


TSTF Technical Specifications Task Force
A Joint Owners Group Activity

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The Applicability and Use of Third-Party Information for Operating Reactors
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Licensee Responsibilities for Unsolicited Third-Party Information

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What is a "Third Party" Unsolicited Information?

- A third party is a person or organization other than:
 - The Nuclear Regulatory Commission,
 - A regulatory agency with authority over a licensee (federal, state, local),
 - The licensee,
 - An organization to which the licensee belongs (Institute of Nuclear Power Operations (INPO), Electric Power Research Institute (EPRI), Nuclear Energy Institute (NEI), Owners Groups), or
 - An organization (such as vendors) which the licensee or regulator hires or engages to obtain information.
- Unsolicited third party information is not requested or sponsored by a regulatory agency with authority over a licensee, the licensee, an organization to which the licensee belongs, or an organization which the licensee engages.

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What is a Licensee's Responsibility Regarding Third Party Information?

- The question breaks down into two parts:
 - Obtaining third party information, and
 - Licensee responsibilities to evaluate or act on third party information.

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Obtaining Third Party Information

- Much of the licensing basis information that would be within the purview of a third party is considered historical and not required to be updated.
 - NEI 98-03, "Guidelines for Updating Final Safety Analysis Reports," describes historical information as "Industry or other data obtained to support or develop the original plant design bases, including that relating to natural or man-made phenomena such as geography, meteorology, hydrology, geology, seismology, population density and nearby facilities."
- There is an important exception that we will discuss later.
- There are regulatory requirements to update some of this information. Information gathered by the licensee to meet regulatory requirements would not be considered unsolicited third party information.

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Obtaining Third Party Information

- Unsolicited third party information could be sources such as:
 - a newspaper article describing a proposed pipeline close to a licensee site,
 - a government agency study on local seismology, or
 - a university paper on flooding.
- Is a licensee required to proactively seek out third party information that may have an effect on plant safety absent any of the types of specific regulatory processes described above?
- No. There is no generic regulatory requirement to seek out third party information.

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Acting On Unsolicited Third Party Information

- What if a licensee (or licensee employee) becomes aware of unsolicited third party information that could affect the plant?
- Is the licensee responsible to evaluate it or can it be ignored?
- The licensee may have a regulatory requirement to evaluate the information under 10 CFR 50.9(b).

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10 CFR 50.9(b)

- 10 CFR 50.9, "Completeness and Accuracy of Information"

"b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements."

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10 CFR 50.9(b)

- The 10 CFR 50.9(b) requirement is acknowledged in NEI 98-03:

"Absent an NRC requirement, licensees need not update historical information in UFSARs to reflect minor changes in population data or other such changes in the site environment. However, licensees should evaluate potentially significant changes in the site environs, e.g., a new natural gas line within the site boundary or a major new industrial facility near the plant site, to determine if notification of NRC and appropriate update of the UFSAR are required. For example, 10 CFR 50.9 requires licensees to notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security."

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10 CFR 50.9 Statements of Consideration (SOC)

- The Statements of Consideration for 10 CFR 50.9 (52 FRN 49362, December 31, 1987) provide a great deal of information on the intent and application of the requirement.
- The following slides point out some salient points.
- What is "significant"?
 - "The standard for reporting is not so broad that licensees should have difficulty recognizing it. For example, the rule does not require licensees to predict what the NRC will likely deem to be 'material' information, an arguably vague standard; rather, the standard is one of a licensee's own recognition of information with significant health or safety or common defense or security implications. This is a standard that the Commission should reasonably expect licensees to understand and apply."

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10 CFR 50.9 Statements of Consideration (SOC)

- Does a licensee need a 50.9 program?
 - "Licensees and applicants will not be required to develop formal programs similar to those prescribed under 10 CFR Part 21 to identify, evaluate, and report information. What is expected is a professional attitude toward safety throughout a licensee's or applicant's organization such that if a person identifies some potential safety information, the information will be freely provided to the appropriate company officials to determine its significance and reportability to the Commission."

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10 CFR 50.9 Statements of Consideration (SOC)

- But there is a significant caveat.
 - "the fact that a licensee considers information to be significant can be established, for example, by the actions taken by the licensee to evaluate that information. "
 - "[T]he licensee's 'identification' of the significance of the information need not be in the form of a specific documented decision before a violation of the rule exists for failure to report. An applicant's or licensee's recognition of information as significant could be established by circumstantial evidence such as specific meetings being held to discuss the matter, analyses performed or other internal actions taken to evaluate the matter."
- Entering an issue into the Corrective Action Program could be considered sufficient evidence that the information is significant.

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Quality of Third Party Information

- The quality of the unsolicited third party information is an important consideration.
- During licensing of a facility, the NRC reviews third party information to determine whether it is an acceptable source.
 - Implied in the licensee's determination of whether third party information is significant is an evaluation of the quality of the information.
- Preliminary information from an ongoing study would be of questionable quality.
- It is important to note that the requirement in 50.9(b) to inform the NRC does not obligate the licensee to take any further action.

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Example Scenario

- Licensee sees a newspaper article on proposed new airport near a plant.
- Does it have the potential to have a significant implication for public health and safety?
 - Yes. 10 CFR Part 100, Paragraph 20, "Factors to be considered when evaluating sites," includes airports.
- Is it of sufficient quality to warrant a determination?
 - No. A newspaper article isn't a quality source. However, a diligent licensee could follow up with reliable sources (local authorities, etc.)
- If the information is verified from a quality source, is it reportable under 50.9(b)?
 - Not necessarily. The licensee would need to determine if has significant implications per 50.9(b).

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Conclusions

- A licensee has no responsibility to seek out unsolicited third party information.
- However, if unsolicited third party information comes to the licensee, some evaluation should be performed to determine whether it should be reported under 10 CFR 50.9(b).
- The information should be of a quality comparable to third party sources used in the licensing basis.
- Just the act of evaluating unsolicited third party information may be used as evidence that the information is significant.
- There is only a two business day period to orally report information to the Regional Administrator.

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Acronyms

- CFR Code of Federal Regulations
- EPRI Electric Power Research Institute
- FR Federal Register
- INPO Institute of Nuclear Power Operations
- NEI Nuclear Energy Institute
- NRC Nuclear Regulatory Commission

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