

**POSSIBLE IMPROVEMENTS TO
THE LEVEL OF OPENNESS AND TRANSPARENCY OF
INFORMATION ASSOCIATED WITH NRC SECURITY INSPECTION
AND SECURITY PERFORMANCE ASSESSMENT OF NRC LICENSEES**

BACKGROUND INFORMATION

Protection of Sensitive Information

The NRC and other government agencies will always withhold information from public disclosure for reasons of security, personal privacy, commercial or trade secret protection, or other valid reasons, as required by, in part, law, regulatory requirement, or Executive Order. In addition, in light of the terrorist events of September 11, 2001, and continued terrorist activities worldwide, the NRC continues to work closely with Federal, State, and local security organizations to enhance document disclosure policies. As such, the NRC must continuously balance its responsibility to preserve public access to information and support meaningful participation in NRC regulatory processes against its responsibility to appropriately control information that if released could be used by adversaries to compromise the security of nuclear facilities or secure use and management of radioactive material.

Section 147, "Safeguards Information," of the Atomic Energy Act of 1954, as amended, requires, in part, that the NRC prescribe regulations to prohibit the unauthorized disclosure of safeguards information, detailing control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material and certain plant equipment (and its location) vital to the safety of the facility. Section 147 also requires that the Commission exercise this authority so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security and upon determination that the unauthorized disclosure of such information could reasonably be expected to have a significant effect on the health and safety of the public and the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material.

Title 10 to the *Code of Federal Regulations* provides a number of regulations detailing the control of sensitive information. For information, three are described here: (1) Section 2.390 (10 CFR 2.390), "Public inspections, exemptions, and requests for withholding," states that final NRC records and documents including but not limited to those associated with licensing or violation of requirements in the absence of a compelling reason for nondisclosure, after a balancing of the interests of the person or agency urging nondisclosure, shall not be exempt from disclosure, except for matters that are: classified (e.g., Confidential, Secret, or Top Secret), exempt by statute, trade secrets and commercial or financial information, privacy information, et al. (2) 10 CFR 73.21, "Requirements for the protection of safeguards

information,”¹ includes but is not limited to: the composite physical security plan, site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical protection system; details of alarm system layouts; written security orders and procedures, communication procedures, list or locations of safety-related equipment vital for purposes of physical protection as described in, for example, a security plan; safeguards contingency plan; plant specific safeguards analysis; guard force response plan and procedures, armament, training, qualification, size, time lines; etc. (3) 10 CFR Part 9, Subpart A, “Freedom of Information Act Regulations,” provides procedures for making NRC agency records available to the public for inspection and copying. This subpart also provides procedures on how to obtain publicly available NRC records and describes which records are exempt from public disclosure (10 CFR 9.17).

Recent Changes to Publicly Available Security-Related Information

Prior to the terrorist events of September 11, 2001, almost all information regarding the inspection and assessment of security activities at NRC licensees was publicly available. Only information specifically requiring protection, such as that described in the preceding section, was withheld from the public. Therefore, most security-related licensee performance information was documented in NRC inspection reports, reviews of licensee performance, and enforcement determinations, and these documents (that were designated as non-sensitive or non-safeguards) were made available for public inspection at the NRC’s public document room accessible locally in Washington D.C. or through the internet via the NRC’s electronic reading room at <http://www.nrc.gov/reading-rm.html>. Furthermore, specific commercial power reactor licensee performance information, such as descriptions of violations, inspection findings, NRC annual assessments of licensee performance, and performance indicators, for individual power facilities was publicly accessible at <http://www.nrc.gov/reactors/ql-reactors.html#over>.

At the preceding NRC Website, non-safeguards information summaries of all security and non-security inspection findings and performance assessments for nuclear power plants used to be described for public review. As a result, for example, a member of the public could ascertain specific licensee performance information in its conduct of safety, security, and safeguards regulatory oversight, and compare that performance to other similar facilities. The inspection process also made available NRC inspection schedules and its meetings with licensees involving NRC-regulated activities. Although security-related information was publicly available, the preponderance of all information that the NRC made available to the public dealt with the design and operation of NRC-regulated facilities, and not with the physical security of these facilities or radioactive materials.

In the aftermath of September 11, 2001, the NRC assessed and revised controls on withholding from public disclosure information that might be useful to persons planning or conducting hostile acts against licensees as discussed below.

¹ Safeguards information is information not otherwise classified as National Security Information or Restricted Data, which specifically identifies security measures for the physical protection of special nuclear material or security measures for the physical protection and location of certain plant equipment vital to the safety of the facility (10 CFR 73.2).

Commercial Power Reactors

Following 9/11, changes to NRC policies and criteria for withholding information currently in the public domain were captured, in part, by COMSECY-02-0015, "Withholding Sensitive Homeland Security Information from the Public," dated April 4, 2002, (ADAMS Accession No. ML020870144) and the associated Staff Requirements Memorandum (SRM) dated May 28, 2002 (ADAMS Accession No. ML021480390). These documents² established a general standard that information should be withheld when its release would provide for a clear and significant benefit to a terrorist in a potential attack. In subsequent correspondence with the Commission, the staff proposed clarifications to the guidance in COMSECY-02-0015 and provided draft guidance on protecting sensitive information for the staff. As a result, the Commission directed the staff to revise the basic standard for withholding information from the public to cover information that "could reasonably be expected to be useful" to terrorists in planning or executing an attack. Further, the staff was directed, in part, to ensure that NRC guidance was consistent with regulations and guidance promulgated by the Department of Homeland Security (DHS).

On October 19, 2004, the staff responded to the Commission's May 7, 2004, SRM with SECY-04-0191, "Withholding Sensitive Unclassified information Concerning Nuclear Power Reactors From Public Disclosure," (ADAMS Accession No. ML042310663) which outlined the NRC staff's proposed approach for determining the appropriate handling of information and enhanced guidance for withholding or releasing information about nuclear power reactors. In its SRM dated November 8, 2004 (ADAMS Accession No. ML043140175), the Commission approved the staff's general framework and guidance and directed that such guidance be routinely updated, that the staff should apply this guidance to non-power reactor licensees, that the staff should strive for consistency in protecting information, that similar guidance be developed for materials and other NRC-licensed facilities, and that the staff consider stakeholder comments regarding the amount of available information disclosed to the public.

In parallel, but not independent of the above staff activities, the staff continued its review of security information under the Reactor Oversight Process (ROP) and provided the Commission options and a discussion of pertinent issues associated with the treatment of inspection-related security information for commercial power reactors. The options ranged from the resumption of the process in place before September 11, 2001, to complete removal of the security cornerstone from the ROP and complete withholding of all security-related information from the public. In March 2004, the Commission directed the staff, in part, to maintain the security cornerstone within the ROP, but make no security oversight information publicly available. The staff implemented the Commission's direction in August 2004, when it withdrew from public access all security-related inspection and assessment information. Further, the staff was directed to develop a classified report to Congress describing the results of force-on-force exercises and other security inspections. An unclassified version is also submitted to Congress and issued to the public describing general security assessment information for both commercial power reactors and Category I fuel cycle facilities. These reports were subsequently established as a statutory requirement in the Energy Policy Act of 2005.

² The Commission documents (e.g., COMSECYs, SRMs, and SECYs) referred to in this document, if publicly available, can be viewed at <http://www.nrc.gov/reading-rm/doc-collections/commission/>.

In May 2005, the staff informed the Commission that under current policy most security-related information would continue to be withheld from public disclosure, including information such as: schedules for planned security inspections, reports for and findings from security inspections, and certain security-related NRC inspection manual chapters (IMCs), inspection procedures, and temporary inspection instructions. However, to improve the amount and quality of security-related information provided to State and Federal law enforcement and emergency preparedness organizations, who may respond, assist, or take other action during a security event at a commercial power reactor, the staff added a new action to ensure that these partners are appropriately and promptly informed of performance changes in a licensee's security program in order to enhance their response considerations.

Following its review, the Commission approved the staff's proposal for making the security assessment process available for public inspection (IMC 0320, "Operating Reactor Security Assessment Program," ADAMS Accession No. ML070390282) and directed the staff to: (1) share with the Commission options for making further progress on openness with the security portion of the ROP and in particular, (2) recommend whether it is feasible to make inspection reports publicly available. In addition, in April 2006, the Commission approved a staff option to make the cover letters to security inspection reports public without revealing any specifics regarding any particular inspection finding. Then in 2007, the staff further enhanced public information regarding NRC identification of security findings that involve cross cutting aspects (human performance, problem identification and resolution, and safety conscious working environment). Staff actions to assess the openness and transparency associated with other NRC-regulated facilities were generally similar.

Fuel Cycle and Other NRC-Regulated Facilities

Before the terrorist attacks on September 11, 2001, similar to power reactors and independent spent fuel storage facilities (ISFSI), physical protection inspections were performed by Region-based inspectors and inspection results were included in periodic Resident Inspector reports or, in some cases, stand-alone reports. These reports were unclassified and available to the public. Material control and accounting (MC&A) inspections of both reactors and fuel cycle facilities (SECY-08-0005, ADAMS Accession No. ML080570144) to evaluate licensee storage and control of special nuclear material and security inspection of research and test reactors were performed by headquarters-based inspectors. These inspection results were issued in separate, stand-alone inspection reports. Transmittal letters were made available to the public, but detailed reports were withheld as proprietary information or safeguards information. Inspection procedures and the NRC Inspection Manual Chapters that describe the process of inspection were publicly available for review.

As described in the previous section ("Commercial Power Reactors"), after the terrorist attacks on September 11, 2001, the Commission implemented a policy of withholding information that could be useful to an adversary. As a result, security inspection results were moved to an addendum in the Resident Inspector reports, and the addendum was withheld from the public. Further, following 9/11, the Commission issued many Orders to NRC licensees requiring, in part, enhanced security measures and compensatory measures, many of these Orders were designated as classified, safeguards information or sensitive unclassified information and appropriately controlled. NRC inspections conducted to verify licensee compliance with these Commission Orders were controlled at the equivalent classification level. However, MC&A inspections at fuel facilities were unchanged with its transmittal letters publicly available and

inspection report details withheld. In 2004, the staff also removed NRC inspection procedures from public disclosure. Also in 2004, due to specific security concerns identified by the U.S. Department of Energy at certain fuel facilities the NRC adopted a policy of withholding all safety and security inspection information from public disclosure for these facilities.

In 2007, the Commission directed the staff (SRM-SECY-07-0129, ADAMS Accession No. ML072430701) to redact and release many of the safety documents withheld since 2004 (SECY-07-0129, ADAMS Accession No. ML072080036). This effort was recently completed and reported to the Commission. Additionally, the NRC and Agreement States conduct inspections at certain industrial, medical, and academic institutions. These inspections focus, in part, on the effective control and management of radiological material. Similar to other inspections, the NRC staff endeavors to apply a consistent level of openness to these inspection results.