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PROPOSED RULE ^{PR} 110
(69FR 55785)

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Pertaining to proposed rule [3150-AH44]:

Before addressing the questions highlighted in the notice and comment section of the particular rule, I would like to commend the NRC for promulgating such a revision to 10 CFR part 110. It is evident, through OMB's estimated burden analysis, that the Commission has assumed a majority of the responsibility within the proposed revision, and has minimized potential costs to industry in terms of increasing expenditures and decreasing productivity. In the post-9/11 world it is imperative to implement and maintain the most stringent of rules regarding the transfer of "high-risk radioactive materials" both domestically and abroad. I am happy to learn that the NRC is working with the IAEA in order to provide added "guidance" to this regulatory process. That being said, there are concerns within the rule revision that require attention.

For example, the proposed rule, if implemented, would not be legally binding on IAEA member states. The implications of this are twofold. Clearly, IAEA member states import and export radioactive material independently of the United States. If they decide that specific import and export licenses for "high-risk radioactive material" is not in their best interest, then the proposed rule is inconsequential when the United States is not a party to import and export negotiations. Thus, the "globally harmonized approach to ensure a level playing field for commerce," spoken of in the proposed rule, would be hindered as a result of the revision. For when the United States is a party to import and export negotiations, under the revised rule, it bears an undue portion of the burden for doing business. As a result, American industry suffers at the hands of the more competitive global market. Returning to the premise promulgating the inconsequentiality

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of the proposed rule when the United States is not a party to import and export negotiations, a contrary but no less repercussive conclusion can be reached. Because the United States' rule-making process does not have regulatory authority over foreign nations, it becomes prudent to ask the question: Is it worth it? Are these "specific licenses" worth the time, effort, and potential disruption of the "harmony of commerce?" Clearly security is of the utmost importance, but sometimes it is difficult to see when or where to draw the line.

In facilitating that process, I would like to make a few more comments regarding the threat to small business and industry. The OMB's Supporting Statement has presented figures that anticipate "increased burden to the public" as a result of the rule. Similarly, small business is disadvantaged in that it is ill equipped, compared with larger corporations, to effectively manage the increased burden. Application and licensing costs would also rise if the proposed rule were implemented. I agree that the burdens to business presented above are minor compared with the opportunity for the safer and more secure transfer of "high-risk radioactive materials." However, I disagree with the means by which the security provision is being enforced. As a rule, the policy is too narrow in scope to have the far-reaching effects on the international community that the NRC desires. The IAEA, a respected international government organization, should present the policy. This gives member states the opportunity to get involved at a systemic level to promote security and "harmony of commerce." Self-regulation may convince the international community of the wisdom of "specific licenses," but the uncertainty of U.S. influence is the true risk to industry.

Respectfully,

Paul W. Hartman