



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

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November 15, 1977

MEMORANDUM FOR: Robert F. Burnett, Director  
Division of Safeguards

FROM: Ronald A. Brightsen, Technical Advisor  
to the Director

SUBJECT: THE PROPOSED UPGRADE RULE: RESPONSIBILITY FOR  
NUCLEAR SECURITY

R. Brightsen  
Memorandum  
U.S. NRC

During a discussion in late October, you indicated that you would like to receive a memorandum from me, containing my professional views on the major issue or issues raised as a result of public comments on the proposed Upgrade Rule.

I have, therefore, carefully and thoughtfully read all the public comments several times, in an effort to identify the most significant safeguards issue contained in those comments. A number of areas of concern were repeatedly identified (i.e., the impact of the rule on research reactors, conflict with federal non-discrimination regulations, conflict with local and state laws regarding allowable weaponry for private guards, etc.). Most of these will undoubtedly be individually addressed by NRC staff in both NMSS and OSD. In my view each of these specific issues is subordinate to, and derived from, the central issue identified by a significant number of licensees, representing in toto essentially the entire nuclear industry as well as parts of the federal establishment and the professional nuclear society of the United States. The issue the industry has identified can be paraphrased as follows:

At the level of protection now deemed necessary by the federal government (NRC) in order to protect the public health and safety from malevolent utilization of SSNM and nuclear sabotage, the federal government rather than the private sector should be responsible for nuclear security.

That this is indeed the central issue is evident by examining Appendix A which contains verbatim excerpts from letters received during the public comment period which ended September 19, 1977. The emphases are mine.

In my professional judgment, the NRC decision to escalate the design threat to a point where private paramilitary organizations would be required to protect the public health and safety has produced a reaction which will sooner or later require a comprehensive reconsideration of the underlying public policy issue:

What is the appropriate distribution of nuclear security responsibility between the private and public (local, state and federal) sectors,<sup>1/</sup> and how does that distribution depend on the level and capabilities of the perceived threat and the consequences of malevolent acts?

There may be those within NRC who would take the position that no serious reconsideration of the public policy issue of responsibility is necessary because:

1. Through a give and take process, detailed concerns of licensees can be accommodated to a point where they will accept continuing responsibility, however reluctantly.
2. Threats by industry to withdraw from the nuclear business are empty, and in any event, of no concern to NRC which has a regulatory rather than developmental role in nuclear power.

With respect to the first point, NRC should not lose sight of the fact that it is by no means certain that this traditional approach will be successful. It is equally or perhaps more likely that the industry (or significant elements of the industry) will resort to legal resistance to escalating private responsibility for protection of the public. Apart from the question of whether or not this approach will "succeed" is the more basic question as to the propriety of the approach, for two reasons:

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<sup>1/</sup> This fundamental public policy issue was examined at length by K. R. Toner and Harold Feiveson in a report entitled "Responsibility for Nuclear Security" (Appendix B), submitted to the NRC in September 1975, in connection with the Security Agency Study (SAS). Toner and Feiveson identified six criteria for the determination of responsibility for nuclear security:

1. The relative effectiveness of private and federal systems.
2. Third parties in regulatory practice: equity and customs.
3. Propriety of the use of private armed guards.
4. Propriety of the use of state and local law enforcement.
5. Internalizing costs and economic efficiency.
6. Propriety of public forces guarding private property.

The Security Agency Study focused entirely on the relative effectiveness of private as compared to federal guard forces (Criterion 1 above), concluded that no significant difference in effectiveness was likely, but did not substantively address the five other criteria.

- o If the NRC staff truly believes (as it must, since the proposed rules were published) that the safeguards requirements contained in the rule are essential for the protection of the public, is accommodation or compromise on the requirements a proper course of action?
- o Is there a justifiable basis for asserting that the responsibility for nuclear security is a closed issue, independent of threat level, consequences of malevolent acts and changing federal policy on nuclear power?

With respect to the second point, I certainly agree that the NRC should not properly be concerned with the possible negative impacts of its safeguards regulations on the development and utilization of nuclear power. Nonetheless, by continuing to insist that the nuclear security responsibility must be assumed by the private sector irrespective of level of threat and consequences of malevolent acts, I believe the implementation of this NRC policy will sooner or later force a significant segment of the nuclear industry to abandon or reduce its nuclear power activities. Such a result is clearly not in the public interest, and flies directly in the face of the Administration's stated objective of expediting the development of nuclear power utilizing LWR's to help the nation through the energy crisis that looms during the next several decades.

In my judgment, there is ample reason to believe that the requirement that the private sector provide the level of protection indicated in the proposed Upgrade Rule will, if implemented, initiate retrenchment or abandonment of nuclear power activities by a significant segment of the nuclear industry.<sup>2/</sup>

For the sake of discussion, however, let us assume that the rule is implemented, responsibility for nuclear security remains with the industry, and no significant immediate impact on the nuclear power industry develops. Where will our present policies ultimately lead?

Clearly, the driving force that determines the level of safeguards protection necessary is the terrorist threat, as perceived by the NRC safeguards staff, the public, the Congress, the press and the intervenors. In the

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<sup>2/</sup> For a perceptive analysis of how we arrived at our present state of affairs, see Appendix C, "Note on Nuclear Safeguards Policy - The Police Function," prepared by James P. Hogan, Senior Counsel of the General Atomic Co., submitted as Attachment B to their September 14, 1977, comments on the Upgrade Rule.

face of terrorist activities on a global scale, is it reasonable to assume that the design threat level in the Upgrade Rule will remain stable (or decline) in the years ahead? Or is it more realistic to assume that the federal perception of the threat will continue to escalate? Most professionals involved in NRC safeguards activities judge that the perception of threat level is more likely to increase than remain stable or decline.

It is my belief that, in addition to being influenced in threat perception by the increasing frequency and violence of terrorist activities, the intervenors and the Congressional oversight committees will be increasingly influenced by the original Congressional intent with respect to the NRC safeguards program. In Senate Report 93-980, issued in connection with the Energy Reorganization Act, pp. 63-4, the Committee expressed its views regarding the responsibilities of the Director of Nuclear Materials Security (now titled the Director of the Office of Nuclear Materials Safety and Safeguards): "His recommendations on regulations should reflect a careful appraisal of what the industry and State and local authorities can be reasonably expected to provide in the way of protection, and what the Federal government must provide, to ensure maximum security for the Nation at large." (emphasis supplied). While the term "maximum security" cannot, of course, be defined, the language suggests that NRC has an obligation to consider very large threats.

All of these considerations lead me to the judgment that the threat perception will most likely continue to escalate, and with it the requirements for increased protection. At some point in this process I believe the industry, with the support of the Congress, the public, the press and the intervenors, will force a shift of nuclear security responsibility from the private sector to the public sector. This is not an entirely new thought, but it is one that has not been seriously examined, to my knowledge, since September 1975, when Toner and Feiveson (loc. cit.) concluded: "In terms of acceptability to private industry, any significant new assignment of responsibility for law enforcement would probably be opposed; and it seems probable that Congress and the public generally would also support drawing the line of industry's responsibility at this point . . ." (emphasis supplied).

In my opinion, the proposed Upgrade Rule constitutes such a "significant new assignment of responsibility" and even if a confrontation is somehow avoided in the near-term, it is inevitable in the longer-term.

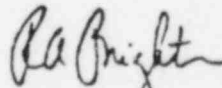
My recommendation on this issue is straightforward, as follows: The Director of the Division of Safeguards and the Director of the Office of Nuclear Material Safety and Safeguards should take the initiative and recommend the following course of action to the Commissioners:

1. That an NRC Safeguards Task Force on Nuclear Security Responsibility be created to reexamine this basic public policy issue:

What is the appropriate distribution of nuclear security responsibility between the private and public (local, state and federal) sectors, and how does that distribution depend on the level and capabilities of the perceived threat and the consequences of malevolent acts?

This Task Force, which should submit its recommendations to the Commission, should utilize expert consultants as necessary, and should be directed to have discussions with appropriate Congressional committees, industry representatives, intervenors and the public at large.

2. That neither the Performance Oriented Safeguards Requirements Rule, the Upgraded Guard Qualification Training and Equipment Rule, nor any other rule which imposes on licensees "a significant new assignment of responsibility" for the safeguards protection of the public be issued in effective form until the Commission has reviewed the recommendations of the NRC Safeguards Task Force on Nuclear Security Responsibility.



Ronald A. Brightsen, Technical Advisor  
to the Director

Enclosures:  
As stated

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Personnel Control  
1.0

General  
Capability  
Description

Access Control (More specific description)  
1.1  
Activity Control (More specific description)  
1.2  
Physical Control (More specific description)  
1.3

Material Control  
2.0

General  
Capability  
Description

Removal Control  
2.1  
Containment Control  
2.2

Authorization Control  
2.1.1  
Exit Control  
2.1.2

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LICENSEE PERFORMANCE REQUIREMENTS

DISAGGREGATION OF BASIC SYSTEMS AND CAPABILITIES



LICENSEE SPECIFICATIONS