

ORIGINAL

NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

SECY-77-611B

DRAFT AMENDMENTS TO THE ATOMIC ENERGY ACT  
ON THE PROTECTION OF SAFEGUARDS INFORMATION  
AND RELATED MATTERS

Place - Washington, D. C.

Date - Thursday, 16 March 1978

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

SECY-77-611B

DRAFT AMENDMENTS TO THE ATOMIC ENERGY ACT  
ON THE PROTECTION OF SAFEGUARDS INFORMATION  
AND RELATED MATTERS

Room 1130  
1717 H Street, N.W.  
Washington, D.C.

Thursday, 16 March 1978

The Commission met, pursuant to notice, at  
9:40 a.m.,

BEFORE:

VICTOR GILINSKY, Acting Chairman

PETER BRADFORD, Commission

ALSO PRESENT:

H. SHAPAR  
S. CHILK  
W. PARKER  
L. GOSSICK  
W. REAMER  
G. SNYDER  
G. MC CORKLE  
E. CASE  
J. KELLEY

P R O C E E D I N G S

(9:40 a.m.)

COMMISSIONER GILINSKY: Very well.

Why don't we go on to the next item.

Howard, you will handle this?

MR. SHAPAR: Yes.

This is SECY-77-611B, draft amendments to the Atomic Energy Act on the protection of safeguards information and related matters.

To review the bidding briefly, you recently saw a very close counterpart of this legislation discussed at a Commission meeting. I believe you weren't there, Mr. Gilinsky --

COMMISSIONER GILINSKY: That's right.

MR. SHAPAR: -- at that meeting.

Essentially, the legislation is part of a much broader picture. Generally, our program for upgrading safeguards and protecting safeguards information; the legislation is intended to protect safeguards information without classifying it, and to approve the legal and statutory provisions of the Atomic Energy Act with respect to protecting access to sites where licensing activities are carried on.

In terms of protecting --

COMMISSIONER GILINSKY: When you say not classified, do you mean not have it subject to Executive Order?

1 MR. SHAPAR: That's correct.

2 COMMISSIONER GILINSKY: In other words, not pro-  
3 tected --

4 MR. SHAPAR: In other words, they will protect  
5 it under the legislation without classifying the information,  
6 not relying on the Executive Order but relying on these new  
7 provisions.

8 COMMISSIONER GILINSKY: Classification being a  
9 term of art, which applies to --

10 MR. SHAPAR: To the Executive Order that you just  
11 mentioned.

12 COMMISSIONER GILINSKY: 1165?

13 MR. SHAPAR: Yes.

14 With respect to the protection of the information,  
15 I think there are three points or phases where it needs to be  
16 protected.

17 And that is, from disclosure under the Freedom  
18 of Information Act;

19 Second, during the hearing process;

20 And thirdly, while the information is in the hands  
21 of licensees and others who might have access to safeguards  
22 information.

23 I think it is also important to keep in mind that  
24 you do have a pending rulemaking proceeding involving clear-  
25 ance of people who have access to significant quantities of

1 special nuclear materials.

2 The proposed rule is out. The Commission decided  
3 there will be a hearing on that proposed rule. If the Com-  
4 mission should decide to go along that route, you in effect  
5 will have a program where you will be clearing people, under  
6 existing authority, who will have access to significant quant-  
7 ities of special nuclear materials.

8 Now, during the last discussion of this legisla-  
9 tion, the Commission agreed that they wanted to consider it  
10 further and asked me to refine it somewhat to be more precise  
11 about the kinds of safeguards information that we were talk-  
12 ing about.

13 And they wanted to make sure that the legislation  
14 would cover materials in transient, as well as materials at  
15 fixed sites, and information relating thereto.

16 And they wanted, as a result of the discussion  
17 with Commissioner Kennedy, they wanted the pros and cons dis-  
18 cussed, of having the legislation rest only on health and  
19 safety grounds or on health and safety and the common de-  
20 fense of security grounds. The paper discusses the pros and  
21 cons of each.

22 Our recommendation is that the legislation ought  
23 to rest on both common defense and security grounds and health  
24 and safety matters, both.

25 I think those are the main elements of the paper.



1 I would be pleased to answer any questions you  
2 might have.

3 I think there is agreement on the paper now, as  
4 drafted. I think it is responsive to what was requested of  
5 the Staff at the last meeting.

6 (Pause.)

7 COMMISSIONER GILINSKY: You have me at a disad-  
8 vantage, Howard.

9 Let me ask you: On our clearance rule; that applies  
10 to, as it is framed, to both reactors and fuel facilities?

11 MR. SHAPAR: Yes.

12 COMMISSIONER GILINSKY: So it is an across-the-  
13 board rule?

14 MR. SHAPAR: An across-the-board rule.

15 COMMISSIONER GILINSKY: And that is the way you  
16 framed your proposal for controlling information?

17 MR. SHAPAR: Yes.

18 COMMISSIONER GILINSKY: Peter, do you have any-  
19 thing?

20 COMMISSIONER BRADFORD: No.

21 I gather that OGC is not fully comfortable with  
22 the draft. And maybe we ought to ask them to --

23 MR. KELLEY: I don't think it is true of the  
24 draft. I think we did get together and concur on language.

25 In terms of comfort, Phil Reamer, who has really

1 done the work on it, is supposed to be on his way up.

2 Oh, he is here.

3 Come on up, Phil.

4 (Pause.)

5 MR. REAMER: We pointed out in our paper to Howard,  
6 certainly points that he was quite aware of, too; which is  
7 that the legislation as drafted was broad in certain areas.

8 It covered, for example, source material, in sug-  
9 gesting authority, in providing authority for a clearance  
10 program.

11 And we felt that some of the areas in which the  
12 legislation was broad might be closely scrutinized by the  
13 Congress, and that we should be prepared to provide justifica-  
14 tions for it; our request for (inaudible).

15 COMMISSIONER GILINSKY: Howard, it has been a  
16 little while since we have covered this point. I wonder if  
17 you can just sort of run over it, the main points of the  
18 proposal, just how broad it is?

19 MR. SHAPAR: Yes.

20 As I indicated earlier, it covers access to mat-  
21 erials and there is an existing provision which we have im-  
22 proved upon, we think, which would enable us to require clear-  
23 ance people who would have access to materials.

24 It would also provide protection.

25 COMMISSIONER GILINSKY: In what way does it improve



1 that one, because that we have.

2 MR. SHAPAR: Well, we have it but it is in terms  
3 of access to significant amounts of special nuclear materials,  
4 only.

5 COMMISSIONER GILINSKY: Yes.

6 MR. SHAPAR: And as drafted, it would not apply  
7 to people who were not licensees. In other words, it would  
8 apply only to licensees as such.

9 COMMISSIONER GILINSKY: Well, would anyone other  
10 than a licensee have access to the materials?

11 MR. SHAPAR: Well, there is the transient situation  
12 is one example I can think of.

13 COMMISSIONER GILINSKY: I see.

14 MR. SHAPAR: Also, it rests solely -- this is  
15 the more important point -- it rests solely on the common  
16 defense and security, and there have been some questions  
17 raised in the past about whether or not that would really cover  
18 sabotage.

19 COMMISSIONER GILINSKY: How does the present  
20 legislation restrict its licensees? Does it specifically say  
21 licensee employees, or --

22 MR. SHAPAR: Well, there are court cases that  
23 indicate that any regulation that you impose pursuant to a  
24 statute, unless the statute is unambiguously clear, that it  
25 applies to people other than those who are licensed by the

1 Commission, that there is a doubt about it.

2 It is those line of cases that we are trying to  
3 address.

4 COMMISSIONER GILINSKY: But the legislation merely  
5 speaks of access to materials.

6 MR. SHAPAR: The way it is written now; access to  
7 significant quantities of special nuclear materials.

8 COMMISSIONER GILINSKY: Right.

9 But you regard that as restricting, as a restric-  
10 tion which would apply only to licensees?

11 MR. SHAPAR: Yes, based on case law and other areas.  
12 I would say generally that unless the statute makes our  
13 authority specific, very specific, with respect to get at  
14 people other than those who have a license, there is a ques-  
15 tion about our authority to do so, and it stems from a case  
16 involving the Eniwetok proving grounds.

17 COMMISSIONER GILINSKY: So you are in a sense  
18 bolstering that authority, to clearly apply to anyone who  
19 has access to the material?

20 MR. SHAPAR: Right, plus resting it on health and  
21 safety grounds, as well as common defense and security  
22 grounds.

23 COMMISSIONER GILINSKY: And what is the advantage  
24 of that?

25 MR. SHAPAR: Well, it would make clear our

1 authority against sabotage.

2 It also, I should add, makes it clear that sabotage  
3 is specifically covered.

4 COMMISSIONER GILINSKY: So you regard sabotage  
5 in some ways as being closer to health and safety?

6 MR. SHAPAR: Yes.

7 COMMISSIONER GILINSKY: And stealing material for  
8 possible use as explosives, closer to common defense and  
9 security.

10 MR. SHAPAR: A number of questions we had were:  
11 How is it really related to common defense and security if  
12 someone sabotages a nuclear power plant. And I remember we  
13 had discussions about whether or not you could use a rationale  
14 to the effect that the power is delivered to a defense base.  
15 We think we could make out a case, but it is not the --

16 COMMISSIONER GILINSKY: Now, when you talk about  
17 sabotage, you mean sabotage that would cause harm to those  
18 outside the facility?

19 MR. SHAPAR: Yes, indeed.

20 COMMISSIONER GILINSKY: Rather than economic  
21 loss?

22 MR. SHAPAR: Yes. That's why we think it is better  
23 and safer from a legal standpoint to have it rest on both  
24 common defense and security and health and safety.

25 COMMISSIONER BRADFORD: It does refer, I gather,

1 from the OGC memo, to sabotage of any type.

2 MR. SHAPAR: That's right, because there is a  
3 history of AEC and NRC activities indicating that rules are  
4 directed at industrial sabotage, but not at the acts of an  
5 enemy agent, pursuant to the so-called Siegel case that hap-  
6 pened several years ago.

7 We want to make it clear that in terms of our  
8 ability to protect access and to protect the information, we  
9 really don't care whether or not the sabotage is done by a  
10 so-called enemy agent, or whether it is done by somebody in-  
11 side the plant.

12 If you are going to have a complete and effective  
13 system of protection, I think we need to get at both.

14 COMMISSIONER GILINSKY: And, let's see: How do  
15 you get to the information, how do you get to protecting  
16 information?

17 MR. SHAPAR: By Section 1.47 and it would protect  
18 it in the three phases that I mentioned in my introductory  
19 remarks and provide a solid legal basis for protecting it  
20 under the Freedom of Information Act.

21 We <sup>have</sup> another section that makes it clear that in  
22 the hearing process itself that we would adopt the framework  
23 of Section 1.81 of the Act and say that yes we can protect  
24 it, but we will protect it with a minimum impairment of the  
25 rights of the parties to the proceeding, which is exactly the

1 same principle which would be applied to the information, even  
2 if it were classified.

3 And then there is the phase of protecting it while  
4 it is in the hands of the licensees or others. And we want  
5 to be sure of our statutory authority to promulgate rules  
6 that would fully protect the information under those circum-  
7 stances.

8 COMMISSIONER GILINSKY: And how do you define the  
9 categories of information?

10 MR. SHAPAR: This is one of the areas where we have  
11 changed the draft from the version that you saw earlier.  
12 It is unauthorized disclosure of information relating to the  
13 control, accountability and physical protection against theft,  
14 diversion, or sabotage of any type, of special nuclear mat-  
15 erials, source or by-product materials, whether in transient  
16 or at fixed sites, which requires a Commission license.

17 And I should add; there was an important sentence  
18 that was in there before:

19 "This information may include information  
20 pertaining the security plans and plant equipment  
21 used in the protection of such materials and facili-  
22 ties against theft, diversion or sabotage of any  
23 type."

24 I am sorry; that was added.

25 But then the key thing is:

1           "The exercise of the authority in this  
2 paragraph shall require a judgment of the Commis-  
3 sion that the unauthorized disclosure of such  
4 information could adversely affect the health  
5 and safety of the public, or the common defense  
6 and security by facilitating theft, diversion or  
7 sabotage of any type, of such material, or such  
8 facility."

9           COMMISSIONER GILINSKY: Why do you need the source  
10 material in there?

11          MR. SHAPAR: Well, remember, we are resting it on  
12 both health and safety and common defense and security  
13 grounds.

14          COMMISSIONER GILINSKY: Well, you are saying that  
15 if we spilled yellowcake, or something, it is harmful to the  
16 public?

17          MR. SHAPAR: I remember some people in Colorado  
18 getting quite excited about the spilling of yellowcake.

19          COMMISSIONER GILINSKY: Yes, but there we are  
20 really overlapping with a lot of other materials. And one  
21 wonders whether this kind of regime is appropriate.

22          MR. SHAPAR: Well, we made a couple of other  
23 points. The first effort to expand 1.61-I(2) in 1968 was  
24 -- would have covered source material. That effort died in  
25 the OMB because presumably it wasn't pushed.

1           And the Nonproliferation Act signed by the Presi-  
2 dent includes source material and nuclear materials and  
3 equipment which have safeguard significance.

4           So we are not breaking into a new field, plus the  
5 fact that I mentioned first, that we are talking about not  
6 just common defense and security, but we are talking about  
7 health impacts on the public.

8           COMMISSIONER GILINSKY: Well, are you then saying  
9 that information relating to mills would then be subject  
10 to classification?

11          MR. SHAPAR: I think you raised a good point, but  
12 it is hard when you are dealing with statutes to be able to  
13 foresee all the possibilities of malicious attempt to steal  
14 material or to misuse it.

15          COMMISSIONER BRADFORD: Would stealing come under  
16 the heading of sabotage?

17          MR. SHAPAR: No, but it would come under theft  
18 or diversion.

19          COMMISSIONER GILINSKY: Well, but you know, here  
20 you are getting into the sort of the run-of-the-mill indu-  
21 strial problem that you have in all industries. And it seems  
22 to me that one of the advantages of going the statutory route  
23 was to create a precedent for extension of classification  
24 which you might have if you simply extended the Executive  
25 Order, extend the application of the Executive Order by saying



1 that the national security is involved.

2 And that could easily extend further through ad-  
3 ministrative means and there didn't to be any clear obstacles  
4 to it.

5 Whereas, being forced to go up to the Congress and  
6 get a specific change in legislation creates a certain sort  
7 of hurdle we have to cross, and you couldn't easily extend  
8 that sort of review to many industries.

9 MR. SHAPAR: Well, I think there --

10 COMMISSIONER GILINSKY: And by catching in this  
11 effort, matters which are really not all that different from  
12 those in other industrial areas, I wonder whether we are  
13 losing that advantage.

14 MR. SHAPAR: Well, let me say that in terms of --

15 COMMISSIONER GILINSKY: Do you understand what I  
16 am saying?

17 MR. SHAPAR: Yes, I do.

18 I will say several things. Number one, in terms  
19 of the overall breadth of this legislation, whether or not  
20 source material is covered, I don't suppose would be a major  
21 point. I mean, it is going to be a pretty controversial  
22 piece of legislation. I don't want anybody to be deluded  
23 on that score. This is very broad-ranging legislation.

24 And whether or not source material is involved or  
25 not, I don't think will be one of the more controversial

1 aspects.

2 Beyond that, we found out through experience that  
3 by narrow drafting we have run into trouble restricting it  
4 to common defense and security, restricting to significant  
5 quantities of SNM, not making it clear that we wanted to hit  
6 people that were not just licensees.

7 It seems to me there is a lesson to be learned  
8 here.

9 And more importantly, the fact that you have got  
10 authorizing legislation doesn't mean that you are going to  
11 use the full scope and sweep of that legislation. I find  
12 that based on experience, that in terms of drafting legisla-  
13 tion of this type, that you simply cannot foresee all of the  
14 situations involved.

15 And since it is so broad anyway, in terms of  
16 applying both to health and safety and common defense and  
17 security, applying to by-product material as well as SNM,  
18 throwing in source material, particularly since the Nonpro-  
19 liferation Act mentions it as a safeguardable material, is  
20 not an undue extension.

21 If it bothers you, I would be perfectly happy to  
22 delete it.

23 COMMISSIONER GILINSKY: Well, I guess my feeling  
24 is that it ought to be as narrow as possible, because -- well;  
25 I think it would be useful to keep the classification or the

1 information control regime as small as possible.

2 Peter?

3 COMMISSIONER BRADFORD: Howard, how do you see  
4 the legislation being applied -- or let me just ask you a  
5 couple of specific situations:

6 Would it, for example, relate to the plans for  
7 shipping that apply to source material; yellowcake, or say  
8 something more significant, say highly enriched uranium;  
9 could one keep the information as to what airports were being  
10 and what time, what have you --

11 MR. SHAPAR: It would be broad enough, in my  
12 opinion, to do that. If it is in terms of -- remember, the  
13 overall, overriding qualification is that the judgment of the  
14 Commission is that the unwarranted disclosure of such inform-  
15 ation could adversely affect the health and safety of the  
16 public and the common defense and security, by facilitating  
17 theft, diversion or sabotage of any type.

18 And the other qualification is it is going to be  
19 information relating to the control, accountability and  
20 physical protection against theft, diversion or sabotage of  
21 any type.

22 So if it meets those qualifications, you could  
23 do it. You don't have to do it, though.

24 COMMISSIONER BRADFORD: I guess since I have been  
25 here I have gotten used to hearing the phrase, material

1 control and accounting as if it were one word. What is the  
2 difference between control and accounting.

3 MR. SHAPAR: I think I would defer to my betters on  
4 that one. Is there somebody from NMSS here?

5 MR. MC CORKLE: Material control actually has  
6 two different aspects. One of them, of course, is material  
7 containment. We control access to it by internal mechanisms  
8 as to how people can get to that material; in other words,  
9 the two-man rule, entry to the vault, things of this nature.

10 The term material control and accounting is a gen-  
11 eric term which encompasses accounting and also they are  
12 tracing from within a material access area of material from  
13 one item control area to another area, from an MDA to another  
14 MDA.

15 So, actually there are two types of materials  
16 control.

17 COMMISSIONER BRADFORD: If you wanted, for example,  
18 not to disclose the airports beings used for HEU shipments,  
19 could you fit that within materials control and accounting  
20 or physical security.

21 MR. MC CORKLE: Physical security. And that  
22 aspect is containment of the material, in other words, an  
23 exclusion area for access to only authorized personnel in the  
24 immediate vicinity of the material.

25 COMMISSIONER BRADFORD: I can understand how you

1 can withhold the guarding arrangements and what have you.

2 You can withhold the time as well, place?

3 MR. MC CORKLE: That's right -- the time and  
4 place, well, of course, at the present time, we use scheduled  
5 for exports, for example, the only air shipments we have  
6 right now are scheduled commercial aircraft, nonstop to the  
7 overseas destination.

8 As far as the arrival of the material for loading  
9 onto the aircraft is concerned, we have to have a cushion.  
10 In other words, we will bring down a truck, so we schedule  
11 the truck to come in a few hours earlier.

12 COMMISSIONER BRADFORD: I understand all that;  
13 I am wondering if -- well, I don't necessarily understand all  
14 that -- but what I am wondering is whether under the law you  
15 could -- first of all, under present law, can you withhold  
16 that information. If someone calls you up and says: When  
17 is the next shipment?

18 MR. MC CORKLE: We can withhold the information  
19 under 2.790 right now.

20 COMMISSIONER BRADFORD: We are pretending it is  
21 proprietary.

22 MR. MC CORKLE: But it is proprietary, but I am  
23 not certain as to -- I will have to refer to my legal friends  
24 who tell me that that is somewhat suspect.

25 COMMISSIONER BRADFORD: Yes.

1 MR. MC CORKLE: It might not hold up.

2 MR. SHAPAR: Let say some lawyers might disagree  
3 to that being the proper approach -- that being the proper  
4 approach for defense under an FOIA request.

5 COMMISSIONER BRADFORD: But you do feel that under  
6 this legislation that information would be withholdable?

7 MR. SHAPAR: Yes.

8 COMMISSIONER BRADFORD: Would it extend even to  
9 being able to withhold general information such as whether a  
10 particular airport is used for shipments?

11 MR. SHAPAR: I guess you would have to apply the  
12 rule of reason. The key to me would be whether or not the  
13 availability of the information would make it easy to steal  
14 or divert.

15 If that information -- there would have to be a  
16 reasonable nexus to the overriding qualification here, that  
17 it would, you know, reasonably make it easy to steal it.  
18 Then I think reasonably we could say that the rule should  
19 cover it.

20 COMMISSIONER BRADFORD: I can begin to now ap-  
21 preciate more where the controversy is going to come.

22 I take it what you are saying is that theoretically  
23 one could say that the mayor of Chicago doesn't -- shouldn't  
24 even know that the Chicago airport was being used, because  
25 that would make it easier for someone to lie in wait for --

1 MR. SHAPAR: Yes, but I have full confidence that  
2 this Commission or any succeeding Commission wouldn't push it  
3 that hard.

4 COMMISSIONER BRADFORD: I am not sure the Congress  
5 shares your confidence in it.

6 What about design questions as to a particular  
7 plant? I think we discussed that a little bit before, but  
8 again, theoretically, I take it an awful lot of questions  
9 about the workings of a nuclear power plant would theoretically  
10 fit within the legislation.

11 MR. SHAPAR: Yes.

12 MR. CASE: Yes, the word "equipment" in there, just  
13 to cover that.

14 COMMISSIONER BRADFORD: An awful of the questions  
15 that one could ask about the effects of the guillotine break  
16 would be, I suppose, questions that would be of interest to  
17 someone who is concerned with causing one.

18 MR. CASE: You have got competing statutes. You  
19 would have if this were passed. One says you make everything  
20 public that you can reasonably do, and the other would say:  
21 don't let stuff out that would -- and you would have to  
22 strike a balance.

23 MR. SHAPAR: Really, the key to this, the thrust  
24 of your questions, is the reasonableness of the rules that  
25 are promulgated under it, and if you feel uncomfortable with



1 the breadth, we can cut back, because it obviously is broad.  
2 The question is where you would like to cut back.

3 MR. CASE My opinion, for whatever it is worth:  
4 You wouldn't cut back on the scope. You would make the  
5 standard facilitating diversion and raise the standard there,  
6 rather than trying to limit the scope of what might be; you  
7 would raise it.

8 MR. SHAPAR: That's certainly an option.

9 And one thing you might want to consider in pur-  
10 suing this thought is taking another look at the second  
11 qualification:

12 "The unauthorized disclosure of such in-  
13 formation could adversely affect the health and  
14 safety of the public and the common defense and  
15 security by facilitating theft, diversion or  
16 sabotage of any type of such material or such  
17 facilities."

18 Those words could be made stronger in terms of  
19 the threshold that you want to stake out.

20 COMMISSIONER BRADFORD: Coming back to one of the  
21 other standards, if somebody really were inclined to try  
22 to withhold substantial amounts of information about how a  
23 reactor works; they would still have to some how or another  
24 be able to relate that to physical security; yes.

25 MR. CASE: Sabotage; they would have to relate it

1 to sabotage.

2 COMMISSIONER BRADFORD: Well, but sabotage it could  
3 cover, in fact, though, most of the parts, I take it, of the  
4 reactor where if you do damage, you could cause real trouble.

5 But if you had also to relate it to physical  
6 security, then would you still be able to withhold information  
7 about the consequences of the main steamline break, or some-  
8 thing like that?

9 MR. REAMER: I would say it is ambiguous. The  
10 question would come down to, I think, under this proposed  
11 legislation, two areas; one would be what is meant by the  
12 term safeguards information, and whether or not there is  
13 some term of art about the word safeguards.

14 And the second would be the clause that says:

15 "This information may include information  
16 relating to plant equipment used for the protection  
17 of facilities."

18 You may or may not be confined to physical pro-  
19 tection by these words, (inaudible) under the statute.

20 MR. CASE: Well, depending on what you mean by  
21 physical protection, -- I didn't want to be confined to  
22 physical protection, because some people read that very  
23 narrowly to mean fences and things like that. And I want  
24 to go beyond that to make sure I included plant equipment.

25 COMMISSIONER GILINSKY: In other words, you are

1 saying any details of reactor systems that might facilitate--  
2 might indicate how they might be disabled.--

3 MR. CASE: Yes.

4 COMMISSIONER GILINSKY: -- would be included.

5 MR. CASE: Would be included.

6 COMMISSIONER GILINSKY: That's broad. You might  
7 be including the very safety systems.

8 MR. CASE: Yes, sir.

9 It is a competing consideration. I have to em-  
10 phasize that.

11 COMMISSIONER GILINSKY: You are at least suggest-  
12 ing that -- or controlling information in a good part of the  
13 SAR, other than site-related.

14 MR. CASE: All I can say is that it could --

15 COMMISSIONER GILINSKY: Well --

16 MR. CASE: It could extend to that if it met  
17 the other test of facilitating theft, diversion or sabotage.

18 COMMISSIONER GILINSKY: That is a lot further than  
19 I think we ever dreamed of going when we started out on this  
20 route.

21 MR. SHAPAR: But this is true of almost any  
22 provision in the Atomic Energy Act, if you take a look at the  
23 way the statutory standards are now written. It gives you  
24 enormous authority.

25 Let me point out also that in terms of equipment

1 now in lightwater reactors, of course, it has been openly  
2 available for years, but there may be new types of reactors  
3 where a key piece of equipment might be vital in terms of  
4 sabotaging the entire plant.

5 COMMISSIONER GILINSKY: Okay; you are using the  
6 word "vital" which is different than --

7 MR. SHAPAR: I am saying it is extremely hard to  
8 predict the future in terms of drafting legislation.

9 COMMISSIONER GILINSKY: Well, it is hard to predict  
10 the future, anyway.

11 (Laughter.)

12 Or especially the future.

13 COMMISSIONER BRADFORD: If some congressman from  
14 Louisiana -- not Louisiana, but where the last grain elevator  
15 disaster was -- or some place that is frequently along the  
16 routes where chlorine is transported -- were to ask: What  
17 is different; in other words, why shouldn't this legislation  
18 also extend to other types of facilities, let's say, es-  
19 specially chlorine gas shipments or LNG shipments.

20 Do we have any -- is there any particular answer  
21 about what it is that is special about nuclear?

22 MR. SHAPAR: Well, I guess one answer might be in  
23 terms of the dimensions of a potential accident.

24 MR. KELLEY: We thought about -- did some thinking  
25 about this idea, in effect, classifying safety information,

1 classifying portions of the PSAR, how that fits in relation  
2 to the statutory requirement that the ACRS report be made  
3 public.

4 As I recall the history on that, the ACRS report  
5 on Fermi 1 that went to court was a secret document, and so  
6 it was treated that way.

7 And that was a big deal. Congress didn't like it  
8 and they wrote a statute which says the ACRS report has to  
9 be a part of the public record.

10 MR. SHAPAR: I think it says, "subject to classi-  
11 fication," if my memory serves me right.

12 MR. KELLEY: So that provision contemplates there  
13 that this stuff could be classified.

14 MR. SHAPAR: Yes.

15 COMMISSIONER BRADFORD: Have we ever actually  
16 classified an ACRS report as such?

17 MR. SHAPAR: Not that I know of.

18 MR. CASE: Not on a commercial reactor, but they  
19 do they write reports on ERDA, now DOE, facilities, which  
20 are classified.

21 COMMISSIONER BRADFORD: Are those classified for  
22 this reason?

23 MR. CASE: No.

24 COMMISSIONER BRADFORD: Why are they classified?

25 MR. CASE: Because they have to do with a production

1 or restricted data under the Atomic Energy Act. They might  
2 deal with a submarine where it is confidential, and national  
3 security information.

4 COMMISSIONER GILINSKY: They review some of the  
5 defense reactors.

6 MR. CASE: Yes.

7 MR. MC CORKLE: For fuel cycle facilities, ERDA  
8 does have a classification manual, implementing amendment  
9 3.47, so all the plants aren't classified at their facilities.

10 That is one of the problems we are running into  
11 with some of our licensees, because they are under contract  
12 to ERDA, and even though it is our physical protection plant,  
13 which we would consider unclassified, it is directed by  
14 ERDA to be classified.

15 COMMISSIONER GILINSKY: Well, they are doing  
16 classified work for ERDA; right?

17 MR. MC CORKLE: They are joint-use facilities.  
18 They have directed --

19 COMMISSIONER GILINSKY: For DOE, rather.

20 MR. MC CORKLE: For DOE. We have asked General  
21 Atomics to classify their plant.

22 And we are running into a couple of problems  
23 because the licensees just don't know which way to turn.  
24 That is the problem that has recently arisen.

25 MR. SHAPAR: Is it fair to say that the information

1 that we are now protecting as proprietary is the same kind  
2 of information to which we would apply this new authority.

3 MR. CASE: Yes.

4 MR. SHAPAR: I think at least shows you where the  
5 Staff is thinking now, as to where the direction would be  
6 in terms of any regulations that we would submit to you for  
7 approval, in the event that such legislation were passed.

8 COMMISSIONER GILINSKY: I don't understand that  
9 point.

10 MR. SHAPAR: The question I asked was:

11 In terms of current Staff thinking, if this leg-  
12 islation were now enacted, as to what kind of information  
13 would have applied. And I further asked: Would it be es-  
14 sentially the same kind of information in safeguards plans,  
15 that we are now protecting under the rubric of proprietary  
16 information.

17 The answer I received was yes.

18 COMMISSIONER GILINSKY: Well, but that is a pretty  
19 narrow category of information; fuel cycle facilities and  
20 reactor safeguards plans.

21 MR. SHAPAR: Indeed it is.

22 MR. MC CORKLE: I think there is one other con-  
23 sideration for the advantages that might accrue from the  
24 broader statement, as Howard has included in his statement, <sup>by the</sup>  
25 and that is under the hypothetical; suppose we had a study



1 out for contract as to how you blow up the various (inaudible)  
2 vaults.

3 COMMISSIONER GILINSKY: The various what?

4 MR. MC CORKLE: What kinds of explosives, where  
5 would you place them, to blow up various types of vaults,  
6 to get a facility, or to cause a meltdown of a reactor.

7 COMMISSIONER GILINSKY: Yes.

8 MR. CASE: A vulnerability analysis.

9 MR. MC CORKLE: A vulnerability analysis, in other  
10 words. It is done by a contractor, but it is generic.

11 Yet, certainly, it is the type of thing that I  
12 don't think any of us would like to see in the papers because  
13 it would be blueprint of how to care of the vault, or a  
14 particular area --

15 COMMISSIONER GILINSKY: Do we have to do that?  
16 Can't we get DOE to do that?

17 (Laughter.)

18 MR. SHAPAR: You can't cover it by proprietary.

19 MR. MC CORKLE: We need some sort of mechanism.  
20 I believe it is part of the problem.

21 COMMISSIONER GILINSKY: Okay.

22 Well, this meeting was called really at the re-  
23 quest of the Chairman. I think that we ought to really hold  
24 the matter over until we are reconstituted.

25 MR. SHAPAR: Could I ask if there are any

1 additional information. Would you like to see an option, for  
2 example, on a tighter --

3 COMMISSIONER GILINSKY: I must say I would like to  
4 see it drawn as tightly as possible and still do what needs  
5 to be done, just on the general principle; if you are con-  
6 trolling information, you should control as little as -- just  
7 restrict it to what you absolutely have to control.

8 COMMISSIONER BRADFORD: Something along the lines  
9 that would essentially permit the Staff to do what they are  
10 doing now under the proprietary information right now, but  
11 not much more than that.

12 MR. SHAPAR: Why don't we set it up for you to  
13 look at.

14 Would you also like to see the source material  
15 deleted from the statute?

16 COMMISSIONER GILINSKY: I think I would, unless you  
17 can give a better reason for including it. If you raise the  
18 by-product, I guess there you are thinking about waste  
19 material.

20 MR. SHAPAR: Well, maybe curie quantities of by-  
21 product material.

22 COMMISSIONER GILINSKY: Yes.

23 So I would like that defined a little bit.

24 It may be that it is appropriate for large quan-  
25 tities of highly active materials, but to throw in every little

1 hospital isotope just doesn't seem to be appropriate.

2 MR. SHAPAR: All right.

3 Why don't we try to narrow it in that area, too,  
4 and give you an option.

5 COMMISSIONER GILINSKY: Okay.

6 And then we will take a look at it.

7 Thank you very much.

8 (Whereupon, at 10:20 a.m, the hearing in the  
9 above-entitled matter was adjourned.)  
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