

June 2, 2015

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Victor M. McCree, Regional Administrator, Region II
Cynthia D. Pederson, Regional Administrator, Region III
Marc L. Dapas, Regional Administrator, Region IV
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Glenn M. Tracy, Director, Office of New Reactors
Catherine Haney, Director, Office of Nuclear Material
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Brian E. Holian, Director, Office of Nuclear Security
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FROM: Patricia K. Holahan, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 15-001, Revision 1:
DOCUMENTATION OF SECURITY-RELATED INFORMATION IN
PUBLICLY AVAILABLE COVER LETTERS RELATED TO
ENFORCEMENT DOCUMENTS

Purpose:

This memorandum is being issued to provide guidance with respect to the generation of publicly available cover letters related to enforcement documents that contain security-related (i.e. physical security, information security, and material control and accounting) information for all U.S. Nuclear Regulatory Commission (NRC) licensed facilities (e.g., power reactors, fuel facilities, and material licensees). The purpose of a publicly available cover letter is to transmit the overall inspection results or enforcement-related actions in which the specific security-related details are not available to the public. The guidance balances the need to withhold certain information from public disclosure while at the same time carrying out the NRC's enforcement policy for security related non-compliances in an open and transparent manner. The guidance discussed below has taken into consideration and is consistent with the Commission policy in the area of security-related information. The guidance also is intended to bring consistency to the level of information released across the various program areas. This Enforcement Guidance Memorandum (EGM) supersedes EGM 15-001, dated April 2, 2015,

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“Documentation of Security-Related Information in Publicly Available Cover Letters Related to Enforcement Documents” (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15085A487 (non-public)). The purpose of this revision of the EGM was to remove the Official Use Only headers and footers, making this EGM publicly available.

Background:

The issue of protecting security-related information below the safeguards and classified levels has evolved since September 11, 2001. The staff had discussed this subject in several documents,¹ and the Commission guidance on security-related information in very specific areas can be found in any number of documents including, for example, the recent SRM-SECY-14-0034, “Request Public Release of Limited Inspection Information on Fuel Cycle Facilities,” (ADAMS Accession No. ML14181B393 (non-public)), where the Commission directed the staff to release limited information on Security and Material Control and Accounting (MC&A) inspections and violations at Fuel Facilities through the issuance of publicly available cover letters related to enforcement documents.

Discussion:

In implementing the Commission’s guidance in the area of security-related information, the program offices have developed policies and procedures tailored specifically for their program area. In order to ensure that all enforcement documents are reviewed to a consistent standard for security-related information, the guidelines set forth below were developed. The intent is to ensure that the guidance is interpreted consistently with specific regard to publicly available cover letters and enforcement actions. It is likely, however, that even with this guidance and the guidance generated by the other offices, there will be situations where judgment is required.

The current NRC Sensitive Unclassified Non Safeguards Information (SUNSI) policy and handling requirements are described in “NRC Policy and Procedures for Handling, Marking, and Protecting SUNSI” (Announcement No. 077, October 26, 2005). The current NRC classified and safeguards information policies and handling requirements are described in Management Directive Volume 12, “Security.” All cover letters related to enforcement actions that staff considers for public release should be reviewed and handled in accordance with the appropriate handling, marking, and protection policy for the information.

Consistent with the dual goals of (1) withholding security-related information and (2) regulating in a transparent and open manner, the following specific guidelines regarding security-related information should be followed when issuing publicly available cover letters related to enforcement documents:

¹ Examples of documents: SECY-04-0020, “Treatment of Physical Protection Under the Reactor Oversight Process”; SECY 04-0155, “Request from the Department of Energy Office of Naval Reactors to Designate Information Related to Nuclear Fuel Services, Inc. and BWX Technologies Inc. as Official Use Only”; SECY-05-0082, “Revised Assessment of Process for the Security Cornerstone of the Reactor Oversight Process”; SECY-05-0091, “Task Force Report on Public Disclosure of Security-Related Information”; SECY-06-0036, “Public Disclosure Options within the Security Cornerstone of the Reactor Oversight Process”; SECY-07-032 “Recommended Staff Actions Regarding Correspondence with Allegers Involving Security-Related Concerns”; SECY-07-0129, “Revisions to Policy Governing Public Availability of Information Associated with Category I Fuel Facilities”; and SECY-07-0189, “Staff Consideration Regarding Increased Openness and Transparency in the Security Inspection Programs.”

1. For actions issued under the Reactor Oversight Process (ROP), the Construction Reactor Oversight Process (cROP), or traditional enforcement, the cover letter should indicate that an inspection was completed. If there were apparent security violations, the cover letter should indicate the number of security violations characterized as either Green, or Severity Level IV. Where the staff finds apparent security violations above those levels, the publicly available cover letters and enforcement actions should either state that the apparent security violations are Greater than Green or are being considered for escalated action. The cover letter should not discuss the number of violations characterized above Green or Severity Level IV.

In rare and exceptional instances, the NRC may choose not to release a cover letter or enforcement document with security-related violations when the information could potentially increase the security risk of a licensee or when another Federal agency requests the NRC not to issue any public notifications regarding a specific event. On a case-by-case basis, NRC senior management from the office issuing the cover letter of an enforcement document, the Office of Nuclear Security and Incident Response (NSIR), the Office of Enforcement (OE), the Office of the General Counsel (OGC) and the Office of Investigations (OI) (for cases involving OI reports) will determine when withholding a cover letter of an enforcement document is appropriate after reviewing specific circumstances of the case.

2. Where an inspection resulted in a combination of violations involving security-related and health and safety violations, the health and safety violations should be made public. To the extent that Notices of Violation (NOV) and inspection report accompanying the cover letter provide details of the security violations, they should be provided to the licensee in a non-public attachment to the cover letter. In such cases, separate NOVs should be written for the security-related violations and for the health and safety violations, in order to facilitate public release of the health and safety violations and allow licensees to better control access to security-related information.
3. Security-related enforcement actions issued to an individual should contain sufficient detail to allow the individual to respond, without providing any specific security-related details on the issue to the individual.
 - a. For enforcement actions taken in parallel with a licensee, the public cover letter sent to the licensee should be provided to the individual.
 - b. To the extent possible, orders as well as the cover letters issued to individuals involving security-related information shall minimize details of security-related information that is released publicly. In some cases (e.g., where there is a continuing non-compliance) the public issuance of an order may indicate a significant issue (even when the details are withheld) and may pose an increased risk of exploitation of the vulnerability. In these cases, NRC senior management from the office that is issuing the order, NSIR, OE, OGC and OI (for cases involving OI reports) will determine whether temporarily withholding an order is appropriate after reviewing the case specifics. In these cases the order must still be made public but only after the basic security consequences are mitigated.

- c. For instances when the NRC decides not to issue an NOV to an individual, the NRC will use discretion to ensure that security-related information is not made publicly available. In these instances, the NRC will issue a close-out letter to the individual stating that, although a violation was identified the NRC has decided not to issue an NOV due to the security-related aspects of the case.
 - d. In rare and exceptional instances, the NRC may choose to issue a public NOV with security-related violations to an individual. In these instances, NRC senior management from the office that is taking the enforcement action, NSIR, OE, OGC and OI (for cases involving OI reports) will determine when issuing an NOV is appropriate after reviewing the case specifics.
4. Cover letters to orders should be publicly available and not contain security-related information, including those issued as the result of Alternative Dispute Resolution. The order itself should be made available to the public and published in the Federal Register, by placing any specific security-related information in a non-public enclosure. Orders as well as the cover letters issued to licensees involving security-related information will conform to the above guidance. Although public release of orders is required, in some cases (e.g., where there is a continuing non-compliance) the very issuance of an order may indicate a significant issue even when the details are withheld and public release of the order may pose an increased risk of exploitation of that vulnerability. In these cases, NRC senior management from the office that is issuing the order, NSIR, OE, OGC and OI (for cases involving OI reports) will determine whether temporarily withholding an order is appropriate after reviewing the case specifics. In these cases the order must still be made public but only after the basic security consequences are mitigated.
5. For the purposes of this guidance, violations of 10 CFR Parts 20.1801, 1802 and 30.34(i) will not be considered security-related violations and will be made available to the public, in accordance with normal procedures.
6. Nothing in this guidance should be read to restrict providing additional information to allegers who are appropriately cleared licensee personnel, in accordance with the Allegation Manual. See the Allegation Manual for guidance related to release of information to allegers.
7. Any reference to 10 CFR Part 19.11 as it relates to posting enforcement documents in security-related enforcement actions should state "In accordance with 10 CFR Part 19.11, you may be required to post this Notice within two working days. However, you are reminded to review your NRC security requirements that limit the release of information."
8. In the rare case where the details of a security-related concern have been aired in public forums (e.g., media coverage, public website, widely attended meetings), the above guidance should be reconciled with the level of information already publicly available to determine the appropriate level of public disclosure regarding resolution of the concern. If a regional or program office concludes that circumstances warrant making additional information available, NSIR, OE, OGC, OI (for cases involving OI reports), and the applicable program office must be consulted. Should it be determined as a result of the consultation that it is appropriate for the NRC to make

more extensive information available to the public, OE will notify the Commission of that decision, along with a short summary of the basis for need.

Appendix B of the Enforcement Manual– Standard Formats for Enforcement Packages contains standard format boilerplates to be used in preparing and processing enforcement packages.

This EGM will remain effective until modified or superseded by another EGM.

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