



State of California

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PROPOSED RULE PR-73 (60)

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EDMUND G. BROWN JR.
GOVERNOR

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PR-2, 50, 70+73
(45 FR 85459)

March 18, 1981



Secretary of the Commission
Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

On January 16, 1981 Chairman Ahearne wrote to Governor Brown requesting comments on the Nuclear Regulatory Commission's proposed amendments to its regulations pertaining to the transportation of radioactive wastes and spent fuel. In response to this request, the State of California provides the following comments.

OVERVIEW

In general, the State of California is supportive of federal rules and procedures that make available to states essential information concerning the management and transport of any hazardous substances, including radioactive materials and waste. The states have an historical responsibility to protect the health and safety of their citizens from the hazards posed by such materials. Adequate information must be made available to the states to assist them in carrying out these responsibilities. Many states, including California, therefore welcome requirements such as those specified in Public Law 96-295 regarding advance notification of spent fuel shipments within or through the state.

Similarly, the State is supportive of the concept of advance notification for particularly hazardous shipments of radioactive materials and wastes and spent fuel. Because our comments address advance notification and safeguards requirements as separate and distinct issues, these two topics will be addressed separately.

GENERAL COMMENTS ON ADVANCE NOTIFICATION

In the 1979 report of the California State Task Force on Nuclear Energy and Radioactive Materials, Part VI (Transportation), the Task Force noted that advance notification for particularly hazardous shipments confers certain advantages by:

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L-4-1, Pt. 2
L-4-1, Pt. 71
L-4-1, Pt. 73

- providing states the opportunity to inspect shipments to determine whether proper precautions have been taken;
- allowing accident-specific preparation;
- providing additional time to bring emergency response teams to a higher degree of readiness;
- possibly reducing time required for responding to accidents;
- allowing state agencies to offer advice as to appropriate routing or provide additional escort, as necessary.

Conversations with representatives from other states indicate that these perceptions are shared by many other states.

The "background" and "discussion" accompanying the proposed rule give no indication that the NRC reviewed existing state pre-notification laws and arrangements prior to drafting the proposed amendments. Such a review might well provide empirical evidence regarding the advantages and disadvantages of such arrangements, and might also provide information that would result in improvements to the proposed amendments.

COMMENTS AND RECOMMENDATIONS - ADVANCE NOTIFICATION

We provide the following specific comments and recommendations on the proposed advance notification amendments to 10 CFR 71 and 73.

- A. In general, we support the intent of the proposed amendments to cause to be transmitted to the Governor of a state the following information with regard to the intrastate or interstate transport of Type B or large quantities of nuclear waste (10 CFR 71):
- point of origin and estimated date (see item C below) of departure;
 - destination of shipment and estimated date (see item C below) of arrival at destination;
 - estimated date (see item C below) of arrival at state boundary;
 - description of waste shipment; and
 - name, address, and telephone number of shipper, carrier, and receiver.

We support the similar intent of the proposed regulations with regard to the transportation of spent fuel (10 CFR 73):

- notification of four days before entry of a shipment into a state;
- shipment route;
- estimated date and time of departure from point of origin;
- estimated date and time of arrival at state boundary;
- identification of shipper, carrier and receiver; and
- description of shipment.

B. NRC should evaluate prior state experience with pre-notification systems. NRC should therefore defer the proposed regulations until NRC staff have obtained, reviewed, and analyzed:

- existing state pre-notification laws to see if they provide better (more efficient and effective) notification systems than that proposed by NRC;
- information on the benefits and problems encountered through the use of such advance warning systems.

Subsequent to such review NRC might wish to revise the proposed amendments and circulate revised amendments for comment.

C. Unlike 10 CFR Part 73, 10 CFR Part 71 does not require information on the route to be taken by the shipment or the exact time of arrival. Routes should be identified for these shipments.

Similarly, the Governor of a state should be given the option of requesting specific dates of departure, arrival at state boundaries, and arrival at destination. The 7-day interval specified in Part 71 5b(b)(3)(i-iii) may be too wide and may significantly reduce the advantages of advance notification for those states with numerous shipments of Type B or large quantity packages of radioactive wastes.

- D. These amendments refer only to nuclear wastes. NRC should consider extending similar notification requirements to shipments of large quantity or Type B packages of radioactive materials.

GENERAL COMMENTS ON SAFEGUARDS (10 CFR Parts 2, 50, 70, and 73)

There is a general consensus that there is a potential threat to public health and safety posed by the diversion or sabotage of irradiated reactor fuel. In response to this potential threat, numerous steps have been taken to protect shipments of such fuel. Insofar as the number of such shipments is expected to increase in the future, additional attention to protective measures is warranted.

There are two general categories of protective measures for the transport of irradiated reactor fuel:

1. Security plans related to physical access to the irradiated fuel (e.g., escorts, cask integrity, communications links).
2. Controls related to access to information about the security plans.

COMMENTS AND RECOMMENDATIONS - SAFEGUARDS

- A. While we concur with the need to protect against unauthorized transfer of information, we believe that controls on physical access provide the primary protection against sabotage and diversion. As such, the physical control measures should receive primary attention and emphasis in NRC regulatory requirements and State efforts. Secrecy cannot be relied upon as primary protection against sabotage, and may in fact create a false sense of security that could lead to insufficient physical security plans. Excessive attention paid to the protection of information could dilute the states' contribution to increased security by absorbing limited resources in a burdensome administrative system of information protection.
- B. We wish to point out that access pursuant to 2.7444 of Part 2 of this chapter constitutes recognition of the right of litigants to have access, under fair protective procedures, to security information necessary to litigation of contentions in a security plan proceeding or other proceeding in which security information may be relevant.

- C. We wish to underscore the intent of Congress as stated in P.L. 96-295, 94 Stat 788 that the NRC is mandated to establish minimum restrictions necessary to protect the health and safety of the public.

It appears to us that the procedures and requirements proposed under these amendments are not in fact "minimum restrictions." The authority extended to the NRC does not represent an open-ended mandate to impose excessively burdensome requirements (or, we might add, to remove information from public access that is not essential for the protection of public health and safety). Neither the proposed amendments nor their supporting materials give any indication that NRC staff evaluated alternative requirements and arrangements. Such an evaluation should be carried out prior to selecting a specific set of requirements, and the process itself and the criteria used to make the selection of the requirements should be specified. In this case, the NRC appears to have simply asserted that the proposed amendments are "minimum requirements" without offering sufficient clarification as to the basis of that assertion.

We wish to make it clear that we concur that safeguards information is sensitive and should be protected. However, the proposed amendments would impose a degree of security that seems unwarranted at this time and that would impose costly and burdensome administrative requirements upon states.

In California, the California Highway Patrol has for some time received information of the kind referred to in these proposed amendments, i.e., information regarding the routing and scheduling of shipments of spent fuel and special nuclear materials. Current practices to protect such information have to date proven to be adequate. We believe that State law enforcement and other agencies, utilizing procedures commensurate with good law enforcement practices, can adequately protect sensitive information from unauthorized disclosure. Requirements pertaining to locked cabinets, restrictions on telephone conversations, etc., seem unnecessary and would entail unprecedented security arrangements.

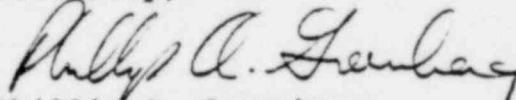
We recommend that NRC adopt the language of the proposed safeguards amendments largely as guidance rather than requirements or regulations. We further recommend that NRC then establish a procedure to regularly review states' practices for protecting sensitive information. Where such review leads NRC staff to believe that a state's procedures and practices are inadequate, and where differences of opinion between NRC and a state cannot be easily resolved, then NRC should be given authority to implement as requirements on a case-by-case (i.e., state-by-state) basis all or part of these proposed amendments. We

believe that this would better meet the "minimum restrictions" criteria specified in the legislation.

- D. With respect to Appendix E, Part A(7), we note that the safeguards information contained in the plans must not be construed to deny access of intervenors to plans for safety related equipment relevant to safe operation. We are especially concerned that the need to protect safeguards information presents the possibility of abuse in contested licensing proceedings. In particular, if great care were not taken by administrative judges and other NRC officials to preserve the openness of the discovery process and other necessary hearing procedures, it would be possible to prevent legitimate safety issues from being litigated on grounds that certain of such issues were also related to physical security. This would undermine administrative due process. Therefore, we request the NRC to implement specific measures to assure that no such abuse occurs.

We appreciate the opportunity to comment on these matters and we would like to thank the NRC staff for accommodating our request to file these comments somewhat later than we had planned.

Sincerely,



Phillip A. Greenberg
Assistant to the Governor
for Energy and Environment