

PUBLIC MEETING SUMMARY

PROPOSED RULE, "EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND RADIOACTIVE MATERIALS: SECURITY POLICIES" (3150-AH44)

**U.S. NUCLEAR REGULATORY COMMISSION HEARING ROOM
OCTOBER 19, 2004**

On October 19, 2004, the U.S. Nuclear Regulatory Commission (NRC) Office of International Programs (OIP) held an informational public meeting in the Commission Hearing Room on Proposed Rule, "Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies" (3150-AH44, published in the Federal Register on September 16, 2004). The Public Meeting was attended by members of the nuclear materials industry, the press, and other government agencies. Acting Deputy Director of OIP, James Clifford, chaired the meeting. Section Chief, Stephen Dembek, provided an informational overview of the current export/import licensing regulations in 10 CFR Part 110, the new security realities in the post-9/11 environment, revisions to the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) and the Proposed Rule revisions.

Mr. Dembek chaired a panel of NRC staff experts that answered questions concerning the rule, including John Hickey, Philip Brochman, and Grace Kim, Offices of Nuclear Material Safety and Safeguards, Nuclear Security and Incident Response, and General Counsel, respectively, Richard Blanton of the Office of State and Tribal Programs also participated in answering questions. Other OIP staff, seated in the audience, assisted the panel in answering questions raised on the floor and by telephone, including, Senior International Safeguards Advisor, Marvin Peterson; Senior Level Foreign Policy Advisor, Dr. Karen Henderson; Senior Licensing Officer, Janice Owens; and Licensing Officer, Carlotta Coates.

An illustrative list of questions and concerns raised and addressed during the Public Meeting is attached to this Summary. They have been edited for clarity purposes and reflect preliminary staff views, since NRC is accepting public comments on the Proposed Rule through November 30, 2004. Additional questions on the Public Meeting and/or the Proposed Rule may be addressed to Suzanne Schuyler-Hayes, International Policy Analyst, OIP, e-mail, ssh@nrc.gov. The public meeting agenda, slide presentation, and proposed rule documents are accessible on the NRC web site, <http://ruleforum.llnl.gov>.

Attachment: Public Meeting Summary List of Questions,
Concerns and Answers

**PUBLIC MEETING SUMMARY, OCTOBER 19, 2004
LIST OF QUESTIONS, CONCERNS AND ANSWERS
EDITED FOR CLARITY PURPOSES**

1. Question: Will U.S. companies be required to obtain separate, specific NRC licenses for exports and imports to different countries? Answer: For exports, in a situation where a U.S. company manufactures multiple devices, utilizes several types of high risk material, and has foreign customers in several countries, it should be possible to submit an application for one broad license authorizing exports of its products to multiple destinations in one country and /or to multiple destinations in several countries. The specific export license authorization could be valid for a defined period of time, e.g., three to five years, establish total quantity thresholds for each material type, and could name various intermediate and ultimate end users, including foreign distributors and/or affiliates in specified countries. For imports, it should also be possible to submit an application for one broad license authorizing imports of material from multiple countries. A specific import license could be valid for the same period of time as the NRC domestic or Agreement State license to possess the material.
2. Question: Do States and Agreement States have a role in the proposed rule? Answer: Export/import is strictly a Federal matter, but NRC does consult with the States and Agreement States when warranted.
3. Question: Does every foreign end user have to be listed in the application for export? Answer: Much will depend on the individual circumstances associated with the types of export transactions proposed and the recipient countries involved. If a distributor is involved and authorized by a legitimate regulatory body then it might not be necessary to list every possible specific end user. However, it is to the benefit of an applicant to list all information possible to avoid a delay in processing or incurring amendment fees to alter an application.
4. Question: Should a copy of the foreign recipient's "end user statement or certificate" be provided with the export application (even though the "end user statement" is not equivalent to a formal document such as a license or permit issued by the Regulatory Authority of the respective country)? Answer: A copy or the citation of the Regulatory Authority license or permit number should be provided with the application.
5. Question: How will the NRC determine that a foreign country has the regulatory infrastructure in place to monitor usage of materials? Answer: The NRC will work through the International Atomic Energy Agency (IAEA), the Department of State and other resources, including contact information provided by the foreign recipient, which can be verified, to determine this.
6. Question: The required 10-day notification of shipment is not always possible, and even 24-hours minimum notice can be problematic at times. Is notification at "time of shipment" possible versus prior to shipment? Comment: The burden of 15 minutes on the licensee for a notification is inaccurate. It will likely take a half-hour or more for each notification, which, in all likelihood would need to be multiplied by the number of notifications required. Answer: NRC will consider options to minimize the advance notification burden on export/import licensees, e.g., allowing notifications by e-mail or facsimile transmittal. We would like more information

from the public on this. It is our understanding that the advance notifications required for export and import shipments of high risk radioactive materials will be consistent with the notifications currently required for domestic material shipments.

7. Concern: Is it right to delay shipping materials to a cancer patient in order to obtain advance notification to stave off a potential terrorist attack? Answer: The requirements for advance notifications are not intended to result in shipment delays, or to condemn cancer patients. As noted above, we believe that mutually acceptable arrangements for advance notifications can be made by e-mail or facsimile sufficiently in advance of a shipment to help avoid or mitigate problems that might arise.

8. Question: Do the export regulations of the NRC dovetail with those of the U.S. customs in order to avoid further complications and delay in shipping radioactive material? Answer: NRC is coordinating its efforts with other Federal government agencies, including the Departments of Homeland Security, Transportation, Energy and State to avoid duplicative or conflicting requirements.

9. Question: The IAEA Code of Conduct requires awareness of the need to promote the safe and secure use of certain sources, but does not address establishing procedures for specific export and import licenses. When was the Code approved by the Board? Answer: It was approved in September 2003, and a guidance document for implementing it was approved by the Board in September 2004.

10. Question: How long will it take to get a license? Answer: Under current NRC regulations, applications must be available in the NRC Public Document System for 30 days before a license can be issued. It is expected that an application for Appendix P, Category 1 shipments, and cases of exceptional circumstances, will require NRC to consult with counterpart regulatory agencies in other countries, the Executive Branch, and the IAEA. The application review process could take up to four to six months, depending on the country and the circumstances.

11. Concern: Cobalt-60 units are being replaced by linear accelerators. There are only one thousand units still in use today, which are mostly in the developing world where accelerators are not easily afforded. These units are only available from Canada and Russia. Requiring specific export and import licenses for each unit will destroy the use of Co-60 in the world. Answer: As indicated in the answer to Question 1, we envision that a specific license could cover multiple product units, by quantity thresholds, to multiple destinations for a period of time to avoid a delay in shipment.

12. Question: Our company currently holds several licenses for gamma irradiators in the NRC and Agreement state jurisdictions. If exports (e.g., CO-60, Category 1) are to be made from multiple U.S. locations to multiple foreign destinations, will one license for the entire company be necessary or will each facility be required to obtain a separate license? Answer: One license may suffice, depending on the specific circumstances.

13. Question: A long waiting period essentially dictates a change in which companies do business. Is there any way for NRC to "smooth out" the waiting period for a license for those countries that do not have an established, documented, and implemented regulatory structure (i.e., those countries with which the NRC does not have extensive relations)? Answer: The NRC plans to work with the IAEA and others to establish a list of countries which have the

requisite technical and administrative capability, and resources or regulatory infrastructure to facilitate compliance with the December 2005 implementation deadline.

14. Question: If NRC does not have a list of “good-guy” countries yet, how will it make the 2005 deadline? Answer: From the regulatory standpoint, international and U.S. implementation of the Code has to be harmonized. The NRC has well-established relations with many of its counterpart agencies in other countries, and could issue a license for these countries faster. In cases of exceptional circumstances, the NRC will consult with the IAEA and the Executive Branch for information to help make the determinations necessary to issue a license.

15. Question: Please define transshipments. Answer: NRC uses it to describe shipments that are transported by air, highway or rail “in bond” while passing through the U.S. for export/import to a third country. The NRC’s regulations in 10 CFR Part 110.1(b)(6) currently provide an exemption for such exports and imports; however they must comply with Department of Transportation and IAEA packaging requirements, and State Transportation requirements.

16. Question: What is the status of regulatory changes in the transshipment area? They should take into account the transshipment of Cobalt-60. Answer: Work in this area has begun. The Code of Conduct is a starting point for regulatory changes in the transshipment area. The NRC is working closely with the IAEA, other Federal agencies, the States and the Agreement States. Also, Since Category 1 shipments of Co-60 occur routinely, the NRC has carefully considered enhanced security measures for such shipments.

17. Question: Will there be a public meeting for transshipment regulatory changes? Answer: The NRC and other agencies will determine which regulations need to change. The need for a public meeting would be determined then.

18. Question: Are shipments to and from Canada considered exports and imports for purposes of the rule? Answer: Yes.

19. Question: What are the license requirements for multiple shipments to the same end user? Answer: NRC’s authorizations for exports and imports will set upper license limits on the total quantity of material that can be exported to one or more end users during a certain period. If a U.S. company plans to export Category 1 or 2 quantities to an end user within a certain time frame, they cannot avoid obtaining a specific NRC export license by breaking the material down into several smaller shipments.

20. Question: How should exports to foreign affiliates or representatives be handled? Where does the NRC’s licensee’s responsibility stop involving shipments to third-party countries (i.e., redistribution to third-party country other than that listed by initial buyer/distributor)? Answer: If the regulatory authority of the initial foreign recipient country is determined to possess the technical capabilities and resources, and the foreign affiliate (recipient) is determined to be authorized to receive and possess the import, then any subsequent transfers would be the responsibility of that foreign authority. The U.S. does not envision approving subsequent transfers, although the actual communications will depend on the material involved and advance notifications required.

21. Question: If the original source is at or above the threshold when shipped, but decays to below threshold value, does the rule still apply? Answer: The activity is to be measured at the time of shipment. If it is at or above the threshold, a specific NRC export or import license is required. If it is to be exported or imported after it decays to below threshold, it would be subject to NRC general export or import license provisions.