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UNITED STATES OF AMERICA MAR -3 89:00
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

emp

COMMISSIONERS:

- Nunzio J. Palladino, Chairman
- Victor Gilinsky
- Peter A. Bradford
- John F. Ahearne
- Thomas M. Roberts

SERVED MAR 3 1982

_____)
 PROTECTION OF UNCLASSIFIED)
 SAFEGUARDS INFORMATION)
)
 (10 CFR Parts 2, 50, 70 and 73))
 (45 FR 85459))
 _____)

ORDER
(CLI-82-3)

Background

On the sixtieth day after the Nuclear Regulatory Commission's adoption and entry of final rules governing protections for safeguards information pursuant to section 147 of the Atomic Energy Act of 1954 as amended, ^{1/} KMC and the Physical Security Coordinating Group (Petitioners), through their attorney Jay E. Silberg, wrote a petition to the Commission requesting reconsideration of those rules and immediate suspension of two of them. In support of their petition they have presented in the main the same allegations and arguments with which they opposed the proposed rule, and

1/ See 46 Fed.Reg. 51718 (1981).

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which the Commission has already considered and rejected. ^{2/} Thus, the Commission finds that no basis has been provided that warrants reconsideration or suspension of the subject rules. ^{3/}

Because petitioners appear to misunderstand what these rules entail, we take this opportunity to discuss briefly the two regulations sought to be amended -- the one prohibiting unprotected telecommunications, the other mandating various storage requirements.

The Commission has prohibited the use of unprotected telecommunication circuits for Safeguards Information except under emergency or extraordinary circumstances in recognition of the ease of accomplishing an interception and the difficulty or impossibility of detection when information has been compromised by such a tap. Nonetheless, it is our view that this rule will not require the purchase of "secure" communication equipment. Routine communications

^{2/} A somewhat different legal argument was proffered with respect to the issue whether the Commission has authority to prohibit disclosure of generic studies. The argument was based on an erroneous statement of the legislative history of section 147. Petitioners apparently failed to recognize that the original House Bill H.R. 2608 which authorized nondisclosure protections for generic studies was amended by a later bill, H.R. 5297, which omitted that protection and that the version sent by the House to conference therefore omitted the protection. Thus although petitioners are correct that the Conference Report notes that there was no change to the House version, that fact lends no support to their thesis. The plain language of Section 147, the Conference Report and the legislative history indicate that the Commission has not the authority to do as petitioners request.

^{3/} In view of this disposition, the Commission does not decide whether the petition is a timely request for reconsideration or whether it is more properly treated as a request for rulemaking.

may be mailed, for example, and there is an exemption for emergencies. Moreover, routine security related transmissions between on-site guard forces or alarm stations can easily be limited to code formats or cryptic language, and discussions of an isolated element taken out of context can be couched in terms that effectively eliminate the identity of any Safeguards Information and therefore would be allowed on commercial telephone. Our own staff has concluded that this restriction will not impede their review of power reactor security plans and has no intention of installing protected circuits to licensed facilities. It is notable that one of the NRC licensed fuel facilities has had a classified security plan for many years -- subject to a bar against unsecured transmissions -- and never found the need for either secure or protected communicating circuits either on or off site.

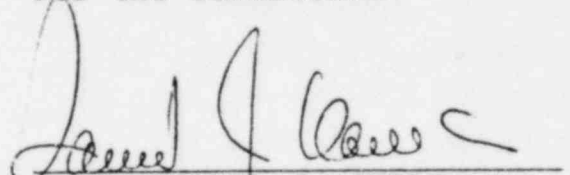
Petitioners complain that the Commission has required a GSA approved security container for areas that do not have protected or controlled access and ask for a change in the regulations to allow the use at any location of the steel filing cabinets now permitted in protected or controlled access areas. They assert that the Commission believes both the steel containers and the filing cabinets afford equivalent protection quoting as support the Commission's statement in the Supplementary Information that "both satisfy this objective [to make more difficult undiscovered compromise of Safeguards Information]".

The Commission believes that each satisfies that objective in the location for which it is required. Because with free access and unlimited time the filing cabinet might more easily be compromised without leaving a trace, it would not satisfy the objective in areas to which access is not controlled. In actuality, however, GSA approved security containers appear to be required only in uncontrolled areas such as might exist at a power reactor construction site. It appears that "in many cases corporation headquarters or other office buildings will qualify as controlled access areas provided they are attended around the clock or locked at night." NUREG-0794 at 5, emphasis provided. We are informed by our staff that after numerous conversations with affected licensees and individuals, they have yet to identify a situation positively requiring the use of a GSA approved storage container. Thus it does not appear that petitioners are adversely affected by this rule. Commissioner Roberts disapproved this Order.

Conclusion

For the foregoing reasons, the petition is DENIED.

For the Commission*


 SAMUEL J. CHILK
 Secretary of the Commission

- * Commissioner Ahearne was not present when this Order was affirmed. Had Commisisoner Ahearne been present, he would have affirmed the Order.

Dated at Washington, D.C.

the 2nd day of March, 1982.