this RIS is intended to remain in effect after the transition to CUI. Additionally, the NRC notes the scope of this RIS is limited to those licensees listed in the Addressees section, and does not address materials or other licensees.

SUMMARY OF ISSUE

The NRC’s regulations at 10 CFR 2.390(b)(1) requires anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information, shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in the same section. For the purpose of determining withholding under 10 CFR 2.390, information contained in § 2.390(d)(1), which states, “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,” is considered commercial or financial information. In terms of current practice, physical security information is normally referred to as “security-related information,” a subset of SUNSI in the NRC’s SUNSI Policy.

The NRC notes that given the issuance of SRM-SECY-15-0032, documents that could potentially contain security-related information, such as PSARs, FSARs, FSAR updates, and fire

⁴ e.g., FOIA/PA Request No. 2015-0025 requested all emergency planning records received after October 1, 2004, for several named facilities; FOIA/PA Request No. 2015-0082 requested all updates, revisions, and amendments to FSARs received by the NRC since October 1, 2001, for all nuclear power reactors. In addition, the NRC has received 62 substantively similar FOIA requests for fire protection documents (FOIA/PA-2014-0403 to 2014-0464).

protection and emergency preparedness documents, will no longer be presumptively withheld from public disclosure, and will instead be reviewed per the NRC SUNSI Policy and proactively released, as appropriate, beginning December 15, 2015. Consistent with the guidance provided in RIS 2005-26, "Control of Sensitive Unclassified Nonsafeguards Information Related to Nuclear Power Reactors," and in RIS 2005-31, "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," licensees should perform SUNSI reviews of *all* submittals sent to the NRC, including PSARs, FSARs, FSAR updates, and fire protection and emergency preparedness documents.

To aid in identifying security-related information that should be withheld, the NRC notes that when the Commission issued SRM-SECY-04-0191, it also approved the staff to follow the guidelines of Attachment 1 to SECY-04-0191 (ADAMS Accession No. ML042310663), which provided a general framework and discussion of SUNSI, and specifically, security-related information, as well as a table detailing specific examples of security-related information that should be withheld from public disclosure. This table is organized by categories of information (e.g., plant drawings, hydrological information, risk information, fire protection), loosely aligning with a large number of standard sections of FSARs, and provides specific examples of information that should be withheld from public disclosure under 10 CFR 2.390(d)(1). It is important to note that SRM-SECY-15-0032 rescinded the direction in SRM-SECY-04-0191 only to the extent that SRM-SECY-04-0191 approved presumptive withholding of FSARs, emergency preparedness documents, and fire protection documents. Therefore, the NRC's use of Attachment 1 to SECY-04-0191 to clearly identify security-related information that 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. Licensees that identify security-related information to be withheld from public disclosure in accordance with 10 CFR 2.390(d)(1) or other provision of the regulation should use the same general practices as used for proprietary commercial or financial information, including appropriate page markings and portion markings. For the controls used in protecting information exchanged between the licensees and the NRC to be effective, licensees are expected to have sufficient internal controls to protect security-related information in its interactions with outside parties, such as contractors. The desired outcome is for the sensitive information to be accessible to only trustworthy individuals needing the information to support safe plant operations.

As a reminder, the NRC notes emergency preparedness documents consist of emergency plans, emergency plan implementing procedures, evacuation time estimate analyses, and biennial exercise scenarios that are required to be submitted to the NRC under Appendix E to 10 CFR Part 50 or under 10 CFR 50.54(q)(4). Examples of security-related information in emergency preparedness documents, which licensees should consider in its screening, may be, but are not limited to: (1) emergency response actions taken in response to a hostile action based event (e.g., locations for pre-positioning of operators); (2) alternate staging or incident command locations for emergency response personnel in a hostile action based event; or (3) alternate emergency communications methods and protocols for a hostile action based event.

In addition, security-related information, which a licensee has screened as SGI, is not required by the NRC to be included in emergency preparedness documents. Examples of SGI can be found in 10 CFR 73.22(a) and 10 CFR 73.23(a). The licensee must control the pages

containing SGI in accordance with 10 CFR 73.21, 10 CFR 73.22(d),⁵ and 10 CFR 73.23, as applicable.

Information providing sufficient details that may compromise implementation of the emergency plan or access to/operation of emergency facilities and equipment should be considered security-related information, and is not required by the NRC to be included in emergency preparedness documents required to be submitted to the NRC. However, if a licensee decides to include information to this level of detail, the licensee should request that this information be withheld under 10 CFR 2.390.⁶ Examples of security-related information in emergency preparedness documents may be, but are not limited to: (1) specific information (e.g., telephone numbers/passcodes, lock combinations, etc.) that would compromise access to or activation/operations of emergency plan facilities/areas/equipment or personnel emergency callout systems; or (2) listings for non-publicly available telephone numbers to emergency facilities or Federal, State, and local governmental facilities.

The NRC will maintain confidentiality of an emergency preparedness exercise scenario submitted to the NRC under Appendix E to 10 CFR Part 50 before the conduct of the exercise by profiling the document as non-publicly available in Agency Documents Access Management System (ADAMS). A SUNSI review (for purposes of making the document public) will not be performed until after completion of the exercise. To facilitate maintaining scenario confidentiality until after the exercise is complete, a licensee is requested to include a cover page on the submittal of its exercise scenario with wording similar to the following: "This document's availability should be controlled as non-public to ensure confidentiality from exercise responders until the conduct of the exercise is concluded." After completion of the exercise and following a SUNSI review, the cover page may be removed or redacted, the file version of the document updated in ADAMS, and the document made publicly available, as determined by the SUNSI review. A licensee is reminded that emergency preparedness exercise scenario submittals to the NRC should be appropriately marked, including portion markings, and submitted in accordance with 10 CFR 2.390 for any material that should be withheld from the public. Exercise scenarios submitted to the NRC should either not contain specific information on how safety-related systems/equipment can be defeated, or should appropriately mark this information for redaction.

Similarly, fire protection documents consist of fire protection plans and fire protection related submittals (such as license amendment and exemption requests). Information in fire protection documents marked for withholding has generally been limited to information of potential use to an adversary. Descriptive information of fire protection and safe shutdown features, including fire risk information, is not generally withheld. Security-related information in the fire protection program should not be included in fire protection documents required to be submitted to the NRC, or should be withheld under 10 CFR 2.390(d)(1).

⁵ A licensee that submits emergency preparedness documents containing SGI must ensure that the submission is properly marked as prescribed by 10 CFR 73.22(d), with additional guidance provided in Section 5 of Regulatory Guide 5.79, "Protection of Safeguards Information." In those instances where an emergency preparedness document is submitted to the NRC containing SGI, the licensee should also consider submitting a version of that same document, void of SGI and capable of being placed in ADAMS as a publicly-available document.

⁶ As stated in the NRC's Values Statement (<http://www.nrc.gov/about-nrc/values>), the NRC intends to strike a balance between the public's right access information related to the regulatory process and the need to protect sensitive information from inadvertent release or unauthorized disclosure. For those reasons, emergency preparedness documents that are submitted to the NRC must be screened for sensitive information, and where warranted, that information properly marked to be withheld from public disclosure.

On very rare occasions, properly marked sensitive and/or non-sensitive unclassified information may, when viewed in its totality, reveal information that warrants SGI designation. The compilations of items of information that are individually sensitive and/or non-sensitive may be designated as SGI when that information, in its totality within a document, form a viable detailed description of methods, targets, techniques, or other information that could be reasonably expected to be useful to an adversary in planning or executing an attack or radiological sabotage on a nuclear power plant. Examples include, but are not limited to, the following uncontrolled or non-SGI information, that when combined may provide an adversary enough information to be considered useful and therefore, warrant an SGI designation: (1) the number of protective personnel at a given facility; (2) an excessive amount of maintenance that is required for security equipment due to demonstrated failure rates; (3) that all protective personnel are armed; (4) description of safety-related systems or equipment in vital areas and typical security measures; and (5) the commonality between vital area and vital equipment.

Regarding the format for submitting FSAR updates, the NRC staff reviews each licensee's FSAR update that is submitted under 10 CFR 50.71(e) or 10 CFR 50.4(b)(6) on a sampling basis and, generally, the plant-specific project manager reviews a sample of changes made to the FSAR, as compared to license amendments, inspection findings, commitments, et al., covering the period of the update. When only the replacement pages are submitted with the update, the staff has difficulty reviewing the changes without the entire section of the FSAR, as well as determining how the changes may affect other portions of the FSAR that may be relevant. This significantly increases the staff's review time because of the need to construct the revised FSAR to validate changes in context with the FSAR and other licensing documents. In an effort to save billable hours, the NRC recommends that licensees submit FSAR updates in an electronic format on a total replacement basis in accordance with the requirements of 10 CFR 50.4(b)(6).

Electronic format, total replacement basis FSARs and FSAR updates are important references for the NRC in its emergency response functions. The NRC's emergency response teams use the design-basis information in these documents to evaluate emergency situations at licensee facilities, as well as to validate licensee responses. Therefore, it is important for the NRC to have quick access to the updated FSARs for executing agency responsibilities to protect the public health and safety.

BACKFITTING AND ISSUE FINALITY DISCUSSION

This RIS reminds the addressees of the review and submission requirements regarding information to be withheld from public disclosure, and recommends a format for submission of updates to FSARs. These positions do not represent new or changed staff positions. In addition, this RIS does not require any action or written response on the part of any licensee or applicant. Accordingly, issuance of this RIS in final form would not represent backfitting as defined in 10 CFR Part 50.109(a)(1), or be inconsistent with any applicable issue finality provision in 10 CFR Part 52. Therefore, the NRC did not prepare a backfit analysis for this RIS or further address the issue finality criteria in Part 52.

FEDERAL REGISTER NOTIFICATION

The NRC published a notice of opportunity for public comment on this draft RIS in the *Federal Register* (80 FR 57884) on September 25, 2015. The agency received comments from three commenters. The staff considered all comments, which resulted in minor clarifications to the

RIS. The evaluation of these comments and the resulting changes to the RIS are discussed in a publicly-available memorandum under ADAMS Accession No. ML15321A180.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

PAPERWORK REDUCTION ACT STATEMENT

This RIS contains and references information collection requirements that are 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 numbers 3150-0011, 3150-0151, and 3150-0002.

