UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

March 9, 2000

Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515-2017

Dear Congressman Markey:

I am responding to your letter of February 4, 2000, concerning the U.S. Nuclear Regulatory Commission's (NRC's) new security program to replace the Operational Safeguards Response Evaluation (OSRE) program. The Commission understands your concerns and we are committed to instituting a security program that is consistent with the agency's mission of protecting public health and safety.

As you stated, the staff is engaged in a comprehensive review of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." This review goes beyond finding a replacement for OSREs, which represented the performance evaluation aspect of the NRC's security oversight program. The staff's review of 10 CFR 73.55 has a broader goal of revising and risk-informing the entire security regulatory program for nuclear power reactors. This process is expected to take three years to complete and is intended to result in a new program that will provide a high level of assurance of protection against the design basis threat (DBT) for radiological sabotage. The staff has a near-term task of defining radiological sabotage for nuclear power reactors and setting the standards for acceptable performance in licensee security programs. The staff is preparing a position paper on these issues and is expected to forward its recommendations to the Commission later this month.

The last OSRE in the current cycle is scheduled for May 2000. Since the final rule is not expected to be published for three years, the staff has taken steps to fill in the gap between May 2000 and the time when the new rule is in place. The NRC staff has reviewed and publicly commented on an industry proposal for a Self-Assessment Program (SAP), to which you referred in your letter. The SAP is planned to be used to fill the gap between the end of the OSRE cycle and the implementation of the new rule, as well as to pilot new concepts for security regulations being considered by the staff. Not until revisions to the SAP are completed to the satisfaction of the NRC, including plans for an adequate number of force-on-force exercises, will the SAP be instituted. Until the industry completes these revisions, which are expected in mid- to late-summer 2000, the NRC staff plans to continue OSRE visits to ensure that there is no gap in testing. In response to your question, we intend to continue the use of contractors while the traditional OSRE process remains in place. As for the role of the NRC in the SAP, the oversight of licensee programs will continue. To this end, we plan to continue using a team of NRC regional and headquarters personnel and NRC contractors to conduct inspections to evaluate the licensees' self-assessment programs, including exercises. We will reevaluate the role of contractors in the new rule-based exercise plan.

As for assuring that noncompliances with requirements of the SAP are appropriately addressed, the industry's proposed program has a section on corrective action, including a commitment to handle deficiencies through the licensee corrective action program. Under the revised oversight program, the NRC will give heightened attention to licensee corrective action programs. Because the SAP is a self-initiated program, the staff is still considering appropriate enforcement options. It is important to note that NRC will continue to ensure compliance with the existing physical protection and safeguards requirements through the baseline inspection program. The SAP is in addition to, not in lieu of, the NRC baseline inspection program.

The Commission has not yet decided on a definition of radiological sabotage, or the criteria upon which the definition may be based. As part of determining how radiological sabotage could affect the environment and public health and safety, the staff has been considering various options, including the use of 10 CFR Part 100 criteria as proposed by industry, in the definition to ensure that the new rule being developed for the Commission's consideration will be based on appropriate criteria. No decisions have yet been made.

You expressed a concern that not all elements of the NRC DBT for radiological sabotage are tested in OSRE exercises, specifically referring to the failure to use an active insider and a vehicle bomb as part of the adversary team in exercises. The regulations require licensees to have pre-access screening, employee background investigations, fitness-for-duty testing, and behavioral observation by supervisors to provide protection against potential threats from insiders. In addition, the regulations require a vehicle barrier system to protect against vehicle bombs. These programs and systems are inspected in the course of the NRC's oversight process. The OSRE exercises serve to complement this effort, and are designed to assess the licensees' capability to respond to threats from external adversaries. While the primary focus of the OSRE is the external threat, the manner in which an OSRE is initiated at a site replicates the type of valuable information that could be provided by the passive insider. This is accomplished through briefings provided by the licensee which reveal in advance the defensive strategies of their response force and by conducting a tour of their protected and vital areas to include the location of vital equipment. As part of a risk-informed review of 10 CFR 73.55, including the industry's proposed self-assessment program, the staff will continue to evaluate methods to address protection against the active insider threat.

In response to your question about the role other agencies such as the Federal Bureau of Investigation or Federal Emergency Management Agency (FEMA) play in defining the DBT, the NRC staff works closely with the FBI Weapons of Mass Destruction Operations Unit (WMDOU), and the Domestic Terrorism Unit (DTU). The NRC staff routinely interacts with the Department of Energy (DOE), the Central Intelligence Agency, the Bureau of Alcohol, Tobacco and Firearms, the Defense Intelligence Agency, U.S. Customs, and other members of the Interagency Intelligence Committee on Terrorism, of which NRC is a member and an active participant. NRC relies on these agencies to provide threat-related information on a daily basis for the NRC staff's use in determining the continuing validity of the DBT, responding to specific threats to NRC licensed facilities, and assessing the domestic threat environment. Currently the DBT and the definition of radiological sabotage are the responsibility of the NRC and the organizations referred to above will continue to function in the same advisory roles, as they do at the present time. With regard to your question regarding the role of the Department of Defense (DOD) in the Nuclear Energy Institute's (NEI's) pilot program, we are not aware of any DOD role in NEI's commercial nuclear activities.

The NRC staff formally assesses the threat environment and validity of the DBT twice a year and consults with the Commission on the results of the assessment. The NRC staff, however, reviews incoming intelligence from both classified and unclassified sources on a daily basis to continually validate the DBT. In addition if an imminent or near-term threat is identified, a threat advisory would be issued to the licensees through the NRC Information Assessment Team, in coordination with the FBI and DOE. Any proposed change to the DBT attributes would be based on extensive trend analyses of actual terrorist and other criminal characteristics that could reasonably be expected in an adversary on the basis of experienced analytical judgment and intelligence community assessments. In response to your question regarding the frequency of threats to NRC-licensed activities, we have received no significant threats since the one mentioned in our response to your letter of November 11, 1998.

In summary, based upon our overall assessment of licensee performance, the Commission continues to believe that existing licensed activity programs are adequate to protect against the DBTs for radiological sabotage and theft and diversion of strategic special nuclear material. If you have further questions on these issues, please contact me.

Sincerely,

Richard A. Meserve