



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

September 10, 1979

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The Honorable Richardson Preyer, Chairman  
Subcommittee on Government Information  
and Individual Rights  
Committee on Government Operations  
United States House of Representatives  
Washington, D.C. 20515

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Dear Mr. Chairman:

Thank you for your letter of August 3, 1979, which contained your comments on those revisions I had proposed earlier to the section of NRC's FY80 authorization bill [H.R. 2608] which would expand the Commission's ability to protect sensitive nuclear safeguards information. I much appreciate your help on this matter. You noted a few minor problems in paragraph A of clause (2) and more significant problems concerning paragraph B which you asked the Commission to consider. Your letter also addressed language on lines 7 and 8 of page 10 of the Interior Committee bill that would apply to clauses (1) and (2). You attached a revised Section 147(a) of H.R. 2608 for our comment.

I think your revised Section 147(a) provides a good basis for going forward, with a few changes discussed below.

First, with regard to clause (2): your addition of "those portions" of studies, etc., and the language "are likely to provide a significantly enhanced ability ..." in this clause are helpful in narrowing the original language in H.R. 2608 and we agree with these additions.

Next, and still concerning clause (2), I should note that in the draft revision I provided you the intent was to specify in paragraphs A and B two basic classes of generic safeguards information we wished to be able to protect. The first concerned techniques or devices that might be used to gain access to nuclear facilities or material, and the second concerned particular vulnerabilities of techniques or devices that are used to protect nuclear facilities or materials. An example of the second class might be a generic study of an alarm device used at a number of unspecified facilities that discussed some weaknesses in the alarm pattern and how these might be remedied.

I think your language for clause (2) covers the first class directly and could also cover the second class if modified as follows:

(2) those portions of studies, reports, and analyses which are conducted by or on behalf of the Commission, its licensees, or applicants for Commission licenses and which identify in detail specific methods, techniques, substances, or devices, detailed knowledge of which is which are likely to provide a significantly enhanced ability to gain unlawful access to safeguarded nuclear facilities or material,

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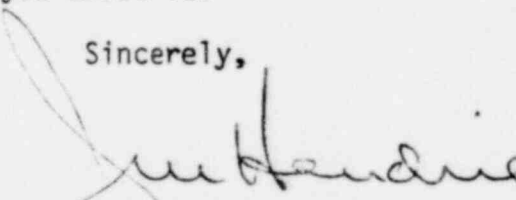
I believe this modification retains the narrowing elements you proposed and also would cover both of the classes of detailed generic safeguards information we think should be protected.

Finally, with regard to the replacement of "could have a significant adverse effect" with "is likely to have a significant adverse effect" in the general language on page 10 of the Interior Committee bill, I strongly urge that the "could have" language be retained. The argument here is that this general language applies to both clauses (1) and (2). I believe we are in agreement on the clause (1) provisions for detailed, facility-specific safeguards information and the more difficult generic studies of clause (2) are now well circumscribed and are limited by the "is likely to provide" language you proposed for clause (2). To apply the "is likely to have a significant adverse effect" standard to the clause (1) provisions as well could, our legal staff believes, involve us in attempting to prove there is a better than even chance that disclosure of facility security measures will endanger public health and safety by facilitating theft or sabotage. I doubt that is provable.

Safeguards measures are established not because it can be clearly demonstrated that there is a more than 50% likelihood of an attempt to divert, steal or sabotage nuclear materials. Rather, such measures are put in place because such attempts are recognized as possible. The dangers to the public from successful diversion, theft or sabotage of nuclear materials are such that protection is warranted even though a high probability of such a threat cannot be demonstrated. Therefore, to require a showing that "unauthorized disclosure of safeguards information is likely to have a significant adverse effect" would be to adopt a new standard, fundamentally inconsistent with sound safeguards principles. The threshold showing which would be required to authorize withholding information would be so difficult to meet that an effective safeguards program would, we think, be hampered.

A further revision of section 147(a), consistent with the above discussion, is provided for your convenience. I hope that it is acceptable, and would appreciate the opportunity to talk with you about it.

Sincerely,



Joseph M. Hendrie

Enclosure: Sec. 147 revision

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"Sec. 147. SAFEGUARDS INFORMATION.--

"a. In addition to any other authority or requirement regarding protection from disclosure of information and notwithstanding section 552 of title 5, United States Code, relating to the availability of records, the Commission shall prescribe such regulations or orders as it may deem necessary to prohibit the unauthorized disclosure of:

"(1) safeguards information which identifies a licensee's or applicant's detailed--

"(A) control and accounting procedures or security measures (including security plans, procedures, and equipment) for the physical protection of special nuclear material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security;

"(B) security measures (including security plans, procedures, and equipment) for the physical protection of source material or by-product material, by whomever possessed, whether in transit or at fixed sites, in quantities determined by the Commission to be significant to the public health and safety or the common defense and security; or

"(C) security measures (including security plans, procedures, and equipment) for the physical protection of and the location of certain plant equipment vital to

the safety of production or utilization facilities involving nuclear materials covered by (A) and (B) in this paragraph; and

"(2) those portions of studies reports, and analyses which are conducted by or on behalf of the Commission, its licensees, or applicants for Commission licenses and which identify specific methods, techniques, substances, or devices, detailed knowledge of which is likely to provide a significantly enhanced ability to gain unlawful access to safeguarded nuclear facilities or material

"if the unauthorized disclosure of such information could have a significant adverse effect on the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of such material or such facility. The Commission shall exercise the authority in this subsection so as to apply the minimum restrictions needed to achieve the objectives of protecting the health and safety of the public or the common defense and security, and upon a determination that the unauthorized disclosure of such information could have a significant adverse effect on the health and safety of the public or the common defense and security by facilitating theft, diversion, or sabotage of such material or such facility. Any person, whether or not a licensee of the Commission, who violates any regulation adopted under this section shall be subject to the civil monetary penalties of

section 234 of this Act. Nothing in this section shall be construed to authorize the withholding of information from the duly authorized committees of the Congress."