

June 8, 1998

SECY-98-129

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: IMPACT STATEMENT REGARDING ELIMINATION OF NUCLEAR
REGULATORY COMMISSION FUNDS FOR CREDIBILITY
ASSESSMENT TEAM SUPPORT FOR THE FEDERAL BUREAU OF
INVESTIGATION

PURPOSE:

In response to a commitment made in a January 29, 1998, Note to Commissioner Assistants, from James L. Blaha, the purpose of this paper is to inform the Commission of the impact on Nuclear Regulatory Commission's (NRC) threat assessment capabilities by the elimination of funding support for the jointly funded NRC and Department of Energy (DOE) Communicated Threat Credibility Assessment (CAT) program. NRC elimination of funds for the joint NRC and DOE program will produce a number of results, including NRC's loss of access to the CAT working station and the staff placing reliance on the DOE and FBI evaluations of threats to NRC licensed facilities and materials, and specifically possibly delaying receipt of 1-hour and 4-hour threat assessment reports.

BACKGROUND:

In the Energy Reorganization Act of 1974, Congress enumerated responsibilities for NRC, including: "the provision and maintenance of safeguards against threats, theft, and sabotage;"

CONTACT: John J. Davidson, NMSS/FCSS
(301) 415-8130

and the development “in consultation and coordination with the Administration, contingency plans for dealing with threats, thefts, and sabotage.” In 1975, the staff began creating an NRC threat assessment program intended to comprise one component of a complementary set of safety and safeguards programs to assure public health and safety and protect the common defense and security. In the intervening years, staff efforts matured into an effective program to provide: 1) a rapid response to threats to the public health and safety and common defense and security against power reactors, and other nuclear facilities, materials, and activities; 2) support to develop and maintain an NRC safeguards policy that complements NRC safety programs; and 3) along with DOE, technical support to U.S. law enforcement agencies, primarily the FBI and Intelligence Community, on a wide variety of matters, including theft or illegal trafficking of nuclear materials, and threatened use of, or sabotage involving, radioactive materials that might endanger the public health and safety.

As early as 1975, NRC, along with DOE and the FBI, identified the need for specialized and unique assessment tools that were unavailable, at that time, to be used for responding to communicated nuclear threats involving improvised nuclear devices, nuclear power reactors, or other nuclear facilities or activities. Development was begun and jointly funded by NRC and DOE on what became the Credibility Assessment Team (CAT). Also, in 1979, the NRC Chairman and the FBI Director signed a Memorandum of Understanding (MOU), in part, to assure “a timely, reliable, and effective response to a nuclear threat incident.” In the MOU, NRC commits to assist the FBI in evaluating the nuclear aspects and the credibility of nuclear threats, as well as coordinating response activities. (Under Federal law, the FBI has lead responsibility for responding to acts of terrorism and acts involving the use of weapons of mass destruction, i.e., terrorism involving nuclear, chemical, or biological agents.) A copy of the MOU is provided in Attachment 1. The CAT became one of several key components of the NRC and DOE threat assessment programs and is a unique Federal asset in the assessment of nuclear-related threats that directly addresses the nuclear portion of weapons of mass destruction threat. Since 1978, the CAT has assessed the credibility of 57 nuclear extortion threats involving improvised nuclear devices; 23 extortion and other threats involving NRC licensed facilities; and approximately 400 cases involving the attempted illicit sale of alleged nuclear materials. Of the threats involving improvised nuclear devices or NRC licensed facilities, only one threat was assessed as credible, and in fact, turned out to involve an actual theft of material as a basis for extorting money. That incident occurred at an NRC-licensed low-enriched facility in 1979.

When NRC funds to support the CAT were reduced in fiscal year (FY) 1998 and eliminated in FY 1999, staff initiated an effort to determine the impact of NRC losing the various assessment and informational tools that had been provided by CAT and to identify, to the extent possible, planned actions to compensate for the loss of the CAT in the future.

DISCUSSION:

The basis for a sound threat assessment program is threefold: 1) provision for effective, consistent, and timely responses to a wide range of threats to the safe and secure operation of licensed facilities and to the safe and secure use of licensed materials; 2) interaction with and support to other Federal agencies regarding threats against nuclear facilities and materials, and

threats to the public involving nuclear and radioactive materials, including nuclear materials smuggling and illicit trafficking; and 3) analytic support and recommendations to senior NRC decision-makers and licensees regarding potential threats to safe and secure operations and implemented programs, and other safeguards policy matters. These efforts also support Presidential Decision Directive-39, "U.S. Policy on Counterterrorism (PDD-39)," dated June 21, 1995, which addresses the Federal response to threats and acts involving nuclear, chemical, and biological materials.

Timeliness, consistency, and reliability in assessing threats to safe and secure operations of licensed facilities and to the unauthorized use of nuclear and radioactive materials are the primary goal of the NRC threat assessment program. They have been achieved through the NRC Information Assessment Team (IAT), the CAT, and the FBI Domestic Warning and Advisory System. The NRC IAT is an on-call team comprising NRC staff who serve as the focal point for assessing all reported threats to NRC licensed facilities, materials, and activities. The IAT is chaired by the Office of Nuclear Material Safety and Safeguards (NMSS) and includes staff representation from NMSS, the Office of Nuclear Reactor Regulation (NRR), and each Regional Office. The IAT, CAT, and the FBI Warning and Advisory System are on-call 24-hour-a-day resources that have a long-established record of effective and measured response to a wide range of threats and incidents. The NRC IAT and the FBI Warning and Advisory System remain effective components of the NRC threat assessment program and will not be discussed further. Details concerning the CAT's composition, operational capabilities, extensive databases, and past NRC and DOE funding are provided in Attachment 2. The CAT is a unique Federal asset comprising more than 50 assessors in six assessment teams that provide operational, technical, and behavioral assessments within one hour of receipt of the threat message. Assessment elements are managed by a Coordination Center at Lawrence Livermore National Laboratory (LLNL), which also maintains a number of one-of-a-kind databases for use in assessing threats and nuclear smuggling incidents. NRC, FBI, DOE, all assessor teams, and the Coordinating Center, are linked by a computer-based communications system that can process classified information.

IMPACT ASSESSMENT:

NRC's threat assessment program continues to provide timely support to the Commission in a variety of ways; however, the program is significantly affected by the loss of the CAT as a real-time threat assessment resource. The impact of this loss will be felt in several areas. With the loss of the CAT secure communications work station, NRC will no longer be able to directly participate in CAT assessments, or directly access the various threat-related databases maintained by LLNL. NRC direct participation in the CAT has assured valuable timely information for NRC management and prompt response to NRC requests when timeliness was vital. Because nuclear threats, smuggling and illicit sales activities, potentially involving material from NRC licensed facilities, will probably continue in the future (that is, there is no new intelligence information; no change in the threat from terrorists, disgruntled employees, or psychopathic behaviors; and no change in the threat environment that supports such a reduction), NRC will continue to respond to such threats. However, the timeliness and responsiveness of NRC involvement, management, and information dissemination will be replaced by a dependence on FBI support and availability when NRC licensees and materials

are the target of a threat. Further, it will be DOE, through the CAT, that provides technical

support to the FBI, even when an NRC licensee is involved. FBI priorities, as lead Federal agency for responding to criminal acts of terrorism, may not always reflect NRC's sensitivity to public health and safety responsibilities and issues, and reliance on the FBI to provide timely assessments to NRC and the licensee may not be comparable to NRC participation and involvement in the CAT. Although responsibility for responding to threats against its licensees in a timely manner remains an NRC oversight responsibility, staff has determined that resources within NRC are not available currently to replace lost CAT capabilities used to assess threats to NRC-licensed facilities and materials. The CAT provides timely independent analyses and assessments, as well as access to a variety of databases and timely expert analysis. In the future, NRC will not have the immediate and direct accessibility to the CAT resources, but will have to communicate through the FBI or DOE; the time frame for response will be increased. Timeliness is a factor in a variety of CAT support activities. For example, in March 1998 when Italian authorities seized a TRIGA fuel element shipped to Zaire in the early 1970s, the first and most complete information provided to NRC came from the CAT nuclear smuggling and illicit sales database. This information guided and focused NRC's initial deliberations in a timely manner.

Finally, the withdrawal of NRC from the CAT has prompted strong responses from FBI and DOE, and modification to the NRC and FBI MOU may be required. Staff will revisit the NRC/FBI MOU with FBI staff to ascertain if changes are warranted that would require renegotiation of the MOU. NRC staff will keep the Commission advised of the results of this effort.

COORDINATION:

The Office of the Chief Financial Officer has reviewed this paper and concurs.

L. Joseph Callan
Executive Director
for Operations

Attachments:

1. NRC/FBI MOU, dated May 29, 1991
2. Description of Credibility Assessment Team - REMOVED TO ALLOW FOR PUBLIC RELEASE OF THE REMAINDER OF THE PAPER

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DOCUMENT NAME: 9800146.EDO * SEE PREVIOUS CONCURRENCE

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OFC	DEDO		EDO									
NAME	HThompson		LJCallan									
DATE	6/ /98		6/ /98									

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