OFFICE OF THE INSPECTOR GENERAL

U.S. NUCLEAR REGULATORY COMMISSION

Audit of NRC's Generic Communications Program

OIG-05-A-19 September 30, 2005

AUDIT REPORT

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September 30, 2005

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Stephen D. Dingbaum**/RA/**
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S GENERIC COMMUNICATIONS PROGRAM (OIG-05-A-19)

Attached is the Office of the Inspector General's (OIG) audit report, *Audit of NRC's Generic Communications Program.*

The audit identified generic communications, specifically, safeguards advisories, that are issued outside of NRC's existing regulatory framework. As a result, the agency (1) may be unable to pursue actions requested or required of licensees in its generic communications, and (2) compromises its openness policy, thereby affecting the public's confidence in NRC's regulatory processes and decision-making.

Additionally, controls for oversight of licensee actions on generic communications are inadequate and NRC did not employ a sound methodology when conducting its effectiveness assessment of the Generic Communications Program. As a result, the agency risks the potential loss of safety/regulatory data and lacks assurance that its generic communications are effective.

Comments from the September 6, 2005, exit conference and your September 27, 2005, written comments have been incorporated, as appropriate, in our final report. Appendix B contains the agency's formal written response in its entirety. Appendix C presents OIG's detailed analysis of the formal comments.

If you have any questions or wish to discuss other issues, please call Anthony Lipuma at 415-5910 or me at 415-5915.

Attachment: As stated

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EXECUTIVE SUMMARY

BACKGROUND

The Nuclear Regulatory Commission's (NRC) primary method of communicating concerns or issues to licensees is through generic communications, i.e., transmittals to one or more classes of licensees. NRC issues several types of generic documents to its licensees and stakeholders in order to communicate significant industry operating experience, request action or information on safety concerns, or provide guidance on issues of regulatory interest. NRC encourages voluntary industry cooperation and participation in the agency's Generic Communications Program.

NRC's Generic Communications Program identifies four communication products - bulletins, generic letters, regulatory issue summaries, and information notices. The first three of the four communiqués can request actions or require responses from licensees; information notices are to simply provide information. However, Generic Communications Program products cannot be used to impose new requirements or mandatory actions. The communication tool used for imposing mandatory regulatory requirements is an NRC Order.

The Office of Nuclear Reactor Regulation (NRR) has primary responsibility for implementing the agency's Generic Communications Program. In addition to NRR, the Office of Nuclear Material Safety and Safeguards issues generic communications to its materials licensees and the Office of Nuclear Security and Incident Response issues security-related generic communications to all classes of NRC licensees. After issuance of a generic communication, the applicable NRC program office conducts follow-up activities, including monitoring and assessing licensees' performance related to generic communications.

Prior Agency Assessments

Over the past 10 years, a number of agency self-assessments have identified weaknesses in the Generic Communications Program. In response, the agency implemented a number of corrective actions, including revisions to internal policies and procedures.

PURPOSE

The purpose of this audit was to assess the effectiveness of the Generic Communications Program, specifically:

- whether NRC generic communications are issued in accordance with the Generic Communications Program and other regulatory requirements, and

- how NRC tracks licensee actions on generic communications.

RESULTS IN BRIEF

Through its Generic Communications Program, NRC has an established framework for developing and issuing certain generic communications. However, OIG identified weaknesses with the agency's internal controls over generic communications. Specifically,

A. safeguards advisories (i.e., a security-related generic communication) are issued outside of NRC's existing regulatory framework,

B. controls for oversight of licensee actions on generic communications are inadequate, and

C. NRC's self-assessment's conclusion of Generic Communications Program effectiveness is not supported.

These issues exist primarily because NRC management has not followed existing policies and procedures by developing and issuing generic communications outside of the agency's regulatory framework. Without application of adequate internal controls to ensure that agency communications are promulgated in accordance with applicable regulatory requirements, the agency may be unable to pursue actions requested or required of licensees in its generic communications, and may compromise its openness policy, thereby affecting the public's confidence in NRC's regulatory processes and decision-making.

Furthermore, NRC's controls for oversight of licensee actions on generic communications are inadequate and the agency did not employ a sound methodology when conducting its effectiveness assessment of the Generic Communications Program. As a result, NRC risks the potential loss of safety/regulatory data and lacks assurance that its generic communications are effective.

RECOMMENDATIONS

This report makes four recommendations to the Executive Director for Operations to strengthen the agency's oversight and controls of its generic communications.

OIG ANALYSIS OF AGENCY COMMENTS

At an exit conference with agency senior executives held on September 6, 2005, NRC officials generally agreed with most of the report's findings and recommendations. Subsequent to that meeting, NRC provided informal comments on the draft report and OIG met with NRR management to address specific issues and concerns needing further clarification and/or explanation. On September 27, 2005, the Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations, provided a formal response to this report in which the staff generally concurs with the report's findings and recommendations. The Deputy Executive Director's transmittal letter and specific comments on this report are included as Appendix B.

This final report incorporates revisions made, where appropriate, as a result of the subsequent meeting and the agency's informal and formal written comments. Appendix C contains OIG's specific responses to the agency's comments.

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ABBREVIATIONS AND ACRONYMS

ACRS	Advisory Committee on Reactor Safeguards
CFR	Code of Federal Regulations
CRGR	Committee to Review Generic Requirements
FTE	full-time equivalent
MD	Management Directive
NMSS	Office of Nuclear Material Safety and Safeguards
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
NSIR	Office of Nuclear Security and Incident Response
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OMB	Office of Management and Budget
Task Force	Davis-Besse Lessons Learned Task Force

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I. BACKGROUND

The Nuclear Regulatory Commission's (NRC) primary method of communicating concerns or issues to licensees is through generic communications. The agency defines generic communications as "transmittals to one or more classes of licensees." NRC issues several types of generic documents to its licensees and stakeholders in order to communicate significant industry operating experience, request action or information on safety concerns, or provide guidance on issues of regulatory interest. NRC encourages voluntary industry cooperation and participation in the agency's Generic Communications Program.

NRC's Generic Communications Program

The Generic Communications Program identifies four communication products - bulletins, generic letters, regulatory issue summaries, and information notices. The first three of the four communiqués can request actions or require responses from licensees; information notices are to simply provide information. However, Generic Communications Program products cannot be used to impose new requirements or mandatory actions. The communication tool used for imposing mandatory regulatory requirements is an NRC Order.[1]

Table 1 summarizes the intended purpose of each of the four Generic Communications Program products.

[1]NRC Orders are regulatory requirements that may modify, suspend, or revoke a license; instruct a licensee to cease and desist from a given practice or activity, or to take such other action as may be proper.

Table 1

NRC Generic Communications Program's Officially Recognized Products and Uses

Type	Issuance Purpose	Can Require Response or Request Action
Bulletins	• share urgent risk-significant issues • can be issued on an expedited basis without extensive formal interaction with industry	Yes
Generic Letters	• have licensees perform analyses or submit descriptions of proposed corrective actions on matters of safety, safeguards, or the environment and may request written submittals that they have completed the requests with or without prior NRC approval of the action • request technical information that NRC needs to perform its functions • submit proposed changes to technical specifications	Yes
Regulatory Issue Summaries	• document NRC endorsement of the resolution of issues addressed by industry-sponsored initiatives • solicit voluntary licensee participation in pilot programs • inform licensee of opportunities for regulatory relief • announce staff technical or policy positions not previously communicated to industry or not broadly understood • address matters previously reserved for administrative letters	Yes (but response is strictly voluntary)
Information Notices	• bring significant, recently identified operating experience about safety, safeguards, or environmental issues to the attention of the nuclear industry. [Addressees are expected to review the information for applicability to their facilities and consider actions, as appropriate, to avoid similar problems.] • do not convey or imply new requirements or interpretations	No

Generic Communications Program Responsibilities

The Office of Nuclear Reactor Regulation (NRR) has primary responsibility for implementing the agency's Generic Communications Program, including providing guidance regarding the development,

processing, closeout, and follow-up activities. NRR staff work with NRC's four regions and other program offices to ensure public health and safety by systematically monitoring reactor-related events, reports, and data to determine the need for a generic communication.

In addition to NRR, the Office of Nuclear Material Safety and Safeguards (NMSS) issues generic communications to its materials licensees and the Office of Nuclear Security and Incident Response (NSIR) issues security-related generic communications to all classes of NRC licensees.

After issuance, the applicable NRC program office conducts follow-up activities, including monitoring and assessing licensees' performance related to generic communications.

Generic Communications Program Budget and Resources

Although NMSS and NSIR each expend resources in the development of generic communications, only NRR identifies the budget and resources for Generic Communications Program activities. For FY 2005, the agency budgeted $72,000 (including $12,000 of carryover funds from FY 2004) for estimated activity within NRR's Generic Communications Program and 8.7 full-time equivalents (FTE) for generic communications and compliance activities. Actual expenditures for FY 2004 were $43,000 and 6.06 FTE.

NRR does not budget resources for generic communications completed by NMSS or NSIR. Because these two program offices do not specifically identify resources attributed to generic communications activities as separate budget line items, the Office of the Inspector General (OIG) could not determine the level of actual resources (FTE and dollars) expended.

Prior Agency Assessments

Over the past 10 years, a number of agency self-assessments[2] have identified weaknesses in the Generic Communications Program. In response, the agency implemented a number of corrective actions, including revisions to internal policies and procedures.

[2] 1995 SECY-95-063, *Final Report on NRC Analysis and Response to the Towers Perrin Nuclear Regulatory Review Study,* dated March 15, 1995; *Davis-Besse Reactor Vessel Head Degradation Lessons-Learned Task Force Report,* dated September 30, 2002; and *Effectiveness Review of Lessons Learned Task Force Reports*, dated August 2, 2004.

II. PURPOSE

The purpose of this audit was to assess the effectiveness of the Generic Communications Program, specifically:

- whether NRC generic communications are issued in accordance with the Generic Communications Program and other regulatory requirements, and

- how NRC tracks licensee actions on generic communications.

Appendix A provides a detailed description of the audit's scope and methodology.

III. FINDINGS

Through its Generic Communications Program, NRC has an established framework for developing and issuing certain generic communications. However, OIG identified weaknesses with the agency's internal controls over generic communications. Specifically,

A. safeguards advisories (i.e., a security-related generic communication) are issued outside of NRC's existing regulatory framework,

B. controls for oversight of licensee actions on generic communications are inadequate, and

C. NRC's self-assessment's conclusion of Generic Communications Program effectiveness is not supported.

Without adequate internal controls, NRC cannot ensure the proper use of, or response to, generic communications. As a result, the agency may not be able to pursue actions requested or required of licensees in its generic communications, which could compromise the public's confidence in NRC's regulatory program.

A. Safeguards Advisories are Issued Outside of NRC's Existing Regulatory Framework

NSIR issues security advisories[3] that are developed and distributed outside of NRC's Generic Communications Program because NSIR managers believe the formal process takes too long. As a result, the advisories, particularly safeguards advisories, are not developed in accordance with the agency's structured review and approval practices. Consequently, safeguards advisories could be issued that do not meet regulatory requirements. The lack of a formal process could lead to an absence of necessary reviews and thereby compromise NRC's regulatory process. Furthermore, the lack of a clear, publicly documented process for requesting and disseminating information through safeguards advisories compromises NRC's openness principle for transparent regulation.

[3] The generic term "security advisories" denotes threat and safeguards advisories, as well as security letters sent to classes of licensees.

Generic Communications Program Process Reviews

All Generic Communications Program products (initiated by NRR, NMSS, or NSIR) go through the Program's disciplined process that includes the following controls associated with technical and regulatory reviews:

- ***Committee to Review Generic Requirements Review***

The Committee to Review Generic Requirements (CRGR) is an advisory committee to NRC's Executive Director for Operations and is responsible for:

- helping NRC program offices to implement the Commission's backfit policy, and
- ensuring that proposed generic backfits imposed on NRC-licensed power reactor and selected nuclear materials licensees are appropriately justified per NRC regulations.

  - ***Backfit Review***

    Backfitting is defined as the modification of systems, structures, components, or design of a plant or a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a plant or a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position.

    NRC's backfit rules for reactors and materials[4] require a systematic analysis be satisfied for all backfits the agency seeks to impose,[5] unless a documented evaluation determines that the backfit is necessary for either "compliance" or "adequate protection" purposes.

[4] "Backfitting." per 10 CFR sections 50.109, 70.76, and 76.76.

[5] Backfits may be imposed if the Commission's analysis determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security, and that the direct and indirect costs of implementation are justified in view of this increased protection [10 CFR 50.109 (a)(3)-(a)(4), 10 CFR 70.76(a)(2)-(a)(4), and 10 CFR 76.76(a)(2)-(a)(4)].

Nonetheless, the regulation requires some form of documentation when imposing a backfit under either of these standards.[6] There are no regulatory exceptions to the backfit rule for security issues.

- ***Advisory Committee on Reactor Safeguards Review***

The Advisory Committee on Reactor Safeguards (ACRS) is statutorily mandated and has three primary purposes:

- review and report on safety studies and reactor facility license and license renewal applications;
- advise the Commission on the hazards of proposed and existing reactor facilities and the adequacy of proposed reactor safety standards; and
- initiate reviews of specific generic matters or nuclear facility safety-related items.

ACRS reviews generic communications, when applicable, before the generic communication is issued for public comment. The Committee can defer its response until after public comments are received and reviewed. Additionally, ACRS should receive copies of all generic letters and bulletins and selected regulatory issue summaries forwarded for CRGR review.

- ***Paperwork Reduction Act Compliance Review***

The Paperwork Reduction Act of 1980 (Act), as revised in 1995, governs Federal requests for information collections and stipulates that independent regulatory agencies (such as NRC) must justify to the Office of Management and Budget (OMB) their information collection requests.

The Paperwork Reduction Act is intended to:

- minimize the burden for respondents,
- minimize information collection-related costs to the Federal government, and

[6] If immediately effective regulatory action is required, a provision at 10 CFR 50.109(a)(6), 10 CFR 70.76(a)(6), and 10 CFR 76.76(a)(6), allows for the documented evaluation to follow, rather than precede, the regulatory action.

- improve the responsibility and accountability of Federal agencies to Congress and to the public for implementing the information collection review process and information management.

Corporations and businesses (such as NRC licensees) are covered by the Act's definition of persons or public entities that may be affected by an agency's "collection of information" activities.

The Act also requires that Federal agencies obtain and display a valid OMB clearance (control) number for all information requests submitted to 10 or more non-Federal entities or individuals.[7] Each part of the Code of Federal Regulations applicable to NRC contains an OMB clearance number for NRC generic communication use.

Evolution of Security Advisories in View of September 11, 2001

Prior to the terrorist attacks of September 11, 2001, the agency dispatched only threat advisories. NRC threat advisories were issued infrequently and were informational only in nature, primarily communicating threat environment information to licensees. Immediately following the terrorist attacks of September 11, 2001, the agency quickly issued threat advisories to its licensee community. This was an effective and efficient use of agency resources and allowed the licensee community to be quickly apprised of changing threat information.

In the weeks that followed, NRC continued to use threat advisories to communicate information to licensees. In October 2001, the agency issued a threat advisory which stated that additional details would be provided in an upcoming "safeguards" advisory. From that time forward, threat advisories continued to primarily fulfill their original function of communicating information regarding changing threat environments while the agency's uses of the newly-created safeguards advisories evolved over time.

[7] Information collection requests addressed to all or a substantial majority of an industry is presumed to involve 10 or more persons.

Change in Uses of Safeguards Advisories

According to NSIR documents, safeguards advisories are defined as a communication of information from the NRC to licensees, where the nature of the information provided involves:

- an identified vulnerability or potential vulnerability;
- protection of the national infrastructure;
- or any other information that requires immediate or prompt attention that would not be timely if other generic communication procedures were utilized.

In the months following September 11, 2001, the pattern of use of threat advisories continued as described above, while the issuance rate was understandably less than that in the immediate aftermath of the attacks. Similarly, safeguards advisories were also seen as a quick method to work in cooperation with the licensee community in response to the terrorist attacks of September 11, 2001. However, in contrast to threat advisories, safeguards advisories began to be used more frequently to achieve a number of purposes other than sharing information. For example, some safeguards advisories communicated information, requested information, requested action, and provided regulatory interpretations.

NSIR's Organizational Development

In April 2002, NRC consolidated staff members experienced in safeguards, security, and incident response functions into the new NSIR office, in order to improve timeliness and consistency of communications among NRC's employees and external stakeholders. To meet the urgent security needs of the agency after the terrorist events of September 11, 2001, this newly formed program office became operationally functional in advance of developing its organizational framework, policies, and procedures. Consequently, NSIR-issued safeguards advisories were developed and distributed outside of the agency's established regulatory framework.

NSIR managers acknowledge that safeguards advisories are a form of generic communication being developed and issued beyond the established regulatory framework. To date, NSIR has not finalized any internal office policies or procedures to address the selection, development, or issuance of safeguards advisories.[8] Furthermore, the agency provides guidance and procedures intended to ensure that generic communications are justified and comply with regulatory requirements. However, safeguards advisories are not discussed in any of the agency's existing procedures or directives.

- ***NSIR Perceives the Generic Communications Program as Untimely***

NSIR justifies issuing safeguards advisories outside of any established processes on two grounds: first, that security issues require quick notification to the licensee community; and second, the perception that the agency's Generic Communications Program is not efficient enough to meet the timeliness needs of safeguards advisories.

- ***Examples of Generic Communications Processing Times***

  Shortly after September 11, 2001, agency managers from offices responsible for safeguards and security issues created the new security-related generic communications vehicle called "safeguards advisory" because they felt the bureaucratic nature of the Generic Communications Program would impede the timeliness of issuing important security communications. In fact, the agency defines safeguards advisories as a type of communication to use for information that "[r]equires immediate or prompt attention that would not be timely if other generic communication procedures were utilized." Specifically, NRC managers understood that it generally takes at least several months to issue a generic communication through the Generic Communications Program. Although not typical, Table 2 shows that generic communications can be issued in as little as one day, when in response to a significant event.

[8] During this audit, NSIR began drafting procedures to address safeguards advisories. However, NSIR said due to other priorities and the additional consideration of whether advisories should be recognized and incorporated in NRC's formal Generic Communications Program, the formal procedures have not been finalized. NSIR stated that it has an informal process for management review and approval of safeguards advisories.

Table 2

Issue Times for Sample of Generic Communications Program Products

Example No.	Description	Date	Elapsed Time from Discovery[9]
1	Discovery of cavity in Davis-Besse Vessel Head	March 7, 2002	--
	Information Notice 02-11	March 12, 2002	5 days
	Bulletin 2002-01	**March 18, 2002**	**11 days**
2	Death of oncology patient attributed at least in part to radiation overdose	November 21, 1992	--
	Second source separation reported to the NRC	December 7, 1992	--
	Bulletin 92-03 Issued	**December 8, 1992**	**1 day/17 days**
3	Discovery of inadequate fire barrier in seismic gaps	January 27, 2005	--
	Information Notice 05-04	February 14, 2005	18 days

The above examples show that generic communications dealing with significant issues, such as the Davis-Besse vessel head problems, can be issued in a timely manner. In fact, as reflected in **bold** in Table 2, the agency developed and issued two bulletins (i.e., the Generic Communications Program product designed to share urgent risk-significant issues) in about two weeks — a time frame considered by an NSIR senior executive as a "reasonable way to proceed."

In addition, NSIR at times chose the Generic Communications Program (see Table 3) to convey security matters of similar substance to those found in safeguards advisories. Specifically, NSIR issued 18 regulatory issue summaries (a recognized Generic Communications Program product), during the same time frame where NSIR issued 65[10] threat and safeguards advisories (unrecognized generic

[9]The time used is very conservative because it is based on discovery or notification of the issue until issuance date of the generic communication. This includes preparation time, review time, process reviews and concurrence.

[10] NSIR provided information regarding the issuance of 65 security advisories during the reference period. However, this number may be conservative because NSIR had not maintained a comprehensive log of the issued advisories.

communications products). Yet, in these cases, NSIR has no documented rationale for selecting a recognized generic communications product versus using security advisories.

Table 3

NRC/NSIR Security-Related Generic Communications Issued September 11, 2001 through January 26, 2005

Type	Number
Security Advisories*	65
Regulatory Issue Summaries**	18
Orders***	10
Total	**93**

*Threat and safeguards advisories - not recognized by the Generic Communications Program
**Official Generic Communications Program product
***Orders meet the generic communication definition when issued to one or more classes of licensees

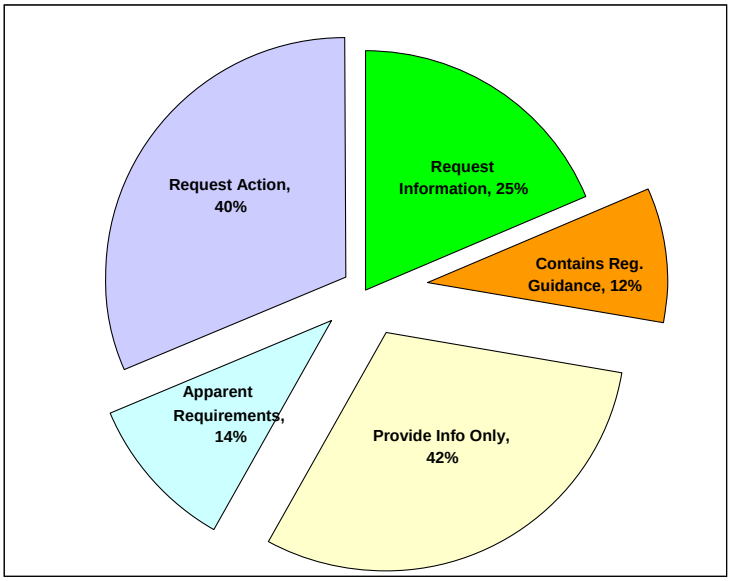
- ***Lack of Technical and Regulatory Reviews Compromises NRC's Regulatory Processes***

The agency's use of advisories significantly increased after September 11, 2001. Agency managers and staff, as well as industry representatives have more and more often questioned the regulatory authority for issuing advisories. Of particular concern are the safeguards advisories primarily because, as stated by a senior Nuclear Energy Institute representative, NRC is using many safeguards advisories "to establish new requirements without going through the required agency review process."

By developing and issuing generic communications outside of the established Generic Communications Program, NRC compromises its regulatory processes. For example, OIG determined that safeguards advisories have no documented regulatory foundation for communicating to licensees anything other than information. However, as shown in Figure 1 below, the majority of advisories served purposes beyond simply conveying information.

Figure 1*

Purposes Served by Advisories Issued from September 11, 2001 through January 26, 2005



*OIG notes that the percentages in the above chart exceed 100% because several advisories served multiple purposes other than providing information only.

OIG's Technical Review of NRC/NSIR-Issued Generic Communications

As discussed in Table 3, NRC/NSIR issued 93 security-related generic communications from September 11, 2001 to January 26, 2005. OIG determined that 65 of the communiqués were security-related advisories, of which 38 percent (or 25 advisories) provided information only. However, the remaining 62 percent (or 40 advisories) were used for other purposes, such as requesting or requiring information or licensee action, containing regulatory guidance, and conveying apparent requirements. Figure 1 represents the purposes served by the 65 security-related advisories.

The agency is obligated to follow appropriate regulatory requirements for its generic communications. However, because advisories are issued outside of the Generic Communications Program, the required regulatory reviews were not performed. As a result, though appropriate in some cases, safeguards advisories did not receive:

- CRGR backfit review although this committee has a defined role in reviewing generic communications to make sure NRC stays within its backfit authorities. Without CRGR review, NRC could impose an improper backfit on its licensees.

- ACRS technical review although this committee has a defined role in reviewing any generic communication that conveys requirements on licensees. Without ACRS review, NRC could impose unjustified requirements on its licensees.

- Paperwork Reduction Act review to ensure proper citing of either the applicable OMB control (clearance) number for information requests, or an exemption clause, where appropriate.

    - The Act states that the NRC "may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number."

  None of the safeguards advisories issued from September 11, 2001 until mid-May 2005 displayed an OMB control number nor contained a statement that the provisions of the Paperwork Reduction Act do not apply (i.e., NRC review determined that OMB clearance was not required).

  Because NRC did not satisfy Paperwork Reduction Act requirements regarding control numbers, licensees have a basis to ignore requests or suggestions contained in NRC safeguards advisories. This brings into question the agency's ability to pursue actions requested or required of licensees as contained in any of these advisories.

- ***NRC's Openness Principle Is Compromised***

  According to NRC's Strategic Plan, the agency has a goal to "ensure openness in our regulatory process."

  - The Openness goal further states that the NRC "views nuclear regulation as the public's business and, as such, it should be transacted openly and candidly in order to maintain the public's confidence. The goal to ensure openness explicitly recognizes that the public must be informed about, and have a reasonable opportunity to participate meaningfully in, the NRC's regulatory process."

  - The Strategic Outcome that supports the goal of openness is, "Stakeholders are informed and involved in NRC processes as appropriate."

However, there is no clear, publicly documented process for disseminating and requesting information through safeguards advisories. In addition, safeguards advisories do not have a consistent, formally-defined concurrence process. This lack of an identified, transparent agency process compromises NRC's principle of open regulation.

While NSIR senior managers acknowledge that there should be a clear, formal process for the development and issuance of safeguards advisories, they expressed a need for balance between protecting public openness (an agency goal) and common defense and security (the agency's mission). Currently there are differing opinions among NRC senior managers regarding the public's right to know about the information contained in the advisories. As of the date of this report, the public may still not know of the existence of specific safeguards advisories because they are not made publicly available even though many do not contain information actually designated by the agency as "Safeguards Information."[11]

[11] The title "safeguards advisories" is misleading in that many do not contain Safeguards-classified information.

Summary

Through its Generic Communications Program, NRC has an established framework for developing and issuing certain generic communications. However, NRC management has not followed existing policies and procedures by developing and issuing safeguards advisories outside of the agency's regulatory framework. Without application of adequate controls to ensure that agency communications are promulgated in accordance with applicable regulatory requirements, the agency may --

- Be unable to pursue actions requested or required of licensees in its generic communications,
- Compromise its openness policy, thereby affecting the public's confidence in NRC's regulatory processes and decision-making, and
- Lack assurance that its generic communications are effective.

To date, NSIR has not finalized any policies or procedures for developing and issuing safeguards advisories.

RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Include safeguards advisories, as well as any other agency communication tool that meets the definition of a generic communication, in the formal Generic Communications Program to ensure compliance with regulatory requirements.
2. Pursue immediately the applicability of including appropriate Office of Management and Budget control numbers in safeguards advisories.

B. Controls for Oversight of Licensee Actions on Generic Communications are Inadequate

NRC's oversight of licensee actions on generic communications is inadequate because the program lacks the controls for an agency-wide systematic follow-up methodology. Instead, the follow-up process is left to the discretion of the project managers responsible for each site. Without a systematic process to ensure that a generic communication is consistently monitored through its lifecycle (from initiation to closure), the agency could lose track of requests to licensees, responses from licensees, and important operating experience data that might identify potential safety and regulatory issues.

Internal Controls for Generic Communications are Lacking

The Generic Communications Program lacks standards for following the full lifecycle of an agency generic communication because the Program's responsibilities end at issuance.

OMB Circular A-123, *Management Accountability and Control,* dictates that agency internal controls include "the plan of organization, methods and procedures adopted by management to ensure its goals are met." In addition, other Federal internal control standards reference a need for agencies to maintain clearly documented, readily available information on the full lifecycle of all agency communications. Therefore, NRC should have procedures in place to facilitate systematic tracking of generic communications from initiation to closure.

Generic Communications Program Tracking Ends at Issuance

The Generic Communications Program's controls are not adequate because the Program only tracks part of the lifecycle of a generic communication. Specifically, the Program's procedures address following a generic communication from the proposal stage, through development of the chosen product, but ends at document issuance. As a result, the Program does not track NRC or licensee actions related to the matter once the document is issued. Such subsequent actions include coordinating licensee responses, agency review of those responses, and any resulting inspections.

Upon issuance of a generic communication, individual NRC project managers or organizational groups assume tracking responsibilities. At this point, the process relies on the diligence of individuals rather than a consistent, systematic tracking process. If agency management desires the status of licensees' actions on a particular generic communication, the data is not available through the Generic Communications Program. Instead, the data must be compiled from a variety of sources, such as the project managers responsible for each site.

The inherent risk in relying on individuals to track NRC or licensees actions subsequent to issuance is that individuals may choose differing tracking strategies (which may or may not be effective) or may fail to track at all. NRC project managers have several information systems at their disposal for tracking data on generic communications. According to NRR staff, these systems include the Operating Experience Section Task Tracking Database; the Multi-Plant Actions system; the Time, Resource, Information, and Management system; and the Reactor Program System. Each of these identified systems is a standalone system and contains different, as well as duplicative, generic communications information.

Internal Guidance on Processing Generic Communications

NRR Office Instruction LIC-503, *Generic Communications Affecting Nuclear Reactor Licensees*, and NRC Inspection Manual Chapter 0730, *Generic Communications Regarding Materials and Fuel Cycle Issues,* both provide guidance and procedures for the preparation, distribution, follow-up, and closeout of generic communications.

However, the internal guidance provides no agency-wide policies or procedures regarding the systematic tracking of generic communication follow-on activities performed by NRC or its licensees. In other words, the guidance discusses 'what' needs to occur for closing out a generic communication, but not 'how' or 'where' to record the information. For example, the guidance discusses how to evaluate responses, but does not address how to track responses.

Potential Loss of Safety/Regulatory Data

NRC issues generic communications to provide guidance, common approaches to resolve issues, and to share industry's operating experiences. Therefore, it is vital that agency management has

assurance that licensees take actions as expected. As previously stated, basic tenets of management controls include methods and procedures adopted by management to *ensure its goals are met*.

When the agency must rely on the diligence of individuals to track actions related to generic communications, it cannot have the programmatic assurance that its goals are met and risks the loss of significant operational data needed for regulatory and/or reactor safety decisions.

RECOMMENDATION

OIG recommends that the Executive Director for Operations:

3. Implement controls to ensure a systematic, consistent tracking methodology from initiation to closure for each agency-issued generic communication.

C. NRC's Self-Assessment's Conclusion of Generic Communications Program Effectiveness is Not Supported

Based on NRC's Commission direction, NRR conducted an effectiveness study of Generic Communications Program products. Although that study concluded that generic communications were effective, the review lacked an adequate sample or scientific basis for the conclusion. The limited sample chosen by NRR resulted from an inability to reach consensus on a sample selection and because of a preconception that the Generic Communications Program was effective. As a result of such a limited review, the conclusion that the Generic Communications Program products are effective is not supported.

Background

In March 2004, based on findings by the Davis-Besse Lessons Learned Task Force (Task Force),[12] the Commission directed staff to evaluate whether generic communications accomplish their intent to inform licensees and collect information on licensee actions in response to serious incidents. The Task Force recommended that staff assess the effectiveness of clear communication to licensees and licensee follow-up activities. The agency's definition of "Effectiveness" was defined as the achievement of a desired outcome from a program, process, or activity in an efficient, realistic, and timely manner.

Prior to the Task Force report, NRR conducted an effort to identify the five highest priority NRC-issued generic communications by requesting technical assistance from staff members in NRR, the Office of Nuclear Regulatory Research, and NRC's four regions. The highest priority generic communications would then be reviewed for verification of continued licensee support and commitment. Agency staff was asked to use their expertise to prioritize from a list of 104 pre-screened Generic Communications Program products, consisting of 36 bulletins and 68 generic letters.

[12] *Davis-Besse Reactor Vessel Head Degradation Lessons-Learned Task Force Report*, dated September 30, 2002.

Agency's Self-Assessment Methodology Was Not Statistically Sound

An NRC statistician advised OIG that the agency could not adequately assess the effectiveness of Generic Communications Program products based on a review of the small, biased sample size proposed by NRR (i.e., 6-10 bulletins/generic letters) or from the actual sample (i.e., two generic communications). Nonetheless, NRR's self-assessment concluded that licensees had adequately responded to generic letters and bulletins. The results communicated to the Commission further stated that generic communications accomplish their intent to inform licensees and collect information on licensee actions in response to significant issues. The self-assessment staff reported that the Generic Communications Program products are effective.

- NRR's proposed methodology for the effectiveness self-assessment was to sample 6-10 bulletins and generic letters from the aforementioned prioritized list. The review would include inspecting for follow-up activities at 8-10 reactor sites. Although the initial methodology was not sound, NRR management and the Commission approved this proposal.

According to the NRC statistician, in order to effectively assess the Generic Communications Program, a significantly larger sampling of products would have been needed than that proposed by the staff. The statistician did not provide a specific sample size because such a decision requires greater insights into how statistical parameters affect the program (e.g., classifying results by bulletin or generic letter).

Moreover, NRR did not conduct the proposed review previously described. In actuality, the review consisted of *only two* generic communications; one generic letter and one regulatory issue summary – a category not even identified in the initial screening. Staff reported that verification of the two generic communications was conducted at 12 plants; three in each of the four regions which OIG notes exceeds the number originally proposed. However, this review approach, like the proposed one, was not based on a sound methodology.

- **Preconceptions Influenced the Prioritization Exercise**

  The agency did not conduct or provide a documented, scientific basis for either the proposed or completed sample because staff could not reach consensus on the priority of the "most significant" generic communications. As a result, the staff decided to reduce the sample for review from the proposed 6-10 high-level generic communications, to just two, including one lower-level priority communiqué.

According to those directly involved in sample selection, staff biases clouded the sample prioritization decisions. In addition, the majority of those interviewed for this audit, including those directly involved in the sample selection, are generally satisfied that the agency's Generic Communications Program is effective. One senior agency executive stated that his confidence in the effectiveness of the Generic Communications Program stems from many years of experience using NRC's generic communications process. Such a preconception contributed to the agency's acceptance of the projection of program effectiveness, regardless of sample size.

In discussions on this finding, NRC staff said this effort was never intended to be a statistical evaluation of the effectiveness of the Generic Communications Program but rather to be a case study involving selected communications. Though not intended, the agency's reported results implied that the whole Generic Communications Program, and not just the selected communiqués, is effective. However, as a result of the inadequate sample size and selection process, there is no scientific/statistical basis to conclude, or imply, that the program and its associated products are effective.

RECOMMENDATION

OIG recommends that the Executive Director for Operations:

4. Direct the development of a methodology that will allow the staff to gauge the effectiveness of agency-issued generic communications.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Include safeguards advisories, as well as any other agency communication tool that meets the definition of a generic communication, in the formal Generic Communications Program to ensure compliance with regulatory requirements.

2. Pursue immediately the applicability of including appropriate Office of Management and Budget control numbers in safeguards advisories.

3. Implement controls to ensure a systematic, consistent tracking methodology from initiation to closure for each agency-issued generic communication.

4. Direct the development of a methodology that will allow the staff to gauge the effectiveness of agency-issued generic communications.

V. AGENCY COMMENTS

On September 6, 2005, OIG discussed its draft report with agency senior executives. Subsequent to that meeting, NRC provided informal comments on the draft report and OIG met with NRR management to address specific issues and concerns needing further clarification and/or explanation. On September 27, 2005, the Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations, provided a formal response to this report in which the staff generally concurs with the report's findings and recommendations. The agency's transmittal letter and specific comments on this report are included as Appendix B.

This final report incorporates revisions made, where appropriate, as a result of the subsequent meeting and the agency's informal and formal written comments. Appendix C contains OIG's specific responses to the agency's comments.

Appendix A

SCOPE AND METHODOLOGY

NRC's Generic Communications Program products are the primary means for communicating with agency licensees. Therefore, all elements of the Program must be effective and efficient in order for generic communications to accomplish their intent.

The purpose of this audit was to assess the effectiveness of the Generic Communications Program, specifically:

- whether NRC generic communications are issued in accordance with the Generic Communications Program and other regulatory requirements, and

- how NRC tracks licensee actions on generic communications.

To address the audit objectives, OIG reviewed relevant management controls, related documentation, and Federal statutes, including reviews of:

- Management Directives 3.54, 3.57, and 3.53
- NRC Inspection Manual Chapter 0730
- NRR Office Instructions LIC-503 and LIC-401
- NSIR's Office Instruction COM-201, Security Advisories, and Emergent Work Process
- NRC's Backfit Rule
- OMB's Paperwork Reduction Act
- GAO's Internal Control Standards
- CRGR's Charter
- NRC's Davis-Besse Lessons Learned Task Force Report
- NRC's Effectiveness Review of Lessons Learned Task Forces
- Code of Federal Regulations, Title 10, Parts 50.54(f), 50.71, 50.109, 70.76, and 76.76
- NRR, NMSS, and NSIR Operating Plans and Budget Documents

Auditors conducted interviews and discussions with agency and industry individuals, including:

- Headquarters' senior managers from the Offices of:
-
    - the Executive Director for Operations, the General Counsel, NRR, NMSS, NSIR, Information Services, and Nuclear Regulatory Research

- Representatives from CRGR
- Representatives from ACRS
- Representatives from the Nuclear Energy Institute
- NRC's statistician

OIG conducted this audit between September 2004 and June 2005 in accordance with generally accepted Government auditing standards and included a review of management controls related to the objectives of this audit. The major contributors to this report were Anthony Lipuma, Team Leader; Catherine Colleli, Audit Manager; Yvette Russell, Senior Auditor; and Michael Cash, Technical Advisor.

Appendix B

FORMAL AGENCY COMMENTS

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 27, 2005

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: William F. Kane
Deputy Executive Director for Reactor
and Preparedness Programs
Office of the Executive Director for Operations

SUBJECT: STAFF COMMENTS ON DRAFT REPORT: AUDIT OF U.S. NUCLEAR REGULATORY COMMISSION'S GENERIC COMMUNICATIONS PROGRAM

In accordance with your memorandum dated September 19, 2005, attached please find our comments on the draft audit report "Audit of NRC's Generic Communications Program." The stated purpose of this Office of the Inspector General (OIG) audit was to ". . . assess the effectiveness of the Generic Communications Program ...." Specifically, OIG assessed whether the Nuclear Regulatory Commission's (NRC's) generic communications are issued in accordance with the Generic Communications Program and other regulatory requirements, and how NRC tracks licensee actions on generic communications.

Regarding these objectives, the OIG report identifies weaknesses with the agency's internal controls over generic communications. The report specifically concludes that (A) safeguards advisories (i.e., a security-related generic communication) are issued outside of the NRC's existing regulatory framework, (B) controls for oversight of licensee actions on generic communications are inadequate, and (C) NRC's self-assessment's conclusion of Generic Communications Program effectiveness is not supported.

In summary, the staff concurs with all four recommendations. Comments on the findings are included in the attached.

Attachment: As stated

CONTACT: Anthony Markley, NRR/DIPM
(301) 415-3165

COMMENTS ON DRAFT OIG REPORT

The following provides detailed staff comments on the draft OIG audit report.

FINDING A:

Overall, we see value in the two recommendations regarding Safeguards Advisories. Over the last year, the staff has moved to stabilize the process and has begun efforts to formalize Safeguards Advisories.

The staff concurs with Recommendations 1 and 2 concerning Safeguards Advisories:

1. "Include safeguards advisories, as well as any other agency communication tool that meets the definition of a generic communication, in the formal Generic Communications Program to ensure compliance with regulatory requirements."

The staff's recommendation regarding establishing a vehicle to communicate security matters to licensees is being addressed in response to a Staff Requirements Memorandum dated April 27, 2005, which is due to the Commission by November 11, 2005. This will result in establishing Safeguards Advisories as a formal vehicle for NRC generic communications, as well as identifying when to use safeguards advisories to communicate security related information.

2. "Pursue immediately the applicability of including appropriate Office of Management and Budget control numbers in safeguards advisories."

The staff has implemented this recommendation and procedural implementation is ongoing.

Specific Comments:

1. At the end of the "Findings" section starting on the bottom of page 6, and also text on page 25, the draft report states that as a result of failure to apply internal control mechanisms, "the agency may not be able to enforce actions requested or required of licensees." The staff believes that the report continues with an erroneous premise in its findings that a generic communication can "require" actions that may be enforced. Generic communications do not impose enforceable requirements to perform actions.

2. On page 7 of the draft report, the following changes should be considered:

   "A. Safeguards Advisories Are Issued Outside of NRC's Existing Regulatory Framework

   NSIR issues security advisories that are developed and distributed outside of NRC's Generic Communications Program because NSIR managers believe the formal process takes too long. As a result, the advisories, particularly safeguards advisories, are not developed in accordance with the agency's structured review and approval practices. Consequently, safeguards advisories could be issued that do not meet regulatory requirements. The lack of a formal process could lead to an absence of necessary reviews

Attachment

and thereby compromises NRC's regulatory process. Furthermore, the lack of a clear, publicly documented process for requesting and disseminating information through safeguards advisories compromises NRC's openness principle for transparent regulation."

3. On page 16 of the draft report, the following changes should be considered:

   "Although not typical, Table 2 shows that generic communications can be issued in as little as one day, ~~when necessary.~~ **,when in response to a significant event.**"

4. On page 17 of the draft report, the following changes should be considered:

   "In addition, ~~contrary to perceived inefficiencies with the process,~~ NSIR at times chose the Generic Communications Program (see Table 3) to convey security matters of similar substance to those found in safeguards advisories. Specifically, NSIR issued 18 regulatory issue summaries (a recognized Generic Communications Program product), during the same period when NSIR issued 65 threat and safeguards advisories (unrecognized generic communications products). Yet, in these cases, NSIR has no documented rationale for selecting a recognized generic communications product versus using security advisories."

   Additionally, the staff believes that improvements have been realized since the "ad hoc days" just after 9/11. Recent SAs have been focused on the following criteria, which is being formalized in an NSIR procedure. The following are considered to be appropriate content of security advisories:

   - Notification that the Homeland Security Threat Advisory System threat level has been elevated
   - Notification of National Special Security Events
   - Recommended compensatory measures and suggested actions for rapidly emerging safeguard and security-related issues
   - Requests for security or safeguards information from licensees related to an imminent vulnerability or condition
   - Guidance on implementing existing security and/or safeguards regulatory requirements related to an imminent vulnerability or condition

5. On page 19, the draft report states:

   "***Lack of Technical and Regulatory Reviews Compromises NRC's Regulatory Processes***

   The agency's use of advisories significantly increased after September 11, 2001. Agency managers and staff, as well as industry representatives have more and more often questioned the regulatory authority for issuing advisories. Of particular concern are the safeguards advisories primarily because, as stated by a senior Nuclear Energy Institute representative, NRC is using many safeguards advisories 'to establish new requirements without going through the required agency review process.'"

Although not formalized, Safeguards Advisories (at least since 2003) have been reviewed by the Office of General Counsel to ensure that new requirements are not set and NSIR is unaware of "new requirements" having been issued, via SAs.

6. On page 20 of the draft report, Figure 1 groups all advisories (Safeguards and Threat Advisories) issued since 9/11 together. This grouping should be reconsidered and the report should focus on more recently developed SAs. This would focus the information on current practices and would aid the staff's understanding of current program needs.

7. Page 21 of the draft report states:

   "As a result, safeguards advisories did not receive . . . ACRS technical review although this committee has a defined role in reviewing any generic communication that conveys requirements on licensees. Without ACRS review, NRC could impose unjustified requirements on its licensees."

   Please note that SAs do not impose requirements, and based on the above statement, an ACRS review is not required.

8. On page 24 of the draft report, the following changes should be considered:

   "While NSIR senior managers acknowledge that there should be a clear, formal process for the development and issuance of safeguards advisories, they expressed a need for balance between protecting public openness (an agency goal) and common defense and security (the agency's mission). Currently there are differing opinions among NRC senior managers regarding the public's right to know about the information contained in the advisories. As of the date of this report, the public may still not know of the ~~specific~~ existence of specific safeguards advisories because they are not made publicly available even though many do not contain information actually designated ~~classified~~ by the agency as "Safeguards Information."

   The content of SAs can be classified as: National Security Information (i.e., Top Secret, Secret, Confidential); Safeguards Information; Exempt from Public Disclosure in Accordance with 10 CFR 2.390; or a variety of federal agency sensitive unclassified information processes (see SECY-04-0191, dated October 19, 2004). These processes are defined and implemented. The above statement (without suggested changes) is somewhat misleading in that the information in the SAs is classified and protected in accordance with defined and formal NRC and federal government processes, and therefore "... differing opinions among NRC senior managers regarding the public's right to know about the information contained in the advisories" is irrelevant. Additionally, the idea that the public may, or may not, be aware of safeguard advisories is valid. However, the concept that "....they are not made publicly available even though many do not contain information actually classified by the agency as "Safeguards Information" does not follow because containing "Safeguards Information" is only one of many very valid reasons the content of an SA is not released to the public.

9. On page 24, the statement about the Paperwork Reduction Act incorrectly implies that an exemption clause is required if a document is <u>not</u> an information request. An exemption

clause is required only if the document is an information request, but is exempt from the requirement for an OMB control number.

10. On page 29, in the first paragraph under **"Internal Guidance on Processing Generic Communications,"** the first sentence through "For example" should be deleted and the paragraph should be started from "NRR Office . . ."

FINDING B:

For Finding B and Recommendation 3, the staff believes that sufficient tracking systems exist such that tracking, status, and closeout of generic communication products can be discerned. The staff acknowledges that an agency-wide tracking system for such products does not presently exist and will address the need for such a system in the staff's response to the final report.

FINDING C:

The staff notes that the report reflects the staff position with respect to the nature of the case study that was undertaken to gage the effectiveness of given generic communication products. The staff also recognizes that the conclusion that was drawn from the case study may have been too broad. The staff concurs with Recommendation 4 that a methodology should be developed to gauge the effectiveness of generic communications.

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Appendix C

DETAILED OIG ANALYSIS OF AGENCY COMMENTS

On September 6, 2005, OIG discussed its draft report with agency senior executives. Subsequent to that meeting, NRC provided informal comments on the draft report and OIG met with NRR management to address specific issues and concerns needing further clarification and/or explanation. On September 27, 2005, the Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations, transmitted a memorandum with formal comments on this report (see Appendix B).

Below is OIG's analysis of the agency's formal comments.

NRC Comment 1

1. At the end of the "Findings" section starting on the bottom of page 6, and also text on page 25, the draft report states that as a result of failure to apply internal control mechanisms, "the agency may not be able to enforce actions requested or required of licensees." The staff believes that the report continues with an erroneous premise in its findings that a generic communication can "require" actions that may be enforced. Generic communications do not impose enforceable requirements to perform actions.

OIG Response

OIG recognizes that generic communications (other than NRC Orders) are not a recognized vehicle for communicating regulatory requirements. However, some safeguards advisories contain ambiguous language that could reasonably be interpreted as a mandate for licensee action or providing information. As such, the point remains that the failure to follow appropriate regulatory processes brings into question the agency's ability to pursue any actions based on these advisories. Nonetheless, OIG recognizes that use of the word "enforce" in close conjunction with "require actions" may be misperceived and warrants a change.

The word "enforce" has been changed in the report to "pursue."

NRC Comment 2

2. On page 7 of the draft report, the following changes should be considered:

   "A. Safeguards Advisories Are Issued Outside of NRC's Existing Regulatory Framework

   NSIR issues security advisories that are developed and distributed outside of NRC's Generic Communications Program because NSIR managers believe the formal process takes too long. As a result, the advisories, particularly safeguards advisories, are not developed in accordance with the agency's structured review and approval practices. Consequently, safeguards advisories could be issued that do not meet regulatory requirements. The *lack of a formal process could lead to an* absence of necessary reviews *and thereby* compromise~~s~~ NRC's regulatory process. Furthermore, the lack of a clear, publicly documented process for requesting and disseminating information through safeguards advisories compromises NRC's openness principle for transparent regulation."

OIG Response

The subtle word change does not alter the sentence's main point that the agency's regulatory process is comprised when appropriate reviews are omitted.

OIG revised the report to reflect the requested change in language.

NRC Comment 3

3. On page 16 of the draft report, the following changes should be considered:

   "Although not typical, Table 2 shows that generic communications can be issued in as little as one day, ~~when necessary.~~ **,when in response to a significant event.**"

OIG Response
The requested word change is subtle and does not alter the sentence's main point.

OIG revised the report to reflect the requested change in language.

NRC Comment 4

4. On page 17 of the draft report, the following changes should b considered:

"In addition, ~~contrary to perceived inefficiencies with the process,~~ NSIR at times chose the Generic Communications Program (see Table 3) to convey security matters of similar substance to those found in safeguards advisories. Specifically, NSIR issued 18 regulatory issue summaries (a recognized Generic Communications Program product), during the same period when NSIR issued 65 threat and safeguards advisories (unrecognized generic communications products). Yet, in these cases, NSIR has no documented rationale for selecting a recognized generic communications product versus using security advisories."

Additionally, the staff believes that improvements have been realized since the "ad hoc days" just after 9/11. Recent SAs have been focused on the following criteria, which is being formalized in an NSIR procedure. The following are considered to be appropriate content of security advisories:

- Notification that the Homeland Security Threat Advisory System threat level has been elevated
- Notification of National Special Security Events
- Recommended compensatory measures and suggested actions for rapidly emerging safeguard and security-related issues
- Requests for security or safeguards information from licensees related to an imminent vulnerability or condition
- Guidance on implementing existing security and/or safeguards regulatory requirements related to an imminent vulnerability or condition

OIG Response
OIG recognizes that NSIR has been working towards formalizing the use of safeguards advisories, such as employing specific criteria to remove the ad hoc nature. Deletion of the identified phrase does not change the point of this paragraph which says that NSIR, at times, used recognized generic communications products to transmit similar type information as found in the unrecognized safeguards advisories.

OIG deleted the phrase as requested.

NRC Comment 5

5. On page 19, the draft report states:

"***Lack of Technical and Regulatory Reviews Compromises NRC's Regulatory Processes***

The agency's use of advisories significantly increased after September 11, 2001. Agency managers and staff, as well as industry representatives have more and more often questioned the regulatory authority for issuing advisories. Of particular concern are the safeguards advisories primarily because, as stated by a senior Nuclear Energy Institute representative, NRC is using many safeguards advisories 'to establish new requirements without going through the required agency review process.'"

Although not formalized, Safeguards Advisories (at least since 2003) have been reviewed by the Office of General Counsel to ensure that new requirements are not set and NSIR is unaware of "new requirements" having been issued, via SAs.

OIG Response
The agency states that safeguards advisories have been reviewed by the Office of the General Counsel (OGC), at least since 2003, to ensure new requirements are not set. However, as stated in the report, OIG conducted a technical review of the 65 security advisories identified by NSIR and found that 14% were used for communicating *apparent* requirements, including a safeguards advisory dated June 2004.

Throughout this audit, NSIR could not identify a comprehensive list of safeguards

advisories issued for the period under consideration nor could NSIR staff provide assurance that all safeguards advisories received an OGC review. In fact, according to NSIR and OGC staff, because the agency was usually anxious to issue the safeguards advisories, they did not always receive an OGC review.

No change made to the report.

NRC Comment 6

6. On page 20 of the draft report, Figure 1 groups all advisories (Safeguards and Threat Advisories) issued since 9/11 together. This grouping should be reconsidered and the report should focus on more recently developed SAs. This would focus the information on current practices and would aid the staff's understanding of current program needs.

OIG Response

OIG acknowledges that the agency has shown increased interest in the development and issuance of safeguards advisories since the start of this audit. However, as stated in the response to agency comment 5, NSIR was not able to provide OIG with a complete listing or copies of all issued safeguards advisories because of a lack of a standard process, including the absence of a numbering system. While OIG acknowledges that threat advisories have a different use and follow a different internal process, neither of the advisories receives a formal regulatory review to ensure proper use. Therefore, information provided in Figure 1 regarding multiple uses of advisories appropriately applies to both types.

No change made to the report.

NRC Comment 7

7. Page 21 of the draft report states:

   "As a result, safeguards advisories did not receive . . . ACRS technical review although this committee has a defined role in reviewing any generic communication that conveys requirements on licensees. Without ACRS review, NRC could impose unjustified requirements on its licensees."

Please note that SAs do not impose requirements, and based on the above statement, an ACRS review is not required.

OIG Response

OIG acknowledges the possibility that not all of the safeguards advisories issued during the period reviewed would have required an ACRS review. However, because OIG's technical review identified a number of advisories which conveyed *apparent* requirements, the likelihood exists that in some instances an ACRS review would have been appropriate. Without the benefit of formal processing, the agency has no assurance that safeguards advisories would receive an ACRS review where necessary.

No change made to the report.

NRC Comment 8

8. On page 24 of the draft report, the following changes should be considered:

"While NSIR senior managers acknowledge that there should be a clear, formal process for the development and issuance of safeguards advisories, they expressed a need for balance between protecting public openness (an agency goal) and common defense and security (the agency's mission). Currently there are differing opinions among NRC senior managers regarding the public's right to know about the information contained in the advisories. As of the date of this report, the public may still not know of the ~~specific~~ existence of *specific* safeguards advisories because they are not made publicly available even though many do not contain information actually *designated* ~~classified~~ by the agency as "Safeguards Information."

The content of SAs can be classified as: National Security Information (i.e., Top Secret, Secret, Confidential); Safeguards Information; Exempt from Public Disclosure in Accordance with 10 CFR 2.390; or a variety of federal agency sensitive unclassified information processes (see SECY-04-0191, dated October 19, 2004). These processes are defined and implemented. The above statement (without suggested changes) is somewhat misleading in that the information in the SAs is classified and protected in accordance with defined and

formal NRC and federal government processes, and therefore "... differing opinions among NRC senior managers regarding the public's right to know about the information contained in the advisories" is irrelevant. Additionally, the idea that the public may, or may not, be aware of safeguard advisories is valid. However, the concept that ".... they are not made publicly available even though many do not contain information actually classified by the agency as "Safeguards Information" does not follow because containing "Safeguards Information" is only one of many very valid reasons the content of an SA is not released to the public.

OIG Response
(Agency comment, paragraph 1)
The requested rewording does not alter the intent of the paragraph.

(Agency comment, paragraph 2)
OIG recognizes that there are many bases for withholding safeguards advisories from public disclosure. However, to date, all safeguards advisories have been withheld from public disclosure, including some that do not have a clear basis for withholding.

OIG made the requested revisions.

NRC Comment 9

9. On page 24, the statement about the Paperwork Reduction Act incorrectly implies that an exemption clause is required if a document is not an information request. An exemption clause is required only if the document is an information request, but is exempt from the requirement for an OMB control number.

OIG Response
OIG concurs with the nuance of this comment.

The statement was revised to accurately reflect the Paperwork Reduction Act requirements.

NRC Comment 10

10. On page 29, in the first paragraph under **"Internal Guidance on Processing Generic Communications,"** the first sentence through "For example" should be deleted and the paragraph should be started from "NRR Office . . ."

OIG Response
The requested deletion does not impact the point of the paragraph.

OIG deleted the language as requested.