

State of Ohio
Office of the Attorney General



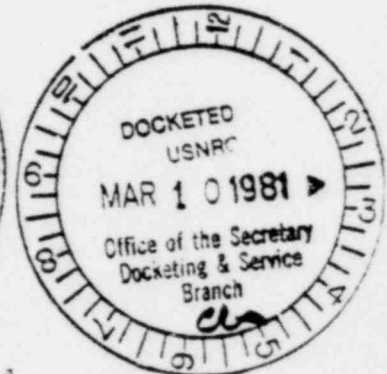
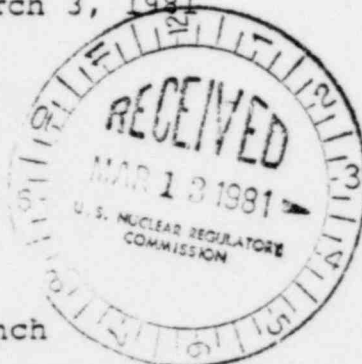
William J. Brown
Attorney General

DOCKET NUMBER
~~PROPOSED RULE~~ PR-2,50,70+73 (7)
*Unauthorized Disclosure
of Safeguards
(45 FR 85459)*

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March 3, 1981

Samuel J. Chilk
The Secretary of the Commission
United States Nuclear Regulatory
Commission
Washington, D.C. 20555



ATTN: Docketing and Service Branch

RE: Proposed Rules on Advance Notification and
Protection of Unclassified Safeguard's
Information, 45 Fed. Reg. 81058; 85459

Dear Mr. Chilk:

The Office of the Attorney General of the State of Ohio would like to submit its comments on the Commission's proposed rules on "Advance Notification to States of Transportation of Certain Types of Nuclear Wastes" and "Protection of Unclassified Safeguard's Information". It is this Office's belief that as applied to the prenotification to states of the transport through the states of certain types of nuclear materials the proposed regulations could create an impractical system which compromises both safeguards and safety concerns.

The fundamental flaw in the proposed rules is contained in the advance notification requirements that notification be submitted to the state governor between four and seven days prior to the shipment of nuclear materials through the state. Based on the State of Ohio's experience with its own prenotification statute, Section 4163.07 of the Ohio Revised Code, this amount of lead time is totally unworkable when applied to the realities of the practice in the industry. Furthermore, this amount of lead time is unnecessary from the standpoint of either emergency response or safeguards preparation. Section 4163.07 of the Ohio Revised Code requires notification 48 hours in advance

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of the shipment of materials through the State. The State has found this 48 hour time period to be adequate for all purposes for which the State may need such notification. The State in its experience has also found that even 48 hour advance notification is frequently impractical. Since the statute has been in effect, the State has found that the timing and routing of shipments is constantly subject to change at a moment's notice and that even notification given 48 hours in advance of the proposed shipment date is repeatedly changed due to unforeseen delays in the shipment of materials. A system which requires four to seven days advance notification will be in effect a nullity. A vast majority of the notifications would be subject to frequent and repeated changes so as to negate whatever lead time was intended to be achieved by the four to seven day requirement.

The extremely impractical lead time required in the proposed advance notification regulation is also inconsistent with the Commission's own concern for adequate safeguards. As the Commission itself noted at 45 Fed. Reg. 85460, advance planning is a critical element of any adversary's attempt to disrupt nuclear shipments. By requiring notification up to seven days in advance of shipments, the Commission is requiring the type of advance notification which facilitates the attempt of adversaries to disrupt shipments. A 48 hour requirement such as contained in the Ohio statute reduces the ability of adversaries to plan such disruptions to an absolute minimum.

A change in the lead time for notification such as mandated by the actual operating conditions in the industry and suggested by the State of Ohio in this letter would require the Commission to rethink the entire structure of the system which it has proposed. The requirement for advance notification within 48 hours of shipment rather than seven days of shipment would eliminate the need for many of the cumbersome, impractical, and unnecessary safeguards requirements which have been imposed elsewhere in the regulations. The need for locked file cabinets and safes would be reduced if the notification of the shipment was to be stored for only 48 hours rather than seven days prior to the shipment. Similarly, the restrictions on the use of unprotected telecommunications equipment and the requirement for the use of couriers or registered first class mail becomes less necessary when the notification is provided 48 hours in advance of a shipment rather than seven days in advance of a shipment. Furthermore,

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it has been the State's experience that the use of unprotected telecommunications between branches of state and local law enforcement agencies is necessary when attempting to administer a scheme which provides for notification only 48 hours in advance of a shipment.

In addition to questioning the need for seven day advance prenotification, the State also questions the need for the advance prenotification to be sent to the governor's office. The Ohio statute requires the notification to be sent to the Director of the state Disaster Services Agency. Other states and jurisdictions may well have specific agencies outside of a governor's office which are assigned this responsibility. Therefore, to require a governor's office to receive the notification is to require such information to be handled by another unnecessary level of personnel, thereby raising additional safeguards concerns. The regulation should be amended to require notification to the governor or such individual as mandated by state law to receive such information.

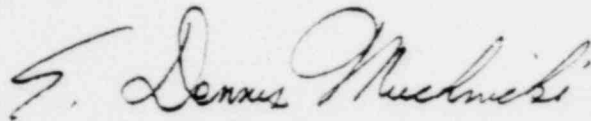
Another deficiency in the proposed notification requirements is that they do not require the notification to indicate the type of material which will be contained in the shipment. The Ohio statute requires both the type and quantity of material to be identified. This information is important to Ohio so that it knows exactly what type and quantity of materials will be coming through the State.

Finally, the State of Ohio believes that the Commission should extend its proposed regulations to cover shipments made by the Department of Energy as part of its research and development programs. While the State understands that this raises a somewhat sensitive question concerning the relationship between the Nuclear Regulatory Commission and the Department of Energy, the State believes that it is important for it to receive advance notification of all shipments that pass through the State.

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The Office of the Attorney General of the State of Ohio hopes that these comments will be of value to the Commission in the evaluation of its proposed rule. Thank you for the opportunity to comment upon the proposed regulations.

Sincerely yours,

A handwritten signature in cursive script, reading "E. Dennis Muchnicki". The signature is written in dark ink and is positioned above the typed name.

E. DENNIS MUCHNICKI
Assistant Attorney General

EDM:ts

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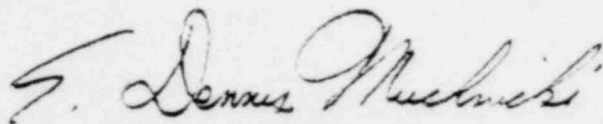
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