

NUCLEAR REGULATORY COMMISSION

[NRC-20YY-XXXX]

Controlled Unclassified Information Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a proposed policy statement to set forth its expectation regarding the treatment of controlled unclassified information (CUI). This proposed policy statement describes how the NRC will comply with regulations recently issued by the National Archives and Records Administration (NARA) that direct agencies to minimize the risk of unauthorized disclosure of controlled unclassified information while allowing timely access by authorized holders. During the transition to the CUI program, all elements of the NRC's existing Sensitive Unclassified Non-Safeguards Information (SUNSI) program will remain in place.

DATES: Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods.

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **<INSERT: NRC-20YY-XXXX>**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Tanya Mensah, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3610, e-mail: Tanya.Mensah@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID **<INSERT: NRC-20YY-XXXX>** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **<INSERT: NRC-20YY-XXXX>**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **<NRC-20YY-XXXX>** in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all

comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In November 2010, the President issued Executive Order 13556, Controlled Unclassified Information (CUI), to “establish an open and uniform program for managing unclassified information that requires safeguarding or dissemination controls.” According to the Executive Order, agency-specific approaches have created an inefficient and confusing patchwork system, resulting in inconsistent marking and safeguarding of information and unnecessarily restricted information-sharing. On September 14, 2016, NARA published in the *Federal Register* a final rule adding new part 2002 to title 32 of the *Code of Federal Regulations* (32 CFR) (81 FR 63323). The CUI final rule went into effect on November 14, 2016, and established requirements for CUI designation, safeguarding, dissemination, marking, decontrolling, destruction, incident management, self-inspection, and oversight across the executive branch. The CUI rule applies directly to Federal executive branch agencies, including the NRC, and the rule’s primary function is to define how the CUI program will be implemented within

these agencies. The CUI rule can also apply indirectly, through information-sharing agreements, to non-executive branch entities that are provided access to information that has been designated as CUI.

Controlled Unclassified Information does not include information that has been classified pursuant to an Executive Order or the Atomic Energy Act of 1954, as amended, nor information a non-Executive Branch entity (e.g., contractors, licensees, Agreement States, intervenors) possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an Executive Branch agency or an entity acting for such an agency.

III. Proposed Statement of Policy

The NRC has long been committed to protecting sensitive information. It is the Commission's policy that the NRC will comply with 32 CFR part 2002, "Controlled Unclassified Information (CUI)" (CUI rule), in order to minimize the risk of unauthorized disclosure of CUI while allowing timely access by authorized holders. In November 2010, the President issued Executive Order (EO) 13556, Controlled Unclassified Information (CUI), to "establish an open and uniform program for managing unclassified information that requires safeguarding or dissemination controls." On September 14, 2016, NARA published 32 CFR part 2002 in the *Federal Register* (81 FR 63323).

The CUI Rule went into effect on November 14, 2016. It defines CUI as information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. The CUI Rule established requirements for CUI designation, safeguarding,

dissemination, marking, decontrolling, destruction, incident management, self-inspection, and oversight across the executive branch.

The CUI Rule applies directly to Federal Executive Branch agencies, including the NRC. The CUI rule identifies NARA as the Executive Agent to implement Executive Order 13556 and to oversee agency actions to ensure compliance with the Executive Order, the CUI rule, and the CUI registry. The CUI registry is an online repository located on the NARA website (<https://www.archives.gov/cui>) which, among other information, identifies all approved CUI categories, provides general descriptions for each, identifies the basis for controls, establishes markings, and includes guidance on handling procedures. The categories within the CUI registry serve as the exclusive designations for identifying CUI.

32 CFR 2002.8(c)(4) states that the CUI Senior Agency Official (SAO) is responsible for ensuring that the agency has CUI implementing policies and plans, as needed. The NRC staff reviewed NARA guidance, including NARA's CUI policy template, to determine the appropriate scope and level of detail needed to comply with the CUI Rule including developing and issuing an agency CUI policy, creating agency CUI training, implementing and verifying that all physical safeguarding requirements are in place to protect CUI, providing CUI training to all agency employees, assessing and transitioning the current configuration of information systems to the CUI rule standard, and developing and implementing internal oversight efforts to measure and monitor the CUI program.

The CUI program at the NRC will replace the Sensitive Unclassified Non-Safeguards Information (SUNSI) program and will also include, within its scope, Safeguards Information (SGI) and Safeguards Information—Modified Handling. Even

though SGI is a form of CUI under the CUI rule, any specific controls found in 10 CFR part 73, “Physical Protection of Plants and Materials,” continue to apply to SGI and will continue to do so until and unless modifications are made through the NRC’s rulemaking process.

The NRC recognizes that the CUI rule could alter how information is shared between the agency and external parties, including licensees, applicants, Agreement and non-Agreement States, and others. The NRC is committed to avoiding unintended consequences that unnecessarily increase the burden on external stakeholders while also maintaining adequate protective measures for CUI.

The CUI program is separate from the Classified National Security Information program. While the two programs may share similar language and some similar requirements, the CUI program’s requirements for designating, protecting, accessing, sharing, and decontrolling information, as well as the repercussions for misuse, differ from those for the classified information program.

In addition, the CUI program does not change NRC policy and practices in responding to a Freedom of Information Act (FOIA) request. Marking and designating information as CUI does not preclude information from release under the FOIA or preclude it from otherwise being considered for public release. The staff must still review the information and apply FOIA exemptions appropriately.

While the NRC transitions to the CUI program, all elements of the Sensitive Unclassified Non-Safeguards Information (SUNSI) program will remain in place. Until directed in accordance with the NRC’s CUI policy, guidance, and training, NRC employees and contractors will not use CUI markings or follow other requirements specific to CUI. If NRC employees or contractors receive CUI before the implementation

of the CUI program at the NRC, they will continue to follow current NRC guidance to protect sensitive information.

Key Elements of the CUI Program

- (1) The NRC's CUI Program Office: The NRC's CUI Senior Agency Official (SAO) is responsible for planning, directing, and overseeing the implementation of a comprehensive, coordinated, integrated, and cost-effective NRC CUI program, consistent with applicable laws and regulations and direction, management initiatives, and policies from the Commission, the Executive Director for Operations, and the Chief Information Officer. The SAO's duties are assigned to the Director, Governance and Enterprise Management Services Division in the Office of the Chief Information Officer.
- (2) Applicability: This policy applies to all NRC employees and contractors. The CUI rule also may apply indirectly through information-sharing agreements, as discussed in the CUI rule, to persons or entities that are provided access to information that has been designated as CUI.

In accordance with the CUI rule, the NRC's CUI program will contain the following elements:

- Safeguarding standards, including for marking, physical protection, and destruction;
- Information technology and cybersecurity control standards;

- Access and dissemination standards, including, where feasible, agreements with external parties for sharing information;
- Training;
- Processes for decontrolling information, issuing waivers, managing incidents, and challenging designations of information as CUI; and
- A self-inspection and corrective action program.

Management Directive 12.6, “NRC Controlled Unclassified Information Program,” when published, will provide detailed guidance to NRC staff and contractors for the handling, marking, protecting, sharing, destroying, and decontrolling of CUI in accordance with 32 CFR part 2002.

Dated at Rockville, Maryland, this XXth day of <MONTH> 2018.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission