

PREPARED TESTIMONY
SUBMITTED BY
UNITED STATES NUCLEAR REGULATORY COMMISSION

TO

SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING
RESTRUCTURING THE NRC

PRESENTED BY
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CHAIRMAN

SUBMITTED: APRIL 26, 1988

B/a

Mr. Chairman, Members of the Subcommittee, my fellow Commissioners and I are pleased to appear before you today to discuss several bills which would restructure the Nuclear Regulatory Commission. These bills are H.R. 3285, the "Nuclear Energy Reorganization Act of 1987"; H.R. 4134, the "Nuclear Standardization and Safety Reform Act of 1988"; H.R. 3124, pertaining to the appointment of the Executive Director for Operations; H.R. 2126, the "Nuclear Regulatory Commission Inspector General and Investigations Act of 1987"; H.R. 4140, the "Nuclear Investigations Improvement Act of 1988"; and H.R. 3049, the "Nuclear Regulatory Commission Accountability Act of 1987".

Various provisions of these bills would replace the Commission with an agency headed by a single administrator, establish an independent nuclear safety board, establish a statutory Inspector General, provide for a statutory Office of Investigations that would report to the agency head, and make the Executive Director for Operations a Presidential appointee confirmed by the Senate. The bills also have provisions that would impose additional conflict of interest restrictions on certain agency employees and provide protection to agency whistleblowers.

Before addressing the specific bills, I will set forth the Commission's position on restructuring the NRC.

Single Administrator

With respect to whether the NRC should be restructured as an independent agency headed by a single administrator, a majority of the Commission supports the single administrator concept.

In recent years there have been several independent examinations of the structure of the Commission. Following the Three Mile Island accident, both the Kemeny Commission and the Rogovin Special Inquiry Group recommended in 1979 that the NRC be headed by a single administrator. In a strongly worded statement, the Kemeny Commission declared that "as presently constituted, the NRC does not possess the organization and management capabilities necessary for the effective pursuit of safety goals." The Rogovin Inquiry Group concluded that "the central and overwhelming need is for legislative and executive reorganization to establish a single chief executive with the clear authority to supervise and direct the entire NRC staff."

In response to these recommendations, the President prepared and the Congress did not object to Reorganization Plan No. 1 of 1980. That Plan vests additional executive authority in the Chairman. Subsequently, the Grace Commission recommended that Congress enact legislation which would further strengthen the authority of the Chairman as the chief executive officer of the Agency. However, no legislation was passed to implement the Grace Commission recommendations.

In large part the central focus of the discussion on the structure of the NRC is whether the public is better served by an organization where important decisions are made through a collegial process or by an agency headed by a single decision-maker. In addressing this issue the Rogovin Inquiry Group stated, "there is not an agency in government that would not better provide for a diversity of views if it were headed by a Commission. It is not likely, however, that any of these agencies would be as well managed."

In 1954 when Congress enacted the Atomic Energy Act, one of the primary mandates of the Atomic Energy Commission was to regulate the development of the commercial uses of nuclear power which were then in their infancy. A collegial body was a sound structure to formulate licensing procedures and resolve the many different licensing and policy issues arising from the development of this highly complex new technology.

In the ensuing 34 years much has changed. More than one hundred commercial nuclear power plants have been licensed to operate. As a result, the workload of the NRC has shifted from evaluation of construction permit and operating license applications to the regulation of an operational industry. In carrying out this role, it is the Commission's view that efficient management of this major regulatory task is increasingly important to maximize the effectiveness of NRC's resources.

A commission-type organization does lead to a diversity of technical and professional opinion. Some believe that a single administrator agency would lack the diversity of opinion brought by the commission form. However, a single administrator would have the benefit of a staff capable of providing a broad diversity of technical and professional judgments which might be pertinent to safety decisions. Additionally, our rulemaking and adjudicatory proceedings assure that a single administrator would be amply exposed to a wide range of views on all significant issues.

A majority of the Commission believes that a single administrator should result in increased responsibility and accountability at the top of the agency, which it believes important to meet this agency's statutory mandate to protect the public health and safety. The majority emphasizes that its support for a single administrator is contingent on the restructured agency having the independence to make the necessary public health and safety judgments. Thus, we believe that the agency should have a limited number of Presidential appointees, and the majority believes that it should not be subject to Office of Management and Budget (OMB) regulatory oversight.

Consistent with these views, the majority of the Commission would oppose single administrator legislation if the agency were made part of another federal agency, or had more than three Presidential appointees --the Administrator, the Deputy Administrator and the Inspector General.

It is also imperative that the agency have independence to make necessary health and safety judgments. This can only be assured if, as is now the case, the Office of Management and Budget would not review proposed agency regulatory policy determinations, including draft proposed or final rules. In other words, the restructured organization should continue to carry out its regulatory mission as an independent agency.

Nuclear Safety Board

There are several legislative proposals pending before Congress that would create an independent nuclear safety board to investigate significant events at NRC licensed reactors. In some of those proposals, the board would be a separate federal agency.

The Commission does not object to the establishment of a nuclear safety board if legislation is enacted creating a restructured regulatory agency headed by a single administrator. However, a majority of the Commission advocates that such a board be part of and operate within the single administrator agency, rather than be established as a separate federal agency.

If a nuclear safety board is chartered as a separate federal agency this would result in an unnecessary duplication of functions. For example, the regulatory agency would still require sufficient resources to determine what happened and what actions should be taken after an accident. The regulatory agency could not be expected to rely completely on a nuclear safety board to make its public

health and safety determinations for which responsibility had been assigned to the regulatory agency.

Of considerable concern is the fact that an independent nuclear safety board has the very real potential to complicate rather than simplify nuclear regulation by further diffusing accountability and responsibility for the execution of the agency's mission.

We recognize that some will argue that a nuclear safety board should be a separate federal agency in order to increase confidence in nuclear incident investigations. This would be achieved by relieving the nuclear regulatory agency of the responsibility to investigate and determine the cause of events to which the regulatory agency's activities might have been contributing factors.

However, a majority of the Commission believes that a nuclear safety board could be given sufficient independence to operate successfully and effectively within the regulatory agency to mitigate these concerns. Such an arrangement would be akin to the functioning of the Commission's licensing and appeal boards which, though a part of the agency, operate independently within their sphere of responsibility.

In sum, the benefits of having the nuclear safety board as part of the regulatory agency outweigh the benefits to be gained by providing it with total independence.

Inspector General

The Commission does not object to a statutory Inspector General (IG) as part of legislation reorganizing the Commission into an agency headed by a single administrator. A majority of the Commission recognizes that a statutory IG could work equally well under the Commission form of governance as under a single administrator.

Statutory Office of Investigations

In 1982 the Commission established an Office of Investigations (OI) that reported directly to the Commission. OI is responsible for investigating potential wrongdoing by licensees, their contractors, vendors, or others in the regulated industry. In late 1987, Congressional conferees directed the Commission to place OI under the supervision of the Office of the Executive Director for Operations. In response to this Conference Committee directive, the Commission took this action effective February 1, 1988. Pending legislative proposals would make OI a statutory office reporting to the head of the agency, rather than to the Executive Director for Operations.

The Commission does not object to legislation which would make OI a statutory office, provided that the legislation does not diminish that office's current accountability to the agency's head. In this regard, the Commission believes that office should continue to determine how specific investigations should be conducted. OI must be free to draw its own conclusions based on the

information developed in its investigations and should continue to be able to report possible criminal violations to the Department of Justice.

On the other hand, the Commission must continue to have the authority to set OI's investigative priorities. In order to carry out its public health and safety responsibilities, the Commission must be able to direct OI to conduct an investigation promptly or to suspend an investigation because of a need to devote resources to higher priority items. Just as the Commission can direct the technical staff where to focus its attention, the Commission needs to be able to direct OI's investigative efforts to matters the Commission believes are most important and relevant to the Commission's regulatory responsibilities.

Since OI has significant input into some NRC licensing and enforcement decisions, it is important that OI have a close working relationship with the head of the agency (whether a Commission or a single administrator). The majority of the Commission believes that it is more desirable for OI to report directly to the head of the agency. On the other hand, the majority also believes that OI can exercise its investigatory functions with competence and integrity in an organizational structure where OI is under the Office of the Executive Director for Operations (EDO).

The Commission does not believe nuclear safety is jeopardized by the placement of OI under the EDO. We emphasize that the purpose of the NRC is to ensure the safe use of nuclear energy. Our ability to carry out this mission is not a function of the organizational placement of OI.

I now turn to the specific bills.

H.R. 3285

H.R. 3285 would replace the Commission with an agency headed by a single administrator, establish a statutory Inspector General to perform the internal audit and investigation functions now performed by our Office of Inspector and Auditor, and establish a Nuclear Safety Board as an independent federal agency with responsibility for investigating events at both NRC regulated and DOE owned facilities.

While, as noted above, the majority of the Commission conceptually supports single administrator legislation, we cannot support the pertinent portions of H.R. 3285 in their present form because the proposed legislation does not assure that the agency will have sufficient independence to make the necessary public health and safety judgments.

Under H.R. 3285, there could be nine Presidential appointees subject to Senate confirmation--the Administrator, the Deputy Administrator, up to six Assistant Administrators, and an Inspector General. The Commission believes the agency should have substantially fewer Presidential appointees.

Moreover, the proposed legislation does not address the important question of whether the agency's non-budgetary actions would be subject to OMB review and approval. We advocate that the restructured agency, like the present NRC, should not be subject to OMB regulatory oversight.

The proposed legislation would also eliminate the position of the Executive Director for Operations. We believe it would be desirable that any legislation provide for the appointment of a senior career civil servant to assist the administrator in the supervision of day-to-day staff activities.

The provisions of H.R. 3285 which would establish an Inspector General are generally satisfactory. We would suggest that the employees of the IG's office be in the excepted service, rather than in the competitive service as provided by the bill. The other employees in the agency would be in the excepted service, and therefore the agency would have a dual personnel system. This would create an unnecessary administrative burden and would lead to unequal treatment of employees.

As currently written, the employees in the Inspector General's office would also be subject to several conflict of interest provisions. The stock ownership restrictions would be less stringent than those currently imposed on our OIA investigators and auditors. Other proposed restrictions would go well beyond those currently required by the NRC. Specifically, the Inspector General would be precluded from hiring individuals who had recently worked for the nuclear industry and the IG's employees could not negotiate for employment with the nuclear industry while serving in the IG office.

We believe that any additional conflict of interest restrictions, if warranted, should be imposed on a government-wide basis rather than placed on employees of a single agency.

H.R. 4134

H.R. 4134 would replace the NRC with an agency headed by a single administrator. This proposal is generally satisfactory. We have two specific concerns. First, the legislation does not address the issue of the restructured agency's relationship with OMB. Second, this bill would eliminate the position of Executive Director for Operations, which we believe should be retained.

H.R. 3124

Under H.R. 3124 the Executive Director for Operations would be appointed by the President and confirmed by the Senate, rather than appointed by the Commission as is currently the case. The Commission opposes this bill because we believe the Executive Director for Operations should be a career federal employee serving at the pleasure of the Commission. It is essential that the Commission have confidence in its chief of staff and this can only be assured if the Commission retains the power to appoint and remove the Executive Director for Operations.

H.R. 2126

H.R. 2126 would create a statutory Inspector General and also create a statutory Office of Investigations reporting to the Commission. It also contains provisions relating to the protection of agency whistleblowers. While the Commission does not object to some of the concepts contained in this legislation, we oppose this bill in its present form.

We strongly oppose the provisions relating to the Inspector General. The Inspector General's charter not only would include those functions now performed by our Office of Inspector and Auditor, but would also include the authority to determine whether the agency is properly implementing and enforcing the laws, regulations, guidelines and procedures relating to the safety of nuclear power.

The IG would also be empowered to review existing and proposed legislation, relating to the programs and operations of the agency and to make recommendations regarding the effects of such legislation on the economy and efficiency of the administration of the agency. These functions should be performed by the agency's regulatory staff, not by an Inspector General.

The employees in the Inspector General's office would be in the competitive service. For reasons outlined above in our discussion of H.R. 3285, we do not find this to be satisfactory.

Finally, we cannot support the conflict of interest provisions. Employees could not be hired if they held any stock in the major companies regulated by the Commission during the three-year period before NRC employment commenced. This provision is unnecessarily restrictive and could hinder recruitment of qualified inspectors and auditors. Divestiture of such stock, which generally is required under current NRC regulations, should result in the necessary employee objectivity.

The provisions relating to the Office of Investigations (OI) are also unsatisfactory. While the Commission has no objection to making OI a statutory office reporting to the Commission, the implementing details contained in H.R. 2126 are seriously flawed. For example, the Director of OI would serve a four-year term, and could only be removed for inefficiency, neglect of duty, or malfeasance in office. For the agency to effectively carry out its regulatory mission, it must have confidence in the Director of OI. Accordingly, that office director (like the director of other major NRC offices) should serve at the pleasure of the Commission.

The Commission also believes that the functions of the office should be limited to those related to the investigation of allegations that licensees, applicants, contractors and vendors have engaged in willful wrongdoing. Under H.R. 2126, OI would also be required to review existing and proposed regulations relating to compliance by licensees, applicants, contractors and vendors with health and safety standards relating to protecting the public from radiological hazards. This provision broadly expands OI's responsibilities in

areas more appropriately performed by the agency's technical and legal staff. OI does not have the legal or technical expertise to accomplish this function.

Finally, this bill contains provisions aimed at providing protection against retaliation to NRC employees who bring information to the attention of the Inspector General or to Congress. While their objective is meritorious, these provisions are unnecessary, duplicative, and, to the extent that they seek to bind the future discretion of the Inspector General, inappropriate.

For example, many of the provisions essentially reiterate existing protections available to Commission employees under the Civil Service Reform Act of 1978. Additionally, the proposed legislation seeks to specify the scope, analysis, form, and content of investigations to be conducted by the Inspector General. The Commission believes that the Inspector General should have wide latitude in determining the appropriate investigatory approach in a given case.

H.R. 4140

H.R. 4140 would establish the Office of Investigations as a statutory office reporting to the Commission. We have no objection to the provisions of this legislation.

H.R. 3049

H.R. 3049 would preclude the appointment to the Commission of an individual who had a "significant financial relationship" with an entity regulated by the Commission within two years preceding the appointment. In addition, a Commissioner would be subject to substantial civil penalties if he or she accepted compensation from a utility holding a power reactor license during the two-year period following the termination of NRC employment.

We believe that existing conflict of interest provisions under federal statutes, executive orders, and implementing NRC regulations are sufficient to ensure the integrity of NRC officials. As noted previously, we believe any new conflict of interest restrictions, if warranted, should be enacted on a government-wide basis.

Mr. Chairman, this concludes our testimony. I understand that some of my fellow Commissioners have separate statements.