

granting or denying access) is governed by 10 CFR 2.311.<sup>3</sup>

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to

minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for

processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 20th day of May, 2015.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

#### ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day          | Event/Activity  |
|--------------|---|
| 0 .....      | Publication of <b>Federal Register</b> notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.   |
| 10 .....     | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.   |
| 60 .....     | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).   |
| 20 .....     | U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).                                   |
| 25 .....     | If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 .....     | Deadline for NRC staff reply to motions to reverse NRC staff determination(s).  |
| 40 .....     | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.  |
| A .....      | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.  |
| A + 3 .....  | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.   |
| A + 28 ..... | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.  |
| A + 53 ..... | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.   |
| A + 60 ..... | (Answer receipt +7) Petitioner/Intervenor reply to answers.   |
| >A + 60 .... | Decision on contention admission.   |

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## NUCLEAR REGULATORY COMMISSION

[NRC-2014-0081]

### Standard Format and Content of Transportation Security Plans for Classified Matter Shipments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 7.13, "Standard Format and Content of Transportation

Security Plans for Classified Matter Shipments." The guide describes a method that NRC staff considers acceptable for compliance with the agency's regulations with regard to the development of classified matter transportation security plans, which identify the correct measures to protect classified matter while in transport.

**ADDRESSES:** The document will be available for those who have established a "need-to-know" and possess access permission to Official Use Only—Security Related Information (OOU—SRI). To obtain the document, contact: Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301-287-3616 or email: [Al.Tardiff@nrc.gov](mailto:Al.Tardiff@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301-287-3616, email: [Al.Tardiff@nrc.gov](mailto:Al.Tardiff@nrc.gov), or Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301-251-7489, email: [Mekonen.Bayssie@nrc.gov](mailto:Mekonen.Bayssie@nrc.gov). U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The NRC is issuing a new guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific

<sup>3</sup>Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as

applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

parts of the agency's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

Regulatory guide RG 7.13 is withheld from public disclosure but is available to those affected licensees and cleared stakeholders who can or have demonstrated a need to know. The "Backfitting and Issue Finality" section describes previously issued guidance on this subject, which is entitled, *Interim Staff Guidance (ISG) DSP-ISG-01, Staff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). This document also contains OUC-SRI information.

## II. Additional Information

DG-7005, was published in the **Federal Register** on April 25, 2014 (79 FR 23015) for a 60-day stakeholders' comment period. The stakeholders' comment period closed on June 24, 2014. Stakeholders' comments on DG-7005 and the staff responses to the stakeholders' comments can be obtained the individuals listed in the **FOR FURTHER INFORMATION** section of this document.

## III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

## III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. This RG provides guidance on development of transportation security plans to protect classified information while such information is in transport, in order to meet the requirements of 10 CFR part 95. The staff has previously issued guidance on this subject in DSP-ISG-01, *Staff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). The staff will use the guidance in the review and approval of new and amended transportation security plans submitted to the NRC. Current licensees with NRC-approved transportation security plans may continue to use DSP-ISG-01, which the NRC has found acceptable for complying with 10 CFR part 95 regulations as long as the licensees do

not change their NRC-approved transportation security plans.

This regulatory guide does not constitute backfitting as described above, would not constitute backfitting under any of the backfitting provisions in 10 CFR Chapter I, nor would it be regarded as backfitting under Commission and Executive Director for Operations guidance. In addition, issuance of the RG would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations.

1. Part 95 applies to materials licensees and other entities transporting (or placing into transport) classified security information, and contains requirements governing such transport. Although some of these materials licensees are protected by backfitting or issue finality provisions in 10 CFR part 52, these backfitting and issue finality protections do not extend to the procedures governing transport of classified information. For example, under the definition of backfitting in 10 CFR 50.109(a)(1), protection is afforded to nuclear power plant licensees against changes in, or new requirements and guidance on, *inter alia*, "procedures or organization required to . . . operate a facility." Procedures governing the transportation of materials off of the facility site cannot reasonably be viewed as constituting such facility operating procedures. The backfitting and issue finality provisions applicable to other materials licensees are written in an analogous fashion. Therefore, changes to the guidance on compliance with 10 CFR part 95—even if imposed on these materials licensees who are protected by backfitting or issue protection provisions in 10 CFR part 52 (see the discussion in item 2)—would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52.

2. Even if the NRC were to conclude that materials licensees are afforded backfitting protection with respect to procedures governing transportation of classified information, changes in guidance would not constitute backfitting as defined in the various NRC backfitting provisions unless imposed on materials licensees. As described earlier, the NRC staff does not intend to impose or apply the guidance in this RG to existing licensees who already have NRC-approved transportation security plans (the exception is where a licensee makes changes to or proposes to amend such plans; the backfitting and issue finality implications are discussed in item 3 below). Given this current lack of staff

intention to impose the guidance in this RG, this would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52. If the staff seeks to impose a position in the RG 7.13 on holders of already issued licenses in a manner which constitutes backfitting or does not provide issue finality as described in the applicable issue finality provision then the staff must make the showing as set forth in the applicable backfitting provision or address the criteria for avoiding issue finality as described applicable issue finality provision.

3. A licensing basis change voluntarily initiated by a licensee is not considered to be backfitting. In such cases, the policy considerations underlying the NRC's backfitting provisions, *viz.* regulatory stability and predictability concerning the terms of an NRC approval, are not applicable where the licensee itself voluntarily seeks a change to its licensing basis. This rationale is reflected in a July 14, 2010, letter from the NRC General Counsel to NEI's General Counsel (ADAMS Accession No. ML101960180)

4. Even if the NRC were to conclude that materials licensees are afforded backfitting protection with respect to procedures governing transportation of classified information, applicants and potential/future applicants for such materials licenses are not, with certain exceptions not relevant here, protected under either the various NRC backfitting provisions or the issue finality provisions under 10 CFR part 52. This is because neither the backfitting provisions nor the issue finality provisions under 10 CFR part 52 were intended for every NRC action which substantially changes the expectations of current and future applicants.

Dated at Rockville, Maryland, this 3rd day of June, 2015.

For the Nuclear Regulatory Commission.

**Harriet Karagiannis,**

*Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

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