

NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555



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By Authority of A. Lynn Silvious 2249

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NLF MR Case No. 98-51

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The President  
The White House

Dear Mr. President:

I wish to convey to you the views of the Nuclear Regulatory Commission on the study of the national security aspects of releasing safeguards information carried out under NSSM 216.

The Commission is in unanimous agreement with the general proposition that effective means to protect certain safeguards information are a necessary element in an overall system designed to guard against theft or diversion of nuclear materials or sabotage of civil nuclear installations. It would appear that achieving this objective — whether by classification or by some combination of other means such as described in the study — will require restrictions on access to such information within the industry and by the public. This means the application of an industrial security program to private activities not now subject to security restrictions and also entails the imposition of limitations greater than are now the case on public participation in safeguards-related aspects of the nuclear regulatory process. Thus, what is involved is a major step — a step which departs from a consistent policy over the past twenty years of maximizing the public's ability to participate in all aspects of nuclear regulatory proceedings.

Given these considerations, it is our view that any action to impose added security controls on information of the subject type should be carefully tailored so as to apply the minimum restrictions needed to achieve safeguards objectives. The Commission would put forth, in this connection, the following operative principles:

- Restrictions should apply only to those activities where such a requirement is definitely established for safeguards purposes (principally, to those fuel cycle activities which involve the handling of significant quantities of strategic nuclear materials, with only limited application to nuclear power plants).

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DEPARTMENT OF ENERGY DECLASSIFICATION REVIEW	
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AUTHORITY: <u>AP Schmidt</u>	4. COORDINATE WITH:
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A new security program need not apply across-the-board to the entire nuclear power industry.

- As regards those activities which are covered, restrictions should be applied to the minimum information necessary to achieve safeguards objectives.
- Any such restrictions should be applied only when and to the extent that some other measure will not supply the protection deemed necessary for safeguards purposes.

With these principles in mind, the Commission has also carefully weighed the matter of whether the national security classification system is the regime best suited to give safeguards information the requisite degree of protection. The majority of the Commission believes that it is. In reaching this conclusion, two basic objectives were considered:

1. Assuring the trustworthiness of persons generating and having access to the subject information.
2. Protecting the information from unauthorized disclosure while in the possession of NRC.

Short of special legislation — which would not appear to be necessary at this juncture — national security classification is the only single way to accomplish both objectives; and, on balance, it is probably the soundest available way to achieve each of these objectives. The Commission majority, in considering its position, was particularly mindful that national security classification under the Executive Order provides a framework which assures the procedural rights of persons affected and is a system familiar to the Congress, the courts and the public. The Commission would urge, however, that the firmest possible underpinnings be provided for application of the national security classification system to this type of information (i.e., information which is privately generated within a regulatory framework). This may make it desirable to amend Executive Order 11652 so as to give such information explicit coverage thereunder.

In sum, based on the foregoing considerations and with the limitations indicated, the majority of the Commissioners are of the view that certain types of safeguards information should be covered by security restrictions and that the classification system established under Executive Order 11652 provides an appropriate basis for protecting such information.

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Commissioner Gilinsky disagrees with the majority view. He believes that the disadvantages of employing the national security classification system, pursuant to Executive Order 11652, are so great, both for substantive reasons and those related to public perceptions, that more careful examination of alternative approaches should be undertaken before a final decision is made. He believes the NSSM 216 study to be inadequate in two respects: with regard to the analysis of alternatives for protecting information, and with regard to the related discussion of the impact of national security classification upon public acceptability of civilian nuclear programs. The Commissioner also suggests that, in consideration of the potentially momentous and long-term impact of the decision in question on a critical civilian industry, further study of this issue should be done with Domestic Council participation. The background of these views is set forth at greater length in an enclosure to this letter.

Turning to the matter of types of safeguards information warranting protection, the full Commission believes that -- apart from the means adopted to protect the information -- at least the security plans of critical fuel cycle facilities should be given protection from unauthorized disclosure additional to that provided today. However, with regard to light water reactors using uranium fuel of low enrichment, the Commission believes that alternative means of protecting security plans from unauthorized disclosure, or compensating physical security measures, should be further analyzed in light of the nature and consequences of sabotage to such facilities before applying national security restrictions in this area. We also believe that the portions of the study dealing with the disclosure of reports on inventory discrepancy of special nuclear material do not provide an adequate basis for deciding under what conditions such information should be withheld. We therefore urge that, before you make any decision on withholding information of this kind from public disclosure, you direct that further analysis be undertaken. Specifically, we recommend analysis of the relationship between the release of inventory discrepancy data -- at any time -- and the credibility of hoaxes. We also recommend the development of alternative criteria for release of data (e.g., withholding of a small, but particularly sensitive, part of the data; aggregating data), taking into account the possibility that hoaxes may not become any less credible after a predetermined interval, such as the six months assumed in the study.

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In order to permit the earliest possible decision on the unresolved issues, we would urge that the NSSM 216 Working Group be directed to complete quickly a detailed analysis of the means which might be employed to protect inventory discrepancy data, while at the same time keeping the public adequately informed of this aspect of the civil nuclear industry -- a public policy consideration which the Commission deems to be of prime importance. The Group should also carry out, simultaneously, an additional study of the risks associated with sabotage of light water reactors and of the need for additional information safeguards to reduce these risks.

Finally, in line with our earlier observation, we urge that the Justice Department carefully review the question of whether the present provisions of Executive Order 11652 are sufficiently comprehensive to cover information of this type.

The Nuclear Regulatory Commission staff will be pleased to participate in additional analyses such as those we have recommended, as well as in the necessary follow-on work to identify specific safeguards information that should be classified or otherwise protected in accordance with decisions made. Prior to making our determinations on what specific safeguards information will be classified or otherwise protected, we will afford the NSC staff an opportunity to comment on our proposed determinations.

On behalf of the entire Commission, I would like to express our appreciation for the opportunity provided the Commission staff to participate in this study and for the invitation to the Commission to furnish you with its views.

Respectfully yours,

Original signed by  
William A. Anders

William A. Anders  
Chairman

Enclosure:  
Commissioner Gilinsky Comment



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