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May 28, 2004

The Honorable Rick Perry
Governor of Texas
Austin, Texas 78711

Dear Governor Perry:

On behalf of the Nuclear Regulatory Commission (NRC), I am writing to inform you of our process for the distribution of security and other NRC information to State contacts, of a recent release of NRC Safeguards Information (SGI), and of the requirements for protecting SGI. I am also requesting your assistance in re-emphasizing the importance of protecting SGI from inadvertent release and unauthorized disclosure.

In 1976, the NRC adopted a recommendation from several State organizations, including the National Governors Association, that we request each State to appoint a single person to act as a liaison to the NRC for the purpose of improving Federal/State cooperation. Former NRC Chairman Richard Meserve sent a March 26, 2003 letter to Governors requesting State contact information. This letter noted that the NRC looks to the Governor-appointed State Liaison Officer (SLO) to provide the primary communication channel between the States and the NRC. The SLO serves as the key person in the State to keep the Governor informed on issues under NRC jurisdiction, including nuclear regulatory, security, and radiological public health and safety matters, and to provide State information to the NRC on particular nuclear safety, security, and environmental issues. The NRC will continue to work with SLOs; however, because of their responsibility for homeland security activities in the States, State Homeland Security Advisors (SHSAs) will be provided certain NRC security information, in coordination with the Department of Homeland Security. This will help ensure that the SHSA has knowledge of and access to this information and can share such information with other authorized State officials on a need-to-know basis. Other authorized State officials, such as the SLOs and Radiation Control Program Directors (RCPDs), will also continue to receive certain security-related information directly from NRC based on a need-to-know determination. The SLOs and RCPDs can contact their SHSAs if they believe they have a need for access to security information not provided directly to them by NRC.

<p>OFFICIAL USE ONLY</p> <p>May be exempt from public release under the Freedom of Information Act (5 U.S.C. 552)</p> <p>Exemption number: 5</p> <p>Nuclear Regulatory Commission review required before public release.</p> <p><u>Paul H. Lohaus, Office of State and Tribal Programs</u></p> <p>Name and organization of person making determination.</p> <p>Date of Determination: _____</p>
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The Honorable Rick Perry

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Regarding the recent discovery of a release of SGI, certain records, some of which contained NRC letters transmitting SGI, were placed into a State's archives after the change of administration following the 2002 elections. This information was identified to NRC by a journalist who was accessing the records during a routine search. Although NRC has confirmed that sensitive information in the publicly-accessible records in this instance is now secured, NRC's review of this incident has identified the root causes of the release, and the State has instituted corrective measures, with which the NRC agrees, to prevent or reduce recurrence.

Given this unfortunate situation, we respectfully ask that you review your existing process for sharing SGI with those who have a need-to-know to ensure that, when there is a change in administration or authorized State official, there is a transfer of knowledge regarding the custody and proper procedures for handling SGI. SGI is a special category of sensitive unclassified information authorized by Section 147 of the Atomic Energy Act of 1954, as amended, to be protected. SGI is handled and protected more like classified National Security Information than like other sensitive unclassified information. The NRC, when necessary, provides SGI to authorized State officials who are deemed to have a need-to-know for official use, along with the requirements for handling and protecting this information.

In light of the events of September 11, 2001, NRC's April 30, 2003 Regulatory Issue Summary (RIS) 2003-08, Protection of Safeguards Information from Unauthorized Disclosure (Enclosure 1), was provided to all SLOs and Agreement State RCPDs in States with large panoramic and underwater irradiators. The RIS contains a Summary of SGI Requirements, which highlights the importance of protecting SGI from inadvertent release and unauthorized disclosure. It further explains individual responsibilities regarding the protection of SGI and addresses penalties for inadequate protection and unauthorized disclosure. Enclosure 2 contains additional detailed information about SGI handling and protection requirements, including (1) sharing SGI with those who, by reason of position, have a need-to-know; (2) protection while in use or storage; (3) preparation and marking; (4) external transmission; (5) reproduction and destruction; and (6) criminal and civil sanctions. Enclosure 3 lists documents containing SGI that have been transmitted to Governors, or Governor-appointed SLOs, RCPDs, SHSAs, and State Transportation Contacts since September 11, 2001. Enclosure 4 contains guidance on NRC's No Comment Policy for Classified and Safeguards Information.

The Commission looks forward to the continued participation by your State in the NRC's SLO program. If you or your staff have any questions concerning this correspondence or wish to obtain additional information about the SLO program, please contact Paul H. Lohaus, Director of NRC's Office of State and Tribal Programs in Headquarters by telephone at 301-415-3340 or by e-mail at phl@nrc.gov.

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The Honorable Rick Perry

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For questions concerning the handling of SGI, please contact Bernard Stapleton, Safeguards Information Specialist, Office of Nuclear Security and Incident Response, by telephone at 301-415-2432 or by e-mail at bws2@nrc.gov. I thank you in advance for your assistance and look forward to continuing an excellent working relationship with the State of Texas.

Sincerely,

/RA/
Nils J. Diaz

Enclosures:

1. Regulatory Issue Summary 2003-08, Protection of Safeguards Information from Unauthorized Disclosure
2. Safeguards Information Protection Requirements
3. List of Documents Containing SGI
4. No Comment Policy for Classified and Safeguards Information

cc w/Enclosures: Roger Mulder, State Liaison Officer
Richard A. Ratliff, Radiation Control Program Director and
State Transportation Contact (Part 71)
Susan M. Jablonski, Radiation Control Program Director
Jay Kimbrough, State Homeland Security Advisor
Colonel Thomas Davis, State Transportation Contact (Part 73)

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May 28, 2004 Letters to Current Governors Re SGI
(cc: State Liaison Officers, Radiation Control Program Directors,
State Homeland Security Advisors, State Transportation Contacts/10 CFR Parts 71/73)

The Honorable Robert Riley
Governor of Alabama
Montgomery, Alabama 36130-2751
cc: Kirksey E. Whatley
James M. Walker, Jr.
Colonel W. M. Coppage

The Honorable Frank Murkowski
Governor of Alaska
Juneau, Alaska 99811-0001
cc: Douglas Dasher
Clyde E. Pearce
Colonel Craig Campbell

The Honorable Togiola Tulafona
Governor of American Samoa
Pago Pago, American Samoa 96799
cc: Leiatua Birdsall Ala'ilima
Pati Faiai

The Honorable Janet Napolitano
Governor of Arizona
Phoenix, Arizona 85007
cc: Aubrey Godwin
Frank Navarette

The Honorable Mike Huckabee
Governor of Arkansas
Little Rock, Arkansas 72201
cc: Bernard Bevill
Jared Thompson
Colonel Wayne Ruthven

The Honorable Bill Owens
Governor of Colorado
Denver, Colorado 80203-1792
cc: Steve Tarlton
Joe Morales
Captain Tommy Wilcoxen

The Honorable John Rowland
Governor of Connecticut
Hartford, Connecticut 06106
cc: Edward L. Wilds, Jr.
Major John Buturla

The Honorable Ruth Ann Minner
Governor of Delaware
Dover, Delaware 19901
cc: Harry W. Otto
Frieda Fisher-Tyler
Phil Cabaud, Jr.
James L. Ford, Jr.

The Honorable Jeb Bush
Governor of Florida
Tallahassee, Florida 32399-0001
cc: William A. Passetti
Guy M. Tunnell
Harlan W. Keaton

The Honorable Sonny Perdue
Governor of Georgia
Atlanta, Georgia 30334
cc: Jim Sommerville
Cynthia Sanders
William W. Hitchens
Captain Bruce Bugg

The Honorable Feliz Camacho
Governor of Guam
Hagatna, Guam 96932
cc: Frank Blas, Jr.,
Fred M. Castro

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The Honorable Linda Lingle
Governor of Hawaii
Honolulu, Hawaii 96813

cc: Jerry Y. Haruno
Russell S. Takata
Brigadier General Robert Lee
Laurence Lau

The Honorable Robert Ehrlich
Governor of Maryland
Annapolis, Maryland 21401

cc: Thomas C. Snyder
Roland G. Fletcher
Dennis Schrader
Michael Bennett

The Honorable Dirk Kempthorne
Governor of Idaho
Boise, Idaho 83702

cc: Douglas Walker
Major General John F. Kane
Lieutenant William L. Reese

The Honorable Mitt Romney
Governor of Massachusetts
Boston, Massachusetts 02133

cc: Cristine McCombs
Robert J. Walker
Edward A. Flynn

The Honorable Rod Blagojevich
Governor of Illinois
Springfield, Illinois 62706

cc: Gary N. Wright
Carl Hawkinson

The Honorable Jennifer Granholm
Governor of Michigan
Lansing, Michigan 48909

cc: Liane Shekter Smith
Colonel Tadarial Sturdivant
Captain Dan Smith

The Honorable Thomas Vilsack
Governor of Iowa
Des Moines, Iowa 50319-0001

cc: Daniel K. McGhee
Donald A. Flater
Ellen M. Gordon

The Honorable Tim Pawlenty
Governor of Minnesota
St. Paul, Minnesota 55155

cc: Patricia Bloomgren
Linda Bruemmer
Michael Campion
John R. Kerr

The Honorable Kathleen Sebelius
Governor of Kansas
Topeka, Kansas 66612-1590

cc: Thomas A. Conley
Colonel Tod Bunting
Frank H. Moussa

The Honorable Bob Holden
Governor of Missouri
Jefferson City, Missouri 65101

cc: Ronald A. Kucera
Keith Henke
Colonel Tim Daniel
Jerry B. Uhlmann

The Honorable John Baldacci
Governor of Maine
Augusta, Maine 04333

cc: W. Clough Toppan
Jay Hyland
Brigadier General John Libby
Colonel Craig Poulin

The Honorable Judy Martz
Governor of Montana
Helena, Montana 59620

cc: Dan McGowan
Juan Stevens
Steve Knecht

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The Honorable Mike Johanns
Governor of Nebraska
Lincoln, Nebraska 68509-4848
cc: Robert E. Leopold
Julia A. Schmitt
Lt. Governor David Heineman
Major Bryan Tuma

The Honorable Kenny Guinn
Governor of Nevada
Carson City, Nevada 89701
cc: Robert R. Loux
Stanley R. Marshall
Jerry Bussell

The Honorable Craig Benson
Governor of New Hampshire
Concord, New Hampshire 03301
cc: Bruce Cheney
Dennis O'Dowd
Lieutenant Stephen Kace

The Honorable James McGreevey
Governor of New Jersey
Trenton, New Jersey 08625
cc: Commissioner Bradley M. Campbell
Jill Lipoti
Sid Caspersen
Kent Tosch

The Honorable Bill Richardson
Governor of New Mexico
Santa Fe, New Mexico 87300
cc: Derrith Watchman-Moore
William Floyd
Brigadier General Annette Sobel

The Honorable George Pataki
Governor of New York
Albany, New York 12224
cc: Peter R. Smith
Clayton J. Bradt
Gene Miskin
Adela Salame-Alfie
Barbara Youngberg
James McMahon
Andrew Feeney

The Honorable Michael Easley
Governor of North Carolina
Raleigh, North Carolina 27699-0301
cc: Beverly O. Hall
Bryan Elliot Beatty
First Sergeant Mark Dalton

The Honorable John Hoeven
Governor of North Dakota
Bismarck, North Dakota 58505-0001
cc: Terry L. O'Clair
Douglas C. Friez

The Honorable Juan Babauta
Governor of the Northern Mariana Islands
Saipan, MP 96950
cc: Jerry Crisostomo
John Castro

The Honorable Brad Henry
Governor of Oklahoma
Oklahoma City, Oklahoma 73105
cc: Mike Broderick
Kerry Pettingill
Kevin L. Ward

The Honorable Ted Kulongoski
Governor of Oregon
Salem, Oregon 97301-4047
cc: David Stewart-Smith
Terry D. Lindsey
Craig Campbell

The Honorable Edward Rendell
Governor of Pennsylvania
Harrisburg, Pennsylvania 17120
cc: David J. Allard
General Keith Martin, Ret.
John Bahnweg

The Honorable Sila Calderon
Governor of Puerto Rico
San Juan, Puerto Rico 00902-0082
cc: Esteban Mujica
Mayra Toro
Rosaida Melendez

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The Honorable Don Carcieri
Governor of Rhode Island
Providence, Rhode Island 02903-1196

cc: Peter Todd
Marie Stoeckel
Major General Reginald Centracchio
Terrence Mercer

The Honorable Mark Sanford
Governor of South Carolina
Columbia, South Carolina 29211

cc: Henry J. Porter
T. Pearce O'Kelley
Robert M. Stewart

The Honorable Mike Rounds
Governor of South Dakota
Pierre, South Dakota 57501

cc: Rick Lancaster
Kevin Forsch
John A. Berheim
Kristi Turman

The Honorable Rick Perry
Governor of Texas
Austin, Texas 78711
cc: Roger Mulder
Richard A. Ratliff
Susan M. Jablonski
Jay Kimbrough
Colonel Thomas Davis

The Honorable Olene S. Walker
Governor of Utah
Salt Lake City, Utah 84114
cc: Dane Finerfrock
Nannette Rolfe

The Honorable Charles Turnbull
Governor of Virgin Islands
St. Thomas, Virgin Islands 00802
cc: Major General Cleave A. McBean
Dean C. Plaskett

The Honorable Gary Locke
Governor of Washington
Olympia, Washington 98504-0002

cc: Bob Nichols
Gary L. Robertson
MG Timothy J. Lowenberg
Steven L. Kalmbach

The Honorable Bob Wise
Governor of West Virginia
Charleston, West Virginia 25305-0370

cc: Dan Hill
Joe Martin
Colonel H. E. Hill, Jr.

The Honorable Jim Doyle
Governor of Wisconsin
Madison, Wisconsin 53702

cc: Edward J. Gleason
Paul S. Schmidt
General Al Wilkening

The Honorable Dave Freudenthal
Governor of Wyoming
Cheyenne, Wyoming 82002

cc: Joe Hunter
David A. Finley
Joe Moore
Captain Vernon Poage

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, DC 20555-0001

April 30, 2003

**NRC REGULATORY ISSUE SUMMARY 2003-08
PROTECTION OF SAFEGUARDS INFORMATION
FROM UNAUTHORIZED DISCLOSURE**

ADDRESSEES

All holders of operating licenses for nuclear power reactors, decommissioning reactor facilities, independent spent fuel storage installations, research and test reactors, large panoramic and underwater irradiators, and fuel cycle facilities.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) and the attached Summary of Safeguards Information Requirements to inform addressees of the importance of protecting Safeguards Information from inadvertent release and unauthorized disclosure. The need to protect sensitive security information from inadvertent release and unauthorized disclosure which might compromise the security of nuclear facilities is heightened since the events of September 11, 2001. Addressees, including all cognizant personnel, have a continuing obligation to be mindful of their responsibilities in protecting such security information. Although many addressees have extensive experience in complying with applicable regulations related to handling and protection of Safeguards Information, additional licensees and individuals with limited or no experience in this area may now or soon will be covered by these requirements. This RIS is intended to serve as a consolidated source of information to reinforce the overall knowledge of Safeguards Information requirements as well as to highlight the serious consequences for failure to control and protect it.

Licensees are encouraged to broadly disseminate this information to affected employees and to post the attached Summary of Safeguards Information Requirements in areas where employees who handle Safeguards Information are located.

BACKGROUND

Several recent events involving published articles or comments to the media demonstrate the need for the NRC to reemphasize the importance of protecting Safeguards Information from inadvertent release and unauthorized disclosure. The release of this information, for example, could result in harm to the public health and safety and the Nation's common defense and security, as well as damage to the Nation's critical infrastructure, including nuclear power plants and other facilities licensed and regulated by the NRC.

RIS 2003-08

ML031150743

Enclosure 1

SUMMARY OF ISSUE

Safeguards Information is a special category of sensitive unclassified information authorized by Section 147 of the Atomic Energy Act of 1954, as amended (the Act), to be protected. While Safeguards Information is considered sensitive unclassified information, it is handled and protected more like classified confidential information than like other sensitive unclassified information (e.g., privacy and proprietary information). Access to Safeguards Information is controlled by a valid need-to-know and an indication of trustworthiness normally obtained through a background check. The criteria for designating special nuclear material and power reactor information as Safeguards Information and associated restrictions on access to and protection of Safeguards Information are codified in Section 73.21 of Title 10 of the *Code of Federal Regulations* (10 CFR 73.21). Part 73 applies to licensees of operating power reactors, research and test reactors, decommissioning facilities, facilities transporting irradiated reactor fuel, fuel cycle facilities, and spent fuel storage installations. Examples of the types of information designated as Safeguards Information include the physical security plan for a nuclear facility or site possessing special nuclear material, the design features of the physical protection system, operational procedures for the security organization, improvements or upgrades to the security system, and vulnerabilities or weaknesses not yet corrected, and such other information as the Commission may designate by order. An example of additional information designated by order is the January 7, 2003 order to operating power reactor licensees concerning access authorization programs. That order made the details of NRC's enhanced access authorization requirements and licensee response to these requirements Safeguards Information. Another example is the April 29, 2003 order to operating power reactor licensees concerning security force training requirements.

In addition to the licensees subject to the Safeguards Information requirements of Part 73, and the types of information designated as Safeguards Information under those regulations, the Commission has authority under Section 147 to designate, by regulation or order, other types of information as Safeguards Information. For example, Section 147 allows the Commission to designate

... a licensee's or applicant's detailed ... security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security ...

to be Safeguards Information. The Commission also may, by order, impose Safeguards Information handling requirements on these other licensees. An example of this type of order is the March 25, 2002 order to Honeywell International, a uranium conversion facility. Violations of Safeguards Information handling requirements, whether those of Part 73 or those imposed by order, are equally subject to the applicable civil and criminal sanctions, as discussed below and in the attached Summary of Safeguards Information Requirements.

Employees, past or present, and all persons who have had access to Safeguards Information have a continuing obligation to protect Safeguards Information against inadvertent release and unauthorized disclosure. The NRC staff and licensees have discovered several cases where Safeguards Information was inadvertently included in uncontrolled plant documents and documents intended for distribution to the public. Documents or other forms of communication

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that include discussions about plant security should be reviewed carefully to ensure that Safeguards Information is not physically included or that plant security is not otherwise being compromised. Attachment 1 to this RIS further explains licensee and individual responsibilities under current regulations, issued Orders, and future Orders regarding the protection of Safeguards Information, and addresses penalties for inadequate protection and unauthorized disclosure.

Licensees are reminded that information designated as Safeguards Information must be withheld from public disclosure and must be physically controlled and protected. Physical protection requirements include (1) secure storage, (2) document marking, (3) access restricted to authorized individuals, (4) limited reproduction, (5) protected transmission, and (6) enhanced automatic data processing system controls. Changes are being proposed to NRC regulations applicable to Safeguards Information as a result of ongoing evaluations. Personnel security controls, including background checks and other means, are in effect for individuals authorized access to Safeguards Information, as is the strict adherence to the need-to-know principle.

Inadequate protection of Safeguards Information, including inadvertent release and unauthorized disclosure, may result in civil and/or criminal penalties. The Act explicitly provides in Section 147a that any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of the Act. Furthermore, willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both, as prescribed in Section 223 of the Act. The specific penalties associated with such violations will be determined by the staff in its implementation of the NRC Enforcement Policy, and the discretion of the Commission based on the details and significance of any violation. Statutory maximum penalties are addressed in Attachment 1.

The NRC will continue to evaluate its requirements, policies and guidance concerning the protection and unauthorized disclosure of Safeguards Information. Licensees and other stakeholders will be informed of proposed revisions or clarifications.

BACKFIT DISCUSSION

The RIS and the attachment do not request any action or written response; therefore, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register*.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

If you have any questions about this matter, please contact the person listed below.

/RA/

Charles L. Miller, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Materials Safety
and Safeguards

/RA/

William D. Beckner, Program Director
Operating Reactor Improvements Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Contact: Bernard Stapleton, NSIR
(301) 415-2432
E-mail: bws2@nrc.gov

Attachments: 1. Summary of Safeguards Information Requirements
2. List of Recently Issued NRC Regulatory Issue Summaries

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

If you have any questions about this matter, please contact the person listed below.

/RA/
Charles L. Miller, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Materials Safety
and Safeguards

/RA/
William D. Beckner, Program Director
Operating Reactor Improvements Program
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Contact: Bernard Stapleton, NSIR
(301) 415-2432
E-mail: bws2@nrc.gov

- Attachments: 1. Summary of Safeguards Information Requirements
2. List of Recently Issued NRC Regulatory Issue Summaries

ADAMS ACCESSION NUMBER: ML031150743

*See previous concurrence

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SUMMARY OF SAFEGUARDS INFORMATION REQUIREMENTS

I. AUTHORITY

The Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.* (Act), grants the Nuclear Regulatory Commission broad and unique authority to prohibit the unauthorized disclosure of Safeguards Information upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. Section 147 of the Act, 42 U.S.C. § 2167.

For licensees and any other person, whether or not a licensee (primarily 10 C.F.R. Part 50 reactor licensees, 10 C.F.R. Part 70 licensees for special nuclear material, and their employees and contractors) subject to the requirements in 10 C.F.R. Part 73, Safeguards Information is defined by NRC regulation as follows:

Safeguards Information means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

10 C.F.R. § 73.2.

Specific requirements for the protection of Safeguards Information are contained in 10 C.F.R. § 73.21. Access to Safeguards Information is limited as follows:

(c) *Access to Safeguards Information.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57;

(ii) A member of a duly authorized committee of the Congress;

(iii) The Governor of a State or designated representatives;

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

(vi) An individual to whom disclosure is ordered pursuant to § 2.744(e) of this chapter [10 CFR 2.744(e)].

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

10 C.F.R. § 73.21(c).

The "need to know" requirement is specified by NRC regulation as follows:

Need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

10 C.F.R. § 73.2.

Thus, unless otherwise authorized by the Commission, NRC regulations limit access to Safeguards Information to certain specified individuals who have been determined to have a "need to know," i.e., specified individuals whose access has been determined to be necessary in the performance of official, contractual or licensee duties of employment.

Furthermore, except as otherwise authorized by the Commission, no person may disclose Safeguards Information to any other person unless that other person is one of the specified persons listed in 10 C.F.R. § 73.21(c)(1) and that person also has a "need to know." 10 C.F.R. § 73.21(c)(2). These regulations and prohibitions on unauthorized disclosure of Safeguards Information are applicable to all licensees and all individuals:

This part [10 C.F.R. Part 73] prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

10 C.F.R. § 73.1(b)(7).

The Commission's statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information is even broader than is reflected in these regulations. Section 147 of the Act grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information" This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities.

The Act explicitly provides: "Any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act." Section 147a of the Act. Section 234a of the Act provides for a civil monetary penalty not to exceed \$120,000 for each violation. See 10 C.F.R. § 2.205(j) (2003). Furthermore, a willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See Sections 147b and 223a of the Act.

The NRC Enforcement Policy outlines potential NRC actions against both licensees and individuals for violations of the regulations and Orders using criteria that evaluate both the details and severity of the violation.

II. DISCUSSION

All licensees and all other persons who now have, or in the future may have, access to Safeguards Information must comply with all applicable requirements delineated in regulations and Orders governing the handling and unauthorized disclosure of Safeguards Information. As stipulated in 10 C.F.R. § 73.21(a), licensees and persons who produce, receive or acquire Safeguards Information are required to ensure that Safeguards Information is protected against unauthorized disclosure. To meet this requirement, licensees and persons subject to 10 C.F.R. § 73.21(a) shall establish and maintain an information protection system governing the proper handling and unauthorized disclosure of Safeguards Information. All licensees should be aware that since the requirements of 10 C.F.R. § 73.21(a) apply to all persons who receive Safeguards Information, they apply to all contractors whose employees may have access to Safeguards Information and they must either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own information protection system, but the licensees remain responsible for the conduct of their contractors. The elements of the required information protection system are specified in 10 C.F.R. § 73.21(b) through (i). The information protection system must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; inspections, audits and evaluations; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

As noted above, in addition to the responsibility of each licensee to ensure that all of its employees, contractors and subcontractors, and their employees comply with applicable requirements, all contractors, subcontractors, and individual employees also are individually responsible for complying with applicable requirements and all are subject to civil and criminal sanctions for failures to comply. The NRC considers that violations of the requirements applicable to the handling of Safeguards Information are a serious breach of adequate protection of the public health and safety and the common defense and security of the United States.

As a result, the staff intends to use the NRC Enforcement Policy, including the discretion to increase penalties for violations, to determine appropriate sanctions against licensees and individuals who violate these requirements. In addition, the Commission may use its discretion, based on the severity of the violation, to further increase the penalty for any violation up to the statutory maximum. Willful violations of these requirements will also be referred to the Department of Justice for a determination of whether criminal penalties will be pursued.

LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2003-07	Issuance of Regulations Revising Filing Requirements for Advance Notification of the Shipment of Spent Nuclear Fuel and Special Nuclear Material	04/23/2003	All U.S. Nuclear Regulatory Commission (NRC) power reactor licensees, research and test reactor licensees, independent spent fuel storage installation licensees, and special nuclear material licensees who ship spent nuclear fuel and special nuclear material.
2003-06	High Security Protected and Vital Area Barrier/Equipment Penetration Manual	03/20/2003	All power reactor (including decommissioning reactor) licensees, independent spent fuel storage installation licensees, the conversion facility licensee, gaseous diffusion plant licensees, and Category I fuel cycle facility licensees.
2003-05	Issuance of Orders Imposing Additional Physical Protection Measures For Independent Spent Fuel Storage Installations Using Dry Storage	03/19/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees who hold general licenses for independent spent fuel storage installations (ISFSIs) using dry storage pursuant to 10 CFR Part 72 and all applicants for site-specific licenses for ISFSIs pursuant to 10 CFR Part 72.
2003-04	Use of the Effective Dose Equivalent in Place of the Deep Dose Equivalent in Dose Assessments	02/13/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees.

Note: NRC generic communications may be received in electronic format shortly after they are issued by subscribing to the NRC listserver as follows:

To subscribe send an e-mail to listproc@nrc.gov, no subject, and the following command in the message portion:

subscribe gc-nrr firstname lastname

SUMMARY OF SAFEGUARDS INFORMATION REQUIREMENTS

I. AUTHORITY

The Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.* (Act), grants the Nuclear Regulatory Commission broad and unique authority to prohibit the unauthorized disclosure of Safeguards Information upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. Section 147 of the Act, 42 U.S.C. § 2167.

For licensees and any other person, whether or not a licensee (primarily 10 C.F.R. Part 50 reactor licensees, 10 C.F.R. Part 70 licensees for special nuclear material, and their employees and contractors) subject to the requirements in 10 C.F.R. Part 73, Safeguards Information is defined by NRC regulation as follows:

Safeguards Information means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

10 C.F.R. § 73.2.

Specific requirements for the protection of Safeguards Information are contained in 10 C.F.R. § 73.21. Access to Safeguards Information is limited as follows:

(c) *Access to Safeguards Information.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57;

(ii) A member of a duly authorized committee of the Congress;

(iii) The Governor of a State or designated representatives;

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

(vi) An individual to whom disclosure is ordered pursuant to § 2.744(e) of this chapter [10 CFR 2.744(e)].

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

10 C.F.R. § 73.21(c).

The "need to know" requirement is specified by NRC regulation as follows:

Need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

10 C.F.R. § 73.2.

Thus, unless otherwise authorized by the Commission, NRC regulations limit access to Safeguards Information to certain specified individuals who have been determined to have a "need to know," i.e., specified individuals whose access has been determined to be necessary in the performance of official, contractual or licensee duties of employment.

Furthermore, except as otherwise authorized by the Commission, no person may disclose Safeguards Information to any other person unless that other person is one of the specified persons listed in 10 C.F.R. § 73.21(c)(1) and that person also has a "need to know." 10 C.F.R. § 73.21(c)(2). These regulations and prohibitions on unauthorized disclosure of Safeguards Information are applicable to all licensees and all individuals:

This part [10 C.F.R. Part 73] prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

10 C.F.R. § 73.1(b)(7).

The Commission's statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information is even broader than is reflected in these regulations. Section 147 of the Act grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information" This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities.

The Act explicitly provides: "Any person, whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of Section 234 of this Act." Section 147a of the Act. Section 234a of the Act provides for a civil monetary penalty not to exceed \$120,000 for each violation. See 10 C.F.R. § 2.205(j) (2003). Furthermore, a willful violation of any regulation or order governing Safeguards Information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See Sections 147b and 223a of the Act.

The NRC Enforcement Policy outlines potential NRC actions against both licensees and individuals for violations of the regulations and Orders using criteria that evaluate both the details and severity of the violation.

II. DISCUSSION

All licensees and all other persons who now have, or in the future may have, access to Safeguards Information must comply with all applicable requirements delineated in regulations and Orders governing the handling and unauthorized disclosure of Safeguards Information. As stipulated in 10 C.F.R. § 73.21(a), licensees and persons who produce, receive or acquire Safeguards Information are required to ensure that Safeguards Information is protected against unauthorized disclosure. To meet this requirement, licensees and persons subject to 10 C.F.R. § 73.21(a) shall establish and maintain an information protection system governing the proper handling and unauthorized disclosure of Safeguards Information. All licensees should be aware that since the requirements of 10 C.F.R. § 73.21(a) apply to all persons who receive Safeguards Information, they apply to all contractors whose employees may have access to Safeguards Information and they must either adhere to the licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own information protection system, but the licensees remain responsible for the conduct of their contractors. The elements of the required information protection system are specified in 10 C.F.R. § 73.21(b) through (i). The information protection system must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; inspections, audits and evaluations; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

As noted above, in addition to the responsibility of each licensee to ensure that all of its employees, contractors and subcontractors, and their employees comply with applicable requirements, all contractors, subcontractors, and individual employees also are individually responsible for complying with applicable requirements and all are subject to civil and criminal sanctions for failures to comply. The NRC considers that violations of the requirements applicable to the handling of Safeguards Information are a serious breach of adequate protection of the public health and safety and the common defense and security of the United States.

As a result, the staff intends to use the NRC Enforcement Policy, including the discretion to increase penalties for violations, to determine appropriate sanctions against licensees and individuals who violate these requirements. In addition, the Commission may use its discretion, based on the severity of the violation, to further increase the penalty for any violation up to the statutory maximum. Willful violations of these requirements will also be referred to the Department of Justice for a determination of whether criminal penalties will be pursued.

LIST OF RECENTLY ISSUED
NRC REGULATORY ISSUE SUMMARIES

Regulatory Issue Summary No.	Subject	Date of Issuance	Issued to
2003-07	Issuance of Regulations Revising Filing Requirements for Advance Notification of the Shipment of Spent Nuclear Fuel and Special Nuclear Material	04/23/2003	All U.S. Nuclear Regulatory Commission (NRC) power reactor licensees, research and test reactor licensees, independent spent fuel storage installation licensees, and special nuclear material licensees who ship spent nuclear fuel and special nuclear material.
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2003-05	Issuance of Orders Imposing Additional Physical Protection Measures For Independent Spent Fuel Storage Installations Using Dry Storage	03/19/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees who hold general licenses for independent spent fuel storage installations (ISFSIs) using dry storage pursuant to 10 CFR Part 72 and all applicants for site-specific licenses for ISFSIs pursuant to 10 CFR Part 72.
2003-04	Use of the Effective Dose Equivalent in Place of the Deep Dose Equivalent in Dose Assessments	02/13/2003	All U.S. Nuclear Regulatory Commission (NRC) licensees.

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To subscribe send an e-mail to <listproc@nrc.gov>, no subject, and the following command in the message portion:

subscribe gc-nrr firstname lastname

Safeguards Information Protection Requirements

Authority

The Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 *et seq.* (Act), grants the U.S. Nuclear Regulatory Commission (NRC) broad and unique authority to prohibit the unauthorized disclosure of Safeguards Information upon a determination that the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction. Section 147 of the Act, 42 U.S.C. § 2167.

In addition to the licensees subject to the Safeguards Information requirements of 10 CFR Part 73, and the types of information designated as Safeguards Information under those regulations, the Commission has authority under Section 147 to designate, by regulation or Order, other types of information as Safeguards Information. This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. The Commission also may, by Order, impose Safeguards Information handling requirements on these other licensees. All licensees and all other persons who now have, or in the future may have, access to Safeguards Information must comply with all applicable requirements delineated in regulations and Orders governing the handling and unauthorized disclosure of Safeguards Information.

Definition of Safeguards Information for Licensees and Any Other Persons Subject to Part 73 Requirements

Safeguards Information is defined by NRC regulation [Section 73.2 of Title 10 of the *Code of Federal Regulations* (10 CFR 73.2)] as follows:

Safeguards Information means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

In addition to the licensees subject to the Safeguards Information requirements of Part 73, and the types of information designated as Safeguards Information under those regulations, the Commission has authority under Section 147 of the AEA to designate, by regulation or Order, other types of information as Safeguards Information. For example, Section 147 allows the Commission to designate as Safeguards Information a licensee's or applicant's detailed:

- (1) Control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the

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Commission to be significant to the public health and safety or common defense and security;

- (2) Security measures (including security plans, procedures and equipment) for the physical protection of source material or byproduct material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or
- (3) Security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to the safety of production or utilization facilities involving nuclear materials covered by paragraphs (1) and (2)

if the unauthorized disclosure of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of such material or such facility.

Generally, definitions (1), (2), and (3) above are referred to by the acronym "SGI;" however, SGI for byproduct or source material subject to modified (from 10 CFR Part 73) handling requirements is also referred to as "Safeguards Information - Modified Handling" or SGI-M to distinguish its handling requirements and associated consequence levels. Information represented by both acronyms are considered Safeguards Information.

General Performance Requirement

Any person who produces, receives, or acquires SGI shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the specific measures listed below. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI is subject to the requirements and sanctions as authorized by Section 147 of the Atomic Energy Act of 1954, as amended, and are more fully described in 10 CFR 73.21 or by the NRC in the form of Orders. A State and its employees would fall under this requirement if they possess SGI. Individuals authorized access to SGI by the State and its employees should be informed as to the existence of regulatory requirements and the need for proper protection. (See additional information under Conditions for Access.)

State or local police units who have access to SGI also are subject to this requirement. However, these organizations are deemed in the requirements of 10 CFR 73.21 and relevant Orders to have adequate information protection systems. The conditions for transfer of

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information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure.

Criminal and Civil Sanctions (Sections 223 and 234 of the Atomic Energy Act)

The Act explicitly provides that any person, "whether or not a licensee of the Commission, who violates any regulations adopted under this Section shall be subject to the civil monetary penalties of Section 234 of this Act." Section 147a of the Act. Furthermore, willful violation of any regulation or Order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See Sections 147b and 223 of the Act.

Categories of Safeguards Information and Protection Levels

SGI is divided into two categories of protected information. Information defined by 10 CFR 73.21(a) applies primarily to special nuclear material (e.g., commercial nuclear reactor or transportation of irradiated fuel) and is designated as SGI. For byproduct material licensees under NRC regulation, the NRC issued Orders requiring specific security measures. This information was designated as Safeguards Information-Modified Handling (SGI-M). This information has been designated as SGI-M because unauthorized disclosure could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials. The designation of information as SGI-M refers to the marking used to denote modified protection requirements; however, the information is still SGI.

Differences in protection levels for SGI and SGI-M due to potential consequences of compromise are addressed below:

Conditions for Access

While there are no personnel security clearances required for access to SGI, a determination of trustworthiness and need-to-know are required for access to this information. The conditions for access are set forth below.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI that a proposed recipient's access to SGI is necessary in the performance of official, contractual, or licensee duties of employment. A person in possession of SGI has discretionary authority in making these determinations. The recipient should be made aware that the information is sensitive, subject to NRC regulations and Orders as well as criminal and civil sanctions.

Occupational Groups

In lieu of a personnel security clearance program (such as that required by Government classified programs), dissemination of SGI is limited to members of certain occupational groups who have a need-to-know such information. These include:

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- (1) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;
- (2) A member of a duly authorized committee of the Congress;
- (3) The Governor of a State or his designated representative;
- (4) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;
- (5) A member of a State or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or
- (6) A person to whom disclosure is ordered pursuant to Section 2.744 of Part 2 of Title 10 of the Code of Federal Regulations.

NRC Orders relating to security measures for byproduct materials licensees have added a seventh occupational group to the list of individuals who can access SGI-M information:

- (7) State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

Generally, individuals are considered to be trustworthy by virtue of their employment status; however, background checks, for some of the above groups, are required to be performed by the employer in addition to verification of employment status. Nevertheless, some discretion should be exercised in granting access if there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI.

Protection While in Use or Storage

While in use, matter containing SGI shall be under the control of an authorized individual. This requirement is satisfied if the matter is attended by an authorized individual even though the information is in fact not constantly being used.

While unattended, SGI shall be stored in a locked security storage container as described in 10 CFR 73.2. Information containing SGI-M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys, where applicable, protecting SGI shall be limited to a minimum number of personnel for operating purposes who have a "need-to-know" and are otherwise authorized access to SGI in accordance with the provisions of the regulations or an NRC Order. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transmission/Transportation of Documents and Other Matter

Documents containing SGI when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers to preclude disclosure of the presence of protected information. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked, on top and bottom on both sides, with the words "**Safeguards Information**" or "**Safeguards Information-Modified Handling**" as appropriate. The outer envelope or wrapper must be addressed to the intended recipient, must contain the

address of the sender, and must not bear any markings or indication that the document contains Safeguards Information.

SGI may be transported by messenger-courier, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to the regulations or an NRC Order. Individuals transporting SGI should retain the documents or other matter in their personal possession at all times or ensure that it is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Except under emergency or extraordinary conditions, SGI shall be transmitted only by protected telecommunications circuits (including facsimile) approved by the NRC.

Marking of Documents

Each document that contains SGI should have on the face of the document (i) the name, title, and organization of the individual authorized to make a SGI determination, and who has determined that the document contains SGI, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each page shall be marked in a conspicuous fashion denoting "**Safeguards Information**" or "**Safeguards Information-Modified Handling**."

Transmittal letters or memoranda which do not in themselves contain SGI should be marked to indicate that attachments or enclosures contain SGI.

In addition to the information required on the face of the document, each item of correspondence that contains SGI, should by marking or other means clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI and which do not. (Portion marking is not required for the specific items of information set forth in 10 CFR 73.21(b) other than guard qualification and training plans and correspondence to and from the NRC).

All documents or other matter in use or storage should be marked in accordance with the regulations or NRC Orders. A specific exception is provided for documents in the possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the regulations or NRC Orders. Such documents need to be marked once they are removed from file drawers, containers, or security storage containers. The same exception would also apply to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by State and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Reproduction of Matter Containing SGI

SGI may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

Use of Automatic Data Processing (ADP) Systems

SGI may be processed or produced on an ADP system provided that the system is self-contained within the SGI holder's facility and requires the use of an entry code for access to stored information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. The objective of these restrictions is to prevent access and retrieval of stored SGI by unauthorized individuals, particularly from remote terminals. Specific files containing SGI will be password protected to preclude access by an unauthorized individual. Files may be transmitted over a network if the file is encrypted. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at <http://csrc.nist.gov/cryptval/140-1/1401val.htm>. SGI files shall be properly labeled as "**Safeguards Information**" or "**Safeguards Information-Modified Handling**," as appropriate, and saved to removable media and stored in an appropriately locked container. A security storage container as defined in 10 CFR 73.2 is appropriate for SGI information. A locked file drawer or cabinet is appropriate for SGI-M information as required by NRC Order.

Removal From SGI Category

Documents originally containing SGI shall be removed from the SGI category whenever the information no longer meets the criteria contained in this Section.

Documents should only be removed from the SGI category by, or with the permission of, the individual (or office) who made the original determination. The document should indicate the name and organization of the individual removing the document from the SGI category and the date of the removal. Other persons who have the document in their possession should be notified of the removal.

Telecommunications

SGI may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose the point of transmission or schedule information. (Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided

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that either the discussion is general in nature or the identification of specific safeguards measures is effectively disguised.)

Individuals should use care when discussing SGI at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts or minutes of meetings or hearings that contain SGI should be marked and protected in accordance with the regulations or NRC Order.

Destruction

Documents containing SGI may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

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LIST OF DOCUMENTS CONTAINING SAFEGUARDS INFORMATION (SGI)

The following is a listing of SGI sent to either Governors, State Liaison Officers (SLOs), State Homeland Security Advisors (SHSAs), Radiation Control Program Directors (RCPDs), or Transportation Contacts (10 CFR Part 71/73) from the NRC since September 11, 2001. The listing was prepared based on NRC Office records of documents distributed. If you identify other sensitive NRC documents which are not on the list, please provide that information to Bernard Stapleton, Safeguards Information Specialist, Office of Nuclear Security and Incident Response, by telephone at 301-415-2432 or by e-mail at bws2@nrc.gov.

Date	Classification	Subject	Information Included	Sent To
9/26/2001	Safeguards Information	Letter to Governors in response to terrorist attacks	Letter attaching IN-98-35 (NRC's Security Level Classifications)	Governors cc: SLOs, except Governors/ SLOs in AK, DE, HI, MT, NV, ND, OK, SD, WV, WY
10/6/2001	Safeguards Information	IAT Advisory for Power Reactors, Decommissioning Reactors, Category 1 Fuel Facilities and Gaseous Diffusion Plants	Advisory with a list of prompt actions and additional actions for licensees to consider in order to strengthen licensee capability to respond to a terrorist attack. (This advisory included "Safeguards Information.")	SLOs in States with facilities affected by this action
10/7/2001	Safeguards Information	IAT Advisory for Power Reactors, Decommissioning Reactors, Category 1 Fuel Facilities and Gaseous Diffusion Plants	Advisory Update with notification to licensee of the initiation of U.S. Military action against targets in Afghanistan and continuance of Security Level III, including additional recommendations of previous advisories.	SLOs in States with facilities affected by this action
10/16/2001	Safeguards Information	IAT Advisory Update for Power Reactors, Non Power Reactors, Category 1 Fuel Facilities, Decommissioning Reactors, Independent Spent Fuel Storage Installation, and Gaseous Diffusion Plants	Report divided into two sections: a) Information regarding terrorist targets, tactics and training. b) Discussion of threat indicators.	All SLOs

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Date	Classification	Subject	Information Included	Sent To
2/26/2002	Safeguards Information	Issuance of Order for Interim Safeguards and Security Compensatory Measures for Operating Nuclear Power Plants	Order modifies the current operating licenses for nuclear power plants to require compliance with specified interim safeguards and security compensatory measures. Copies of the cover letter were sent to each operating nuclear power plant licensee. The complete package was mailed to SLOs with facilities in their State affected by this Order on 2/25/2002. (Attachment 2 contained "Safeguards Information")	SLOs with facilities in affected States
7/10/2002	Safeguards Information	Orders for Interim Compensatory Measures (ICMs) for Transportation of Spent Nuclear Fuel and Large Quantity Shipments of Radioactive Material	Letter enclosing draft ICMs for both spent fuel and for highway route controlled quantities (HRCQ) for review and comment. Noted meetings in July and August to discuss the draft ICMs.	All SLOs
8/19/2002	Safeguards Information	NRC Regulatory Issue Summary (RIS)	Letter sent to Governors enclosing NRC RIS: NRC Threat Advisory and Protective Measures System 2002-12A - Power Reactors 2002-12B - Research & Test Reactors 2002-12G - Conversion Facility	Governors with affected facilities in their States (cc: SLOs and State Homeland Security Advisors (SHSAs) in affected States)
10/3/2002	Safeguards Information	Letters to Governors of Affected States - Shipment of Spent Nuclear Fuel Greater Than 100 Grams	Letter enclosed Redacted Orders and ICMs for the Transportation of Spent Nuclear Fuel Greater than 100 Grams, RIS 2002-18, and RIS 2002-121, Rev. 1. (Some Governors received a listing of the licensees in their States receiving the Orders.	Governors of Affected States (cc: SLOs, Advance Notification Governors Designees, SHSAs)
10/17/2002	Safeguards Information	Orders and ICMs to Dry Independent Spent Fuel Storage Installation (ISFSI) Licensees	Letter to SLOs of affected States enclosing a copy of the Orders sent to general licensees and specific licensees and ICMs; also enclosed RIS further describing the increased protection requirements.	SLOs (cc: SHSAs)
12/11/2002	Safeguards Information	Proposed Implementation Guidance for ICMs	Proposed Implementation Guidance for ICMs for shipments of spent nuclear fuel greater than 100 grams and meeting notice for December 18, 2002 closed workshop to discuss the proposed guidance on ICMs and Rev. 1 to the HSAS protective measures for the transportation of spent nuclear fuel.	SLOs (Not sent to AK, HI, PR); and Governors' Designees Receiving Advance Notification (Not sent to AK, HI, PR, D.C., Islands)

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Date	Classification	Subject	Information Included	Sent To
1/2/2003	Safeguards Information	Revised Design Basis Threats (DBT)	Letters sent to SHSAs in the Power Reactor States enclosing a draft paper entitled "Staff View of Adversary Attributes for Radiological Sabotage" (Safeguards Information) describing what the NRC is considering for revised design basis threats. (Ohio letter to Homeland Security Contact/Morckel)	30 SHSAs in States with Nuclear Power Reactors; SLOs
1/7/2003	Safeguards Information	Issuance of Order for Compensatory Measures Related to Access Authorization	January 7, 2003 Letter signed by S. J. Collins sent to Holders of Licenses for Operating Power Reactors as listed in Enclosure 2 of this letter.	Copies of Letter Sent to SLOs in States with Operating Nuclear Power Reactors
2/25/2003	Safeguards Information	Closed Meetings on DBT on January 9, 2003, and February 12, 2003	Document listing questions and NRC staff responses that arose from the closed January 9, 2003 DBT Meeting. Copies of slide presentations from both the January 9, and February 12, 2003 Meetings were sent to States with Nuclear Power Reactors	SHSAs and SLOs in States with Nuclear Power Reactors
3/12/2003	Safeguards Information	NRC RIS 2002-12F - Category III Fuel Facilities - NRC Threat Advisory and Protective Measures System	Letters sent to Category III Fuel Facilities States enclosing a new RIS 2002-12F to inform addressees of changes to the descriptions of the various threat advisory conditions and provide guidance that addressees may use in preplanning graded protective measures to respond to changes in the threat environment.	Category III Fuel Facilities States (NC, SC, TN, VA, WA); cc: SLOs from those States
3/12/2003	Safeguards Information	Implementation Guidance for Interim Compensatory Measures for Shipments of Spent Nuclear Fuel Greater than 100 Grams in the Current Threat Environment	Letters sent to SLOs and Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste enclosing (1) NRC Acceptance Letter; (2) NEI Letter; and (3) Implementation Guidance for ICMs for Shipments of Spent Nuclear Fuel Greater Than 100 Grams in the Current Threat Environment (Ltrs. not sent to AK; HI; PR; Guam; Washington, D.C.; Virgin Islands; American Samoa; Saipan, MP)	SLOs and Governors' Designees

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Date	Classification	Subject	Information Included	Sent To
4/29/2003	Safeguards Information	SLOs and SHSAs in States with Nuclear Power Reactors - Issuance of Orders	Letter enclosing Orders were issued which limit the number of hours that security personnel can work, enhance the training requirements for security personnel and establish a revised design basis threat against which power reactors must be able to defend. Also a copy of NRC regulation 10 CFR 73.21 was enclosed.	SLOs, SHSAs in States with Nuclear Power Reactors; Delaware and West Virginia (within 10-mile EPZ)
6/5/2003	Safeguards Information - Modified	Order Imposing Compensatory Measures on Panoramic and Underwater Irradiators with Greater than 10,000 Curies of Radioactive Material	Letter enclosing the generic Order imposing Compensatory Measures on Panoramic and Underwater Irradiators with greater than 10,000 curies of radioactive material. NRC will issue the Order to the Licensees on June 6, 2003.	Agreement State (A/S) RCPDs and SLOs in States having Panoramic or Underwater Irradiators
8/27/2003	Safeguards Information - Modified	Request for review and comment on draft 274i agreement and temporary instruction pertaining to State inspection of materials licensees to verify compliance with NRC enhanced security measures	Draft 274i agreement and draft Temporary Instruction (TI) guidance document (TI is Safeguards Information - Modified) Staff talking points and a schedule of milestones was also included.	A/S RCPDs
11/24/2003	Safeguards Information - Modified	Draft Additional Security Measures (ASMs) and Draft Implementing Guidance for Manufacturing and Distribution (M&D) Materials Licensees	These ASMs and new requirements delineate licensee responsibility in response to the current threat environment.	A/S RCPDs
12/11/2003	Safeguards Information	Letter to Governor Bob Riley of Alabama from Chairman Diaz	Letter to Alabama Governor which updated him on actions taken by the NRC relating to enhanced physical protection measures for the transportation of spent nuclear fuel. Letter enclosed the Order, Attachment 1 (Licensee List), Attachment 2 (ASMs for the Transportation of SNF Greater than 100 Grams; RIS- 2002-121, Rev. 1.)	Alabama Governor, SLO, SHSA, and Part 71/73 Contact

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Date	Classification	Subject	Information Included	Sent To
1/12/2004	Safeguards Information - Modified	RCPD-04-001, ASMs for M&D Licensees Dated 1/12/2004	RCPD-04-001 enclosed Order, M&D ASMs, Regulatory Issue Summary (RIS) 2002-12M with enclosures, and Implementing Guidance For SLOs, the 11/25/2003 Order on Protection of SGI-M, the 11/24/2003 letter to RCPDs, and the State responses were also provided.	A/S RCPDs in States that License M&D (AZ, CA, GA, IL, LA, MD, MA, NC, OH, TX, WI) cc: SLOs in CA, IL, LA, MD, MA, NC, OH, TX, WI
2/20/2004	Safeguards Information - Modified	RCPD-04-006, Transmittal of 274i Agreements and Temporary Instruction for the Inspection of Panoramic and Underwater Irradiators	RCPD-04-006 enclosed the 274i Agreement and Temporary Instruction for the Inspection of Panoramic and Underwater Irradiators' Additional Security Measures	A/S RCPDs
3/30/2004	Safeguards Information - Modified	RCPD-04-010, A/S That License M&D Facilities	RCPD-04-010 enclosed licensee responses to the NRC Order imposing ASMs on manufacturing and distribution licensees that possess quantities of radioactive material greater than quantities of concern.	A/S RCPDs in AZ, CA, GA, LA, MA, OH, TX
4/8/2004	Safeguards Information - Modified	RCPD-04-011, Order Imposing ASMs for M&D Licensees Dated 1/12/2004	RCPD-04-011 enclosed Order, M&D ASMs, Regulatory Issue Summary (RIS) 2002-12M with enclosures, and Implementing Guidance	A/S RCPDs in AL, AR, CO, FL, IA, KS, KY, ME, MS, NE, NV, NH, NM, NYS DOH, NYC DOH, NYS DOL, ND, OK, OR, RI, SC, TN, UT, WA

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NO COMMENT POLICY FOR CLASSIFIED AND SAFEGUARDS INFORMATION

This is to reinforce the NRC's policy, procedures, and guidance for NRC personnel and contractors concerning classified and Safeguards Information (SGI) that is in the public domain.

Classified information and SGI are protected by preventing dissemination to unauthorized individuals. Occasionally, such information appears in the public domain without authorization. Commenting on the information or attempting to prevent its further dissemination could result in greater damage to the national security and/or common defense and security of the United States than if no comment is made about the information.

The fact that information has appeared publicly does not render the information unclassified or decontrolled. If the discussion concerns protected security information, the answer to any questions raised about the accuracy, designation or classification, or technical merit of such information should be "no comment." A follow up statement should be "The State will neither confirm nor deny the presence or accuracy of protected information in the public domain."

Documents containing speculation in a subject area involving protected security information by individuals not authorized for access to such information are sometimes submitted for unsolicited review by NRC or its contractors. Again, no comment should be made on the accuracy, designation or classification, or technical merit of the documents. Any decision to comment shall be made, insofar as possible, in coordination with NRC and with due consideration to the possible ramifications of such a comment.

If there is any doubt as to the appropriate action to take when implementing this policy, the NRC's Information Security Section, Office of Nuclear Security and Incident Response should be consulted at 301-415-2214.

ENCLOSURE 4

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