

POLICY ISSUE NOTATION VOTE

February 12, 2007

SECY-07-0032

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: RECOMMENDED STAFF ACTIONS REGARDING
CORRESPONDENCE WITH ALLEGERS INVOLVING
SECURITY-RELATED CONCERNS

PURPOSE:

To seek Commission approval of the staff's recommendation to revise agency guidance for responding to security-related allegation concerns involving facilities and materials licensed or certified by the U.S. Nuclear Regulatory Commission (NRC). This paper does not address any new commitments or resource implications.

SUMMARY:

In the aftermath of September 11, 2001, restrictions were placed on the dissemination of sensitive security-related information outside the agency in an effort to preclude the release of information useful to potential adversaries. These controls were also applied to the information that is provided to allegers raising security-related concerns to the NRC. The restrictions have made it difficult for the staff to assure allegers that their concerns have been addressed, and a number of allegers have expressed dissatisfaction with the NRC's limited response. Some, in an effort to obtain a satisfactory response, have chosen to pursue their concerns publicly by engaging elected officials and public interest groups and disseminating their concerns via public web sites or media outlets. In recent instances these actions have necessitated that the staff

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respond in a public manner to the allegers' concerns. While the allegers were receptive to the feedback provided, at this time, the staff does not consider a public response to be the most advisable primary means of addressing security-related concerns. This document recommends new staff guidance for responding to individual allegers who raise security-related concerns.

The staff believes that the approach recommended herein would have afforded an opportunity to provide an appropriate graded response to those allegers who chose to air their concerns publicly, and may have precluded their motivation to take the concern into the public realm. The staff's goal is to be as responsive to an allexer as is possible, while continuing to protect any information that could be used by an adversary to exploit a potential security vulnerability.

BACKGROUND:

On March 16, 2006, the Office of Enforcement (OE) issued Allegation Guidance Memorandum (AGM) 2005-001, "Guidance on Correspondence to Licensees and Concerned Individuals Regarding Security-Related Concerns," which provides current agency guidance regarding the handling of security-related allegation documentation. This guidance relates specifically to sensitive information involving the security of NRC-licensed facilities or materials not designated as Safeguards Information or classified as National Security Information or Restricted Data. Such information involves physical protection, classified matter protection, the material control and accounting program for special nuclear material, Security Orders, or Confirmatory Action Letters related to security issues. The guidance also applies to fitness-for-duty issues which are programmatic or relate specifically to security personnel.

AGM 2005-001, which applies to both materials licensees and reactor licensees, states that staff feedback to allegers raising sensitive security-related information will not contain information on related agency inspection activity or actions taken to evaluate the allegation. This is consistent with the March 29, 2004, Staff Requirements Memorandum (SRM) for SECY-04-0020, "Treatment of Physical Protection Under the Reactor Oversight Process." Closure letters to allegers are written to reiterate the security-related concern and to inform the allegers that the NRC has addressed their issues, but do not discuss actions taken to evaluate the concern or whether the concern was substantiated.

In the SRM for SECY-05-0082, "Revised Assessment Process for the Security Cornerstone of the Reactor Oversight Process," dated August 15, 2005, the Commission directed the staff to: (1) share with the Commission options for making further progress on agency openness with the security portion of the reactor oversight process (ROP); and (2) recommend whether it is feasible to make inspection reports publicly available after completion of long-term corrective actions. In response, the staff issued SECY-06-0036 on February 14, 2006, "Public Disclosure Options Within the Security Cornerstone of the Reactor Oversight Process," which provided several options and a staff recommendation to the Commission regarding public disclosure of certain security-related information within the security cornerstone of the ROP. On April 4, 2006, the Commission issued the SRM for SECY-06-0036, which approved the staff's recommendation to increase the amount of public information released pursuant to the

implementation of the Security Oversight Process. The SRM indicates that security inspection report cover letters, which will now be publicly available, will indicate that an inspection was conducted in one or more of the attributes of the Security Cornerstone. In addition, the cover letter will indicate whether any findings resulted from the inspection and will affirm prompt correction of or compensation for any noted deficiencies. The Commission directed that the specific attributes affected by the adverse findings are not to be described by the staff.

The staff noted in SECY-06-0036 two exceptions to the recommendation to publicly provide information regarding findings and the status of any necessary compensatory actions, as follows: (1) cover letters transmitting violations, deficiencies, or vulnerabilities that a potential adversary could exploit, circumvent, or take advantage of due to the employment of interim compensatory measures, will not be made publicly available (examples include significant contingency response or intrusion detection system deficiencies that require immediate compensation that have not yet been permanently corrected by the licensee); and (2) the staff will maintain control of information related to industry weaknesses or vulnerabilities.

DISCUSSION:

Since September 11, 2001, the volume of security-related allegation concerns has increased significantly. In 2006, approximately 20 percent of all allegation concerns received were focused in the security area. Limiting the information shared with the alleged, and in particular, withholding the staff's determination as to whether or not a security concern was substantiated, has made it difficult for the staff to assure allegeders that their concerns have been addressed. A number of allegeders have expressed dissatisfaction with our limited responses. Some have engaged in more public venues in an attempt to obtain a more satisfactory response to their concerns.

By engaging public interest groups or elected officials in a request for feedback and widely disseminating their concerns via public web sites or media outlets, allegeders have necessitated that the NRC provide a public response in some instances, resulting in a wide distribution of the response information for the related security concerns. The staff does not consider this to be the most advisable means of responding to security matters, and is concerned that in continuing with the current approach, allegeders could unintentionally release information to the public that could reveal potentially significant security-related vulnerabilities that an adversary could exploit. To address this concern, the staff proposes revising its guidance for handling security-related allegation closure correspondence, as described below.

Security-related allegation concerns received by the NRC will be grouped into three categories:

Category I - Concerns that involve a potential generic industry security vulnerability.

Category II - Security-related concerns that, if true, would constitute more than a minor finding or violation, as determined by applicable guidance or review panels.

Category III - Security-related concerns that, if true, would, at most, constitute a minor finding or violation, as determined by applicable guidance or review panels.

A new AGM will establish the following handling guidance for each category:

Category I

As currently outlined in AGM 2005-001, the staff will provide limited information for both substantiated and unsubstantiated security-related concerns that involve a potential generic industry vulnerability. Letters to allegeders will continue to reiterate the issues raised in sufficient detail. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegeder. Closure letter language similar to the following would be used:

While we are fully committed to our goal of ensuring openness in our regulatory process, we must balance that goal with ensuring the continued safety and secure operation of nuclear facilities in our country. Normally, when we have completed our review of an allegation, we provide the concerned individual with information as to whether his or her concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities, we can provide only limited information regarding the NRC's evaluation of your concern.

Category II

For those security-related concerns that, if true, would constitute more than a minor finding or violation, as determined by applicable guidance or review panels, the staff will provide limited information in response to both substantiated and unsubstantiated concerns. Letters to allegeders will continue to reiterate the issues raised in sufficient detail. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegeder. The sample closure letter language shown above for Category I concerns can be used in Category II closure letters as well, with the addition of language similar to the following:

While we cannot provide the specific details regarding our evaluation of your concern, we note that an NRC assessment was conducted in the security area that included a review of your concern(s). Based on that NRC assessment, no findings were identified. [Or, The NRC assessment identified at least one finding. Identified deficiencies were promptly corrected or addressed by compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements. To ensure that we do not unnecessarily release information that would reveal potential security-related vulnerabilities, we are unable to inform you if any finding is specifically associated with the concern(s) you raised.]

If the allegeder requests additional information and the staff can verify that he or she is currently employed at the NRC-licensed facility that is associated with the allegation concerns as a member of the security force with normal access to such information; the staff will offer to discuss the specifics of the agency's actions and conclusions with the

allegor. Employment and position verification will not be sought without prior permission from the allegor.

Category III

For those security-related concerns that, if true, would, at most constitute a minor finding or violation, as determined by applicable guidance and review panels, the staff will provide a complete response to the allegor, once required compensatory actions, if any, are in place. The response to both substantiated and unsubstantiated concerns will include a description of the actions taken by the staff to evaluate the concern and the staff's conclusion regarding the validity of the concern, but would not include a description of the compensatory actions taken. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegor.

If followup of a security-related concern results in a minor finding or violation requiring compensatory actions, and if the allegor requests additional information and the staff can verify that he or she is currently employed at the NRC-licensed facility that is associated with the allegation concerns as a member of the security force with normal access to such information; the staff will offer to discuss the compensatory actions with the allegor. Employment and position verification will not be sought without prior permission from the allegor.

A tabulation of the categories with illustrative examples is enclosed.

The staff recognizes that sometimes it may be appropriate to provide allegors with additional details regarding the agency's handling of their security-related concerns. Regardless of the categorization of the concern, the agency will continue to protect information that an adversary could exploit. Each action office will be directed to coordinate their efforts with NSIR and/or regional security inspection management. OE will continue to monitor for potential effects that limiting information to allegors may have on the willingness of individuals to raise security issues to the NRC.

RECOMMENDATION:

The staff recommends that the Commission approve the revised guidance for handling security-related allegation closure correspondence, as described above.

The Commissioners

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COORDINATION:

The Office of the General Counsel reviewed this paper and has no legal objection.

/RA William F. Kane Acting For/

Luis A. Reyes
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for Operations

Enclosure:
Guidance for Correspondence with
Allegers Involving Security-Related
Concerns (Table)

**Guidance for Correspondence with Allegers
Involving Security-Related Concerns**

Concern Category	Description	Response	Examples
I	Involves a potential generic industry security vulnerability.	Limited response, as outlined in AGM 2005-001. Letter to alleger will reiterate issues raised in sufficient detail, but staff actions and conclusions will not be described. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter.	*Failure, degradation or other deficiency in a model or brand of security equipment (e.g., intrusion detection system, contraband detection equipment) that affects multiple licensees.
II	If true, would constitute more than a minor finding or violation, as determined by applicable guidance or review panels.	Limited response. Letter to alleger will reiterate issues raised in sufficient detail, but staff actions and conclusions will not be described. Letter will state whether findings were identified and deficiencies corrected, but without specific detail. Response provided once required compensatory actions, if any, are in place. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter. If requested and the alleger is a security force member at the facility with normal access to such information, the staff will discuss agency actions and conclusions. Employment and position verification will not be sought without prior permission from the alleger.	<p>*Failure to control work hour limits within requirements that results in a fitness-for-duty issue.</p> <p>*Failure to maintain a required number of armed responders.</p> <p>*Failure to install, test and implement a protected area intrusion detection system in accordance with the manufacturer or licensee design or performance specifications.</p>
III	If true, would, at most, constitute a minor finding or violation, as determined by applicable guidance or review panels.	Response provided once required compensatory actions, if any, are in place. Response will describe staff actions and staff's conclusion regarding concern validity, but not a description of compensatory actions, if any are taken. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter. If requested, and the alleger is a security force member at the facility with normal access to such information, and a review of the concern resulted in a finding or violation requiring compensatory actions, the staff will discuss the compensatory actions with the alleger. Employment and position verification will not be sought without prior permission from the alleger.	<p>(1) Not a finding: *Failure to provide security personnel coverage to a post that is not a regulatory committed position.</p> <p>(2) Minor finding: *Failure to meet height requirements in a section of the protected area fence, but the infraction is not a significant dimensional discrepancy.</p>