



OFFICE OF THE
SECRETARY

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

January 5, 1990

MEMORANDUM FOR: Harold R. Denton, Director
Office of Governmental and Public Affairs

FROM: *Boyle*
Samuel J. Chilk, Secretary

SUBJECT: SECY-89-327 - ADVANCE NOTICE OF PROPOSED
RULEMAKING ON THE IMPORT AND EXPORT OF
RADIOACTIVE WASTES

This is to advise you that the Commission (with all Commissioners agreeing) has approved publication of the Advance Notice subject to the attached editorial comments. In addition, the staff responses to the questions contained in Appendix A of SECY-89-068, as found in SECY-89-068A, may be of interest and informative to the public. They might also solicit more focused public comments to the questions posed by the Commission. Accordingly, consideration should be given to including these responses in the ANPR, perhaps as an attachment. The responses could be conditioned with the caveat that they represent preliminary views intended to focus public comment and are subject to revision based upon those comments.

The Federal Register Notice should be revised as noted, reviewed by the Regulatory Publications Branch for consistency with Federal Register requirements, and forwarded for signature.
(GPA) (SECY SUSPENSE: 1/31/90)

Attachment:
As Stated

cc: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
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on appropriate control and monitoring mechanisms. Currently it is the consensus of a large number of IAEA Member States that all countries should have in place adequate national means to control the transboundary movements of radioactive wastes in order to avoid unsafe disposal practices.

Existing regulations of the U.S. Environmental Protection Agency (EPA) (40 CFR Part 262) establish criteria for the export of (non-nuclear) hazardous wastes which are more restrictive than the existing regulations of NRC for the export of radioactive waste. Among other requirements, ~~EPA's~~ Section 3017 (42 USC 3017) of the "Resource Conservation and Recovery Act" prohibits exports of hazardous waste to a country not having an agreement with the U.S. unless a foreign country has been notified and has consented. The Basel Convention, which calls for stricter controls on international shipments of non-nuclear hazardous wastes, has been signed by many nations *including the United States*

The U.S. currently does not have a specific national policy with respect to transfers of radioactive wastes, nor does the Commission require specific licenses for the export or import of most low-level radioactive wastes. The Commission believes that, while it is unaware of any low-level radioactive waste being imported or exported in an unsafe manner, it is time to establish a national policy that would provide the necessary framework to enable the Commission to carry out its responsibility to ensure appropriate regulation of the import and export of radioactive wastes. The Commission is presently ^{towards} working ~~closely with the Department of State to~~ formulate such a national policy. It is the Commission's preliminary judgment that the best approach would be to develop a policy that would provide greater control and accountability over the export and import of radioactive wastes.

This policy could lead to an amendment to NRC's existing export/import regulations in 10 CFR Part 110 to require advance notification and/or consent for radioactive waste exports or imports.

The Commission recognizes that it is in the interest of exporting countries, as well as importing countries, to assure themselves that disposal of radioactive wastes will be effectively regulated. However, there is a delicate balance between protecting public health and safety in foreign countries and placing unnecessary restrictions on international trade. As the Commission begins to integrate a variety of topics into a proposed rule, an opportunity for public comment on the options and issues under consideration is being provided via this document.

In considering what radioactive materials should be considered wastes for import and export purposes, the Commission proposes to use the existing IAEA definition of radioactive wastes as contained in the "Radioactive Waste Management Glossary" (IAEA-TECDOC-447) which describes radioactive waste as "any material that contains or is contaminated with radionuclides at concentrations or radioactivity levels greater than the exempt quantities established by the competent authorities and for which no use is foreseen."

Proposed Options

The following ^{are under consideration} ~~are~~ four possible options for establishing Commission regulatory requirements on the export and import of radioactive wastes: (1) Continue the existing policy and procedures as codified in 10 CFR Part 110; (2) Require notification of all imports and exports of radioactive wastes; (3) Require specific

licenses for the import and export of radioactive wastes; and (4) Ban the import and export of radioactive wastes except with respect to countries with which the U.S. has an agreement. These options are not exhaustive; therefore, comments are ~~welcome~~ on any additional options the public may raise. In addition, the Commission will ensure that the implementation of any one of these options is not inconsistent with its forthcoming policy on "Below Regulatory Concern" (BRC) wastes. Consistency could be assured in several ways. For example, the Commission could develop a mechanism to inform recipient countries of the Commission's BRC policy and that the NRC review of any BRC petition that anticipated exports would include consultation with the receipt country before approval, ~~or the Commission could specify in its forthcoming BRC policy that any subsequent decision rendered by the Commission on BRC wastes shall not be deemed to authorize the export of such wastes.~~

Option 1: Status Quo--Continue the use of existing regulations. Under this option the present policy and procedures on import and export of nuclear materials, as codified in 10 CFR Part 110, would be continued. NRC's regulations in 10 CFR Part 110 currently do not distinguish "radioactive waste" as a separate class of material. Consequently, radioactive wastes are regulated under Part 110 to the extent that the wastes contain byproduct, source, or special nuclear material in quantities and concentrations that are subject to NRC regulations. For example, existing regulations permit the import of low-level radioactive wastes into the U.S. under a general license issued pursuant to 10 CFR 110.27, ~~with some restrictions.~~ ~~Such radioactive wastes can be imported into the U.S. under a general license,~~ if the consignee is authorized to possess the material under: 1) a contract with the U.S. Department of Energy; 2) an exemption from domestic licensing requirements issued by the Commission; or 3) a general or specific domestic license. Part 110 permits export of low-level radioactive wastes from the U.S. under a general license

if the provisions of §§110.21, 110.22 and 110.23 in 10 CFR Part 110 are satisfied. Thus, the existing regulations address the import and export of radioactive wastes only to the same degree that they address other radioactive materials and do not ensure that the NRC is cognizant of all transfers of radioactive wastes per se across U.S. borders. Consequently, the Commission may be in a position of knowing little about the quantities, types, and concentrations of radioactive wastes being imported or exported. However, existing regulations do require the exporter and importer to maintain records of transfers, ~~therefore~~ the Commission may inspect ~~these records~~.

Option 2: Require notification of NRC for all imports and exports. Under this option, the regulations contained in 10 CFR Part 110 would be amended to require written notification of the NRC before radioactive wastes are imported or exported and the receipt of written consent by the exporter from a receiving country prior to the export of wastes from the U.S. Under this option, the Commission would have a regulatory mechanism to track wastes that are imported or exported and assurances that importing countries are willing to import the material. While the primary objective of this option is oversight or tracking, the Commission could take action if a threat to public health or safety were to materialize. However, this option provides little additional regulatory control over that which is provided under current NRC regulations because no NRC licensing (or denial) action would be required for specific imports or exports of radioactive wastes.

Option 3: Under this option, 10 CFR Part 110 would be amended to require that any person seeking to import or export radioactive wastes obtain a specific license. Under this option, the NRC would assume positive regulatory control over transfers

of radioactive wastes between the U.S. and foreign countries. The extent of NRC control on import and export activities would be determined by the criteria NRC established for specific license applications. Possible criteria could be: (1) banning wastes, such as Greater-than-Class C wastes (10 CFR §61.55), from import and export and (2) permitting the import of only limited types of waste under general license, such as the return of sealed radiation sources to a manufacturer as specified in a purchase agreement. Under this option, the inconsistencies in NRC regulations that may permit imported radioactive waste to be subject to less regulatory oversight than radioactive waste resulting from domestic licensee operations could be removed. The specific license requirement also would provide the necessary framework that would alleviate growing concerns that transfers of radioactive wastes are not being adequately controlled.

Amend Part 110 to
 Option 4: *ban imports and exports of radioactive wastes* except under international disposal agreements. Under this option, the NRC would ban the import and export of radioactive waste except with respect to those foreign countries with which the U.S. has negotiated appropriate agreements. These agreements could contain provisions for advance notification and consent of the receiving government, information exchanges on the manner in which the wastes would be managed in the receiving country, cooperation and enforcement, and periodic review of the effectiveness of the agreement. This option would provide a more rigorous framework for control of such transfers, assure governmental acceptance by the other countries, and encourage countries having agreements to take responsibility for waste disposal within their own territories. This would alleviate concerns that transfers of radioactive wastes are not being adequately controlled. As in Option 3, this option would eliminate the inconsistency in existing NRC regulations which could allow imported low-level

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radioactive waste to be subject to less regulatory oversight than low-level radioactive waste resulting from similar domestic licensee operations at NRC or Agreement State licensed facilities. The agreements would be negotiated through the U.S. Department of State and could involve extensive ~~negotiations~~ of technical, administrative, and political complexity.

Questions and Issues

In light of the previous discussion, the NRC is particularly interested in receiving comments concerning the following questions which involve key considerations in developing NRC's regulatory requirements on the import and export of radioactive wastes. This list of questions is not exhaustive; therefore, comments are welcome on any additional relevant matters the public may identify.

1. What are the economic advantages and disadvantages to the import and export of radioactive wastes, e.g., would such imports or exports affect the economic viability of disposal facilities or State radioactive waste disposal compacts?
2. Are there policy, health and safety, or economic disadvantages to denying import or export of certain radioactive wastes, e.g., interference with ongoing U.S. international trade in sealed sources and gauges used in medical or other applications?
3. Would it be in the interest of U.S. foreign policy to assist certain countries with the disposal of their radioactive wastes?

4. Does the U.S. have an adequate mechanism to dispose of imported radioactive wastes ^{so that adverse} ~~so as not to~~ impact the disposal of domestically generated wastes ~~adversely~~?

5. Would imported radioactive wastes be similar to radioactive wastes generated in the U.S. and therefore not likely to result in new radiological and/or environmental problems?

6. What are the views of operators of disposal facilities and State and local governments on the import of radioactive waste?

7. Are national authorities in countries that might receive U.S.-exported radioactive wastes technically competent to dispose of such wastes and would they agree to its receipt?

8. Should the capability of a recipient country to manage and dispose of radioactive wastes safely be considered in any NRC export license review process, recognizing that NRC authority to deny a license on these grounds is open to question?

9. Would the export of some or all categories of radioactive wastes help ^{to} solve a significant problem in the U.S., such as limited available disposal capacity?



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February 12, 1990

TRANSMITTAL TO: X Document Control Desk, P1-24
ADVANCE COPY TO: _____ Public Document Room
FROM: *O. J. Miller* SECY, Operations Branch

Attached are copies of SECY papers and related documents. They are being forwarded for entry on the Daily Accession List and placement in the Public Document Room. No other distribution is requested or required.

Item description:

1. SECY-89-327 - Advance Notice of Proposed Rulemaking on the Import and Export of Radioactive Wastes (dated 10/23/89) and SRM on SECY-89-327 dated 1/5/90
2. SECY-89-355 - Proposed License, Under 10 CFR Part 72, for Dry Concrete Module Storage of Spent Fuel at Duke Power Company's (DPC's) Oconee Nuclear Station Site (dated 11/28/89) and SRM on SECY-89-355 dated 1/12/90
3. SECY-89-364 - Ten-Year License Term for Major Operating Fuel Cycle Licensees (dated 12/4/89) and SRM on SECY-89-364 dated 1/16/90
4. SECY-89-387 - Section 208 Report to the Congress on Abnormal Occurrences for July-September 1989 (dated 12/28/89) and SRM on SECY-89-387 dated 1/19/90
5. SECY-90-002 - Proposed Retransfer of HEU from Japan to France for Cold Scrap Recovery (dated 1/3/90) and SRM on SECY-90-002 dated 1/16/90
6. SECY-90-012 - The Loma Prieta, California, Earthquake of October 17, 1989 (dated 1/10/90)
7. SECY-90-015 - Comparison of Proposed Maintenance Indicator with Maintenance Team Inspection Results (dated 1/11/90)
8. SECY-90-017 - Membership, Advisory Committee on the Medical Uses of Isotopes (dated 1/12/90)

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9. SECY-90-018 - Weekly Information Report - Week Ending January 5, 1990 (dated 1/11/90)
10. SECY-90-023 - Mark I Containment Performance Improvement Program (dated 1/17/90)
11. SECY-90-024 - Weekly Information Report - Week Ending January 12, 1990 (dated 1/17/90)
12. SECY-90-027 - LSS Administrator - Second Quarterly Report (dated 1/26/90)
13. SECY-90-030 - Weekly Information Report - Week Ending January 19, 1990 (dated 1/24/90)

cc: C&RB, SECY
Margo Bridges, EDO