



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

February 22, 1990

The Honorable James H. Scheuer
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Scheuer:

This is to acknowledge receipt of your letter dated February 8, 1990 to Samuel J. Chilk, Secretary to the Commission, in which you commented on the proposed rule to revise 10 CFR Part 71. Your comments will be given careful consideration as will the others that we have received.

Thank you for taking the time to write.

Sincerely,

A handwritten signature in cursive script that reads "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

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REMARKS

Per our discussion,
 I received this letter from SECY
 as a public comment on our proposed
 revision of 10 CFR Part 71, Proposed
 changes to Transportation Regulations.
 I am looking for assurance that
 the letter has been handled properly
 and that the letter does not need
 a response.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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DOCKET NUMBER PR 71
PROPOSED RULE

(53 FR 21550)

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JAMES H. SCHEUER
8TH DISTRICT, NEW YORK

Congress of the United States
House of Representatives
Washington, DC 20515

February 8, 1988

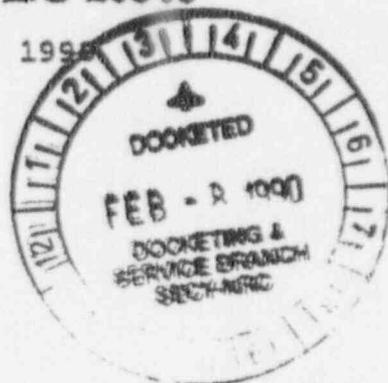
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Samuel J. Chilk
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATTN: Docketing and Service Branch

Dear Mr. Chilk:

I am writing to comment on the proposed rule to revise 10 CFR Part 71 (Federal Register, June 8, 1988), intended to make the United States' regulations for the safe transportation of radioactive material compatible with the guidelines of the International Atomic Energy Agency (IAEA).

Specifically, I am writing in strong support of the criteria for air shipment of plutonium, contained in sections 71.64, 71.74, and 71.86 of the proposed rule. These criteria originally were developed in 1978, in response to an amendment (the "Scheuer Amendment") I sponsored successfully in 1975, as part of Public Law 94-79 (89 Stat. 413; 42 U.S.C. 5841 note).

I am writing also to oppose strongly the recent efforts of the Department of Energy to relax the regulations imposed by the Scheuer Amendment. Such an action would be illegal and could significantly increase the radioactive risk to the U.S. public.

Background

In 1975, I sponsored the Scheuer Amendment in response to a number of air shipments of highly-toxic plutonium into John F. Kennedy International Airport, in New York. The shipments used containers that would have split open and released their poisonous contents over New York City, in the event of a severe accident.

The Scheuer Amendment put a halt to these shipments, stating:

The Nuclear Regulatory Commission shall not license any shipments by air transport of plutonium in any form, whether exports, imports, or domestic shipments; provided, however, that any plutonium in any form contained in a medical device designed for individual human application is not subject to this restriction. This restriction shall be in force until the Nuclear Regulatory Commission has certified to the Joint Committee on Atomic Energy of Congress that a safe container has been

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developed and tested which will not rupture under crash and blast-testing equivalent to the crash and explosion of a high-flying aircraft.

In 1978, the Commission issued NUREG-0360, laying out criteria for plutonium air-shipment containers to satisfy the Scheuer Amendment. That report stated: "The approach taken in this Report to satisfy Public Law 94-79 is to provide a high degree of assurance that plutonium packages can withstand virtually all aircraft accidents." Since that time, two shipment packages, PAT-1 and PAT-2, have been qualified under the NUREG-0360 criteria.

In 1987, the purview of the Scheuer Amendment was broadened by a section of P.L. 100-203, known as the Murkowski Amendment, which stated in part, that

. . . no form of plutonium may be transported by aircraft through the air space of the United States from a foreign nation to a foreign nation unless the Nuclear Regulatory Commission has certified to Congress that the container in which such plutonium is transported is safe, as determined in accordance with . . . the second undesignated paragraph under section 201 of Public Law 94-79 [the Scheuer Amendment] . . .

Thus, the Scheuer Amendment represents the minimum safety standard not only for imports, exports, and domestic U.S. air shipments of plutonium, but also for trans-shipments that traverse U.S. air space.

Although the Scheuer Amendment has been the law of the United States since 1975, the standards of NUREG-0360 still have not been incorporated into the U.S. Code of Federal Regulations. This would be accomplished by the proposed rule, in the sections cited above.

Comments on Proposed Rule

It has come to my attention that certain parties, including the Department of Energy, oppose the proposed codification of the Scheuer Amendment on the grounds that it is "premature" [May 11, 1989 letter from DOE] and that "much of the proposed regulation has not been adequately justified and is extremely conservative" [December 2, 1988 letter from DOE].

1. In fact, it has been fifteen years since enactment of the Scheuer Amendment and twelve years since the development of the NUREG-0360 standards to satisfy the Amendment. Codification of those regulations is hardly premature. If anything, it is overdue.

2. Secondly, as to whether the "proposed regulation" has been "adequately justified," I refer you to the language of the Scheuer Amendment cited above, which requires that plutonium air shipment containers be certified leak-proof after tests equivalent to the crash and explosion of a high-flying aircraft. It was in response to this U.S. law that the NRC developed the NUREG-0360 regulations, which are to

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be codified formally by the proposed rule. These regulations have been in force for 12 years already, without formal codification. Furthermore, the criteria set out in NUREG-0360 were confirmed in 1978 by a prestigious panel of the National Academy of Sciences ["Review of Criteria for Packaging Plutonium for Transport by Air," National Research Council of the National Academy of Sciences, published by NRC as NUREG/CR-0428].

I find it absolutely incredible that the Department of Energy would describe the Scheuer Amendment, and the NUREG-0360 regulations it spawned, as overly conservative, in light of the catastrophic consequences that would result from a substantial release of plutonium in a populated area. In the late-1960s, two military aircraft accidents that dispersed plutonium -- in Palomares, Spain and Thule, Greenland -- demonstrated the potential for disaster in such a spill. Fortunately, both accidents occurred in extremely sparsely populated areas. Despite this, the clean-up and decontamination of each spill cost tens of millions of dollars, in 1960s dollars. In addition, many of the personnel who cleaned up the Thule spill have come down with rare forms of cancer.

Imagine such a plutonium release in a densely populated area -- New York City, for example, near Kennedy Airport, where a number of British plutonium shipments landed in the 1970s. Recognized experts state that such a spill could cause tens of thousands of latent cancer fatalities and would cost billions of dollars to clean up and decontaminate. This would represent the greatest man-made disaster ever -- at least an order of magnitude more carnage than caused by the chemical release at Bhopal, India.

Given these potential consequences, I find it unfathomable that any responsible party could label the requirements of the Scheuer Amendment and NUREG-0360 overly conservative. If anything, they are not conservative enough, in light of the fact that NUREG-0360 states that its criteria only "provide a high degree of assurance that plutonium packages can withstand virtually all aircraft accidents" [emphasis added]. When dealing with a substance as toxic as plutonium, there is no margin for error. Crashworthiness criteria should guarantee integrity of the transportation package in all potential aircraft accidents.

3. It also has been argued that the United States should forego codification of the NUREG-0360 regulations because IAEA international guidelines are less stringent -- and will continue to be, even after proposed upgrades. This is backwards thinking. By their very nature, the IAEA guidelines represent the least common denominator among various national standards, because the IAEA guidelines must be agreed to by consensus. The proposal that the United States should reduce safety standards for American citizens because some other country has shabby standards for protection of its own citizens is preposterous and unacceptable on its face.

Once again, I urge you to approve the above-cited sections of the proposed rule.

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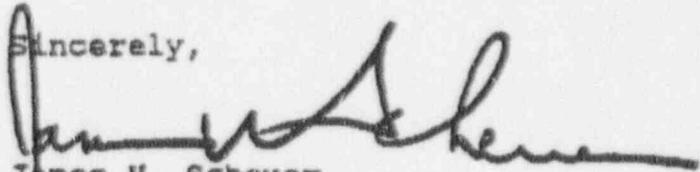
Serving Notice

This letter also is intended to put you on notice that I and my colleagues would contest forcefully any attempt to lower the U.S. standards for air shipment of plutonium. As you know, plutonium is among the most toxic of substances. In coming years, it is anticipated that there will be dozens of international plutonium air shipments annually, each involving tens or hundreds of pounds of plutonium. According to laboratory studies, millionths of an ounce of plutonium sufficient to induce lung cancer, if inhaled. As such, there is no room for error. Nor is there any room to reduce the safety margins established by the Scheuer Amendment and NUREG-0360.

To reduce safety restrictions on U.S. plutonium air transport would require an act of Congress and the President. No such action is occurring or anticipated. I and my colleagues would resist strongly any such attempt to endanger the health and safety of the American public and the environmental protection of the global commons.

Thank you very much for this opportunity to express my opinion on the proposed rule.

Sincerely,



James H. Scheuer
Member of Congress