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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20556-0001

February 3, 1994

The Honorable Jolene Unsoeld
United States House of
Representatives
Washington, DC 20515

Dear Congresswoman Unsoeld:

I am writing in response to a telephone call of February 1, 1994 from Ms. Caroline Heldman to Mr. Ronald Hauber of the Nuclear Regulatory Commission's Office of International Programs regarding a concern raised by one of your constituents. I understand that your constituent heard that 23 countries are exporting their nuclear waste to the United States and requested more information on this situation.

Commercial imports of nuclear waste are under NRC's jurisdiction in 10 CFR Part 110. At present, the regulations in Part 110 permit a person to import low-level radioactive waste under the general license provisions, if the consignee in the United States is authorized to possess the material under a domestic materials license issued by the NRC or an Agreement State. These domestic regulations provide the primary regulatory controls over nuclear waste for health and safety and environmental protection purposes. An example of a situation where "nuclear waste" might be accepted from other countries could involve firms in the United States that manufacture radioactive sealed sources and devices for sale overseas. These manufacturers may have a contractual agreement with the purchaser to accept depleted radioactive sources or devices from the purchaser for recycle or disposal. However, the Commission is not aware of countries sending any appreciable amount of commercial nuclear waste to the United States for disposal. The Commission has published a proposed rule which would tighten the NRC's controls in 10 CFR Part 110 over nuclear waste, by requiring specific licensing controls on such imports (and corresponding U.S. exports). This rule is intended to conform our export and import regulations with the recommendations contained in the International Atomic Energy Agency voluntary Code of Practice on the International Transboundary Movement of Radioactive Waste. The Commission expects to promulgate a final rule in 1994. Copies of the proposed rule and the IAEA Code of Practice are enclosed, as requested by Ms. Heldman.

Further, there are a number of valid reasons related to national security and national economic policy that could result in United States government agencies accepting radioactive materials from other countries. Such imports would be carried out by the Department of Energy (government to government transfers) and would not require an NRC import license. For example, the

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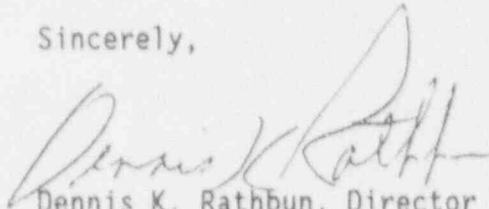
Honorable Jolene Unsoeld

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United States may accept plutonium from dismantled nuclear weapons in the former Soviet Union as a means of reducing the risk of nuclear proliferation. The United States may also accept spent research reactor fuel containing highly enriched uranium from institutes in foreign countries, as a means of safeguarding against nuclear proliferation.

I hope you find this information useful in responding to your constituent's concern.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

for Federal Housing Administration loans to the extent practical given FmHA's existing computer system. The Agency would like to make its program requirements so that they fit into the existing servicing systems used in the mortgage loan industry.

FmHA is considering removal of the requirement for the use of a cost handbook in determining replacement cost value. Replacement cost would no longer be required for existing dwellings; those dwellings which are more than a year old. FmHA is also considering removal of the requirement for attachment for all supporting calculations.

The Agency is considering adding a provision for the appraiser to complete an environmental checklist. The intent of this is to help FmHA determine the need for further investigation of the site for environmental reasons. FmHA is particularly interested in comments from persons knowledgeable in the appraisal industry as to how this might impact the cost and timing of the appraisal. The proposed environmental checklist is fairly similar to the "Appraiser Checklist" used by the Department of Housing and Urban Development. Interested parties may obtain further information by contacting FmHA at the address above.

Interested parties are invited to participate in this advance notice of proposed rulemaking by submitting such written data, views, arguments, or proposals as they may desire. Comments relative to the issues noted above as well as any other areas of the current RH guaranteed loan program which they feel could be improved to make the program more consistent with the existing mortgage industry are invited. Comments are specifically solicited on the reduction or revision of forms or other methods of streamlining, to include the elimination of processing steps seen as overly burdensome or unnecessary, which will improve the acceptability of the program to lenders and the secondary market for mortgage loans. Comments and proposals should include illustrations and/or references to forms and procedures utilized in other program areas in the industry.

Written proposals will be received for a period of 30 days from the date of this publication.

This program is listed in the catalog of Federal Domestic Assistance under 10.429, Guaranteed Rural Housing Loans—Demonstration Program.

For the reason set forth in the final rule related notice to 7 CFR part 31, 5, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372

which requires intergovernmental consultation with State and local officials.

Dated: March 18, 1992.
La Verde Ausmao,
Administrator, Farmers Home
Administration.

[FR Doc. 92-8783 Filed 4-27-92; 8:45 am]
BILLING CODE 3410-07-01

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-A 036

Import and Export of Radioactive Wastes

AGENCY: Nuclear Regulatory
Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its licensing requirements regarding the import and export of radioactive wastes. The proposed amendments reflect the decision of the General Conference of the International Atomic Energy Agency in September 1990 approving a voluntary Code of Practice to guide Nation States in the development and harmonization of policies and laws on the international transboundary movement of radioactive waste. The proposed amendments are intended to conform U.S. policies with these international recommendations.

DATES: Comment period expires July 13, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only of comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received may be examined at: The NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC, between 7:30 a.m. and 4:15 p.m. Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ronald Hauber, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/504-2344.

SUPPLEMENTARY INFORMATION: Introduction and Purpose

The Nuclear Regulatory Commission (NRC) issued an advance notice of proposed rulemaking (ANPR) on February 7, 1990 (55 FR 4181) to solicit public comments on possible options with respect to imports and exports of radioactive waste. The ANPR was issued in the context of ongoing Commission interactions with the U.S. Department of State and other Federal agencies regarding the Commission's interest in helping to develop a broad U.S. policy in regard to these imports and exports.

The ANPR referred to the work of the International Atomic Energy Agency (IAEA) voluntary code of practice on transboundary shipments of radioactive waste. This effort was supported by the U.S. Government. A final document was approved by the IAEA General Conference in Vienna, Austria in September 1990. A basic principle of the code of practice is that international exports of radioactive waste should take place with the prior notification and consent of the sending, receiving, and transit countries.

At present, the NRC's import and export licensing requirements are concerned primarily with nuclear proliferation controls. Radioactive materials of little or no significance with respect to national security are currently allowed to enter or leave the U.S. under general import and export licenses. Thus, currently, imports or exports of nuclear waste may take place without issuance of a specific license by the NRC and without the NRC's knowledge. By amending part 110, in the manner discussed below, to require specific licensing of such imports or exports, the NRC will be strengthening its controls over radioactive waste entering or leaving the United States.

The ANPR reflected concerns that international transfers of radioactive wastes to and from the U.S., in particular low-level radioactive wastes (LLW), should be subject to more control. The Commission sought comments from the public, industry, and other government agencies on four regulatory options and several related issues. The ANPR stated the NRC's preliminary judgment that the best approach would be to develop a policy that provides greater control and accountability over the export and import of radioactive waste. The ANPR also stated that this policy could lead to an amendment to the NRC's existing regulations in part 110 to require advance notification and/or consent for radioactive waste exports or imports.

Thirty letters of comments were received in response to the ANPR. The comments addressed various aspects of the four regulatory options and thirteen associated questions. A discussion of the general comments of the low-level waste compacts, and the public comments on the four options and thirteen questions, is given below:

General Comments by Low-Level Waste Compacts

The Southeast Compact Commission offered four general comments, as follows:

1. As a matter of policy, the Commission should recognize that most low-level radioactive waste compacts have adopted a policy controlling the import and export of low-level waste to and from their respective regions. Authority to enforce restrictions has been granted by the Congress in its approval of compact legislation. The ANPR gives little recognition of this fact.

NRC Response: The authority of the low-level waste compacts (Compacts) and States is recognized in the proposed rule. The NRC would coordinate its import licensing actions closely with interested Compacts and States. An NRC import license would not be issued in a particular case unless there were a disposal facility willing and able to receive it, including having the necessary authorization from State-level officials. Neither Compacts nor States have any authority over exports of low-level radioactive waste from the United States although they may have authority to bar such waste from leaving their respective regions or jurisdictions.

2. The NRC must provide specific notice of any approved, impending imports and exports to all low-level Compacts which may be impacted. The host State should also be notified of such shipments.

NRC Response: The NRC will inform interested Compacts and States prior to issuing a license to authorize the import or export of radioactive waste. However, the proposed rule does not place reporting requirements on shippers with regard to notifying the NRC of the actual route and schedule of each authorized import or export of radioactive waste. The Compacts and States might be able to place their own reporting requirements on shippers. In the case of imports, such reporting requirements might be imposed as a condition of authorizing a disposal facility to receive the shipper's material.

3. It is believed that Congress did not contemplate the foreign importation or exportation of waste that would violate a Compact's expressed desires to deny such domestic importation from or

exportation to another region of this country.

NRC Response: The NRC believes the proposed rule complies with Congressional requirements and respects the role and authority of the Compacts and States with respect to low-level radioactive waste. It does not preempt the authority of the Compacts or States to control the movement of low-level waste into or out of a regional or State facility.

4. Because the imported and exported material may have low economic value and might be abandoned in the event of an accident, appropriate financial assurance must be obtained for these wastes.

NRC Response: The proposed rule does not establish any special requirements for financial assurances as a condition for the NRC issuing an import or export license. The NRC staff believes it would be difficult to justify requiring financial assurances for waste shipments when assurances are not required for other shipments of radioactive materials which have low economic value. However, the Commission's decision criteria for licensing imports or exports of radioactive waste include a determination of whether or not the proposed import or export would minimize public health, safety, and environmental impacts in the U.S. and the global commons. This criterion could lead to an examination of the shipper's qualifications and past performance in light of the potential risks to the public and the environment. Moreover, the NRC will consult with State officials and the Department of State will consult with foreign officials to identify concerns in particular cases and allow those officials or others to require special financial assurances, outside the specific framework of the NRC's import-export regulations.

The Central Midwest Interstate Low-Level Radioactive Waste Commission, in addition to several specific comments on the options, noted:

1. Policies adopted by the NRC must allow the Compact commissions to exercise their authority over low-level waste disposed of in their regions.

NRC Response: The NRC agrees, as discussed above and as reflected in the proposed rule.

2. The public must be confident that their health and safety is being protected by an agency (NRC) that places the burden of proof on industry to demonstrate that imports or exports will not pose a threat to them.

NRC Response: The NRC believes its proposed rule should be helpful in

assuring public confidence in this regard.

3. The NRC's regulations should contain explicit statements acknowledging that compliance with federal regulations is necessary, but not sufficient. The NRC should explicitly recognize the authority granted to the Compacts by the Low-Level Radioactive Waste Policy Amendments Act to control "imports and exports" of waste across their regional boundaries.

NRC Response: The introduction to the proposed rule states that the NRC's import/export licensing authority only controls the entry or exit of the radioactive waste into or out of the jurisdiction of the United States. It does not authorize possession of the materials nor does it in anyway assure access to a disposal facility or preempt the authority of the Compacts or States in respect to the movement of radioactive waste into or out of a region or State.

The Pennsylvania Department of Environmental Resources, with particular reference to the Appalachian States Compact, observed:

1. No low-level radioactive waste may be imported or exported into the Compact region for disposal at the regional facility without authorization as provided by law.

NRC Response: The proposed rule does not preempt the authority of the Compacts or States to control the movement of low-level waste into or out of a region or State.

2. When the Appalachian States disposal facility begins operation in Pennsylvania, the import or export of any low-level radioactive waste for disposal purposes is effectively banned. Any exception would have to be approved by the Compact commission and/or the legislature of the host State.

NRC Response: The proposed rule does not preempt the authority of the Compacts or States to control the movement of low-level waste into or out of a region or State.

Public Comments on the Four Options and Thirteen Questions

Option 1: Maintain the status quo.

Several commenters preferred Option 1. They said a need for change is not evident; any proposed rulemaking would be based on conjecture about potential future problems; the Compacts are able to restrict transfers in and out of their regions; and if there is any inconsistency in the regulation of domestic- and foreign-origin waste disposal the regulations governing domestic possession and use could be modified.

Others opposed Option 1 because this option does not provide adequate control, is not appropriate in view of international concern about extraterritorial waste dumping, and does not keep the NRC informed about waste exports and imports.

The NRC carefully considered the comment that regional Compact restrictions on waste moving in or out of the Compact obviated the need for additional NRC import and export controls on radioactive wastes. However, the NRC concluded that neither these restrictions, nor conditions placed on materials licenses by the NRC or the Agreement States, effectively control exports or imports of wastes under the general licenses in Part 110.

Overall, Option 1 does not ensure that the Commission would be informed of radioactive waste exports from the U.S. or of imports into this country and does not provide the degree of control and international consultation recommended by the IAEA Code of Practice.

Option 2: Notification of the NRC.

One commenter favored this option, if any change is needed. Two supported this option in combination with Options 3 (specific licensing) and 4 (international agreements).

Several commenters opposed this option, some because it would be too restrictive or burdensome, others because it would be ineffective or would offer an insufficient degree of control.

The Department of State commented that this option, by itself, is not appropriate in view of international concerns. The NRC believes that a notification-only option is insufficient in regard to assuring adequate government control to allay worldwide concerns about waste dumping and conform with the IAEA Code of Practice.

Option 3: Require specific licenses to import or export radioactive waste.

One commenter opposed Option 3. This commenter believed that it is unnecessary to control waste imports to the U.S. because of the import provisions of the Low-Level Radioactive Waste Policy Amendments Act and current requirements for obtaining site use permits and for identifying waste generators at the current disposal sites. The commenter said acknowledgement of the receiving country may be useful to prevent an inappropriate export of waste but that this is possible without licensing. One commenter observed that Option 3 demands trust in the NRC to administer the program and that the public may not trust the NRC to assure that foreign "BRC" (below regulatory concern) wastes will not end up in municipal landfills or incinerators in the U.S.

Several commenters supported Option 3 either alone or combined with Option 4. Option 3 was generally recognized as ensuring effective control, yet providing some flexibility. One commenter supported Option 3 because the licensing process allows possible public participation which would be unavailable under Option 4. Another commenter said Option 3 would provide for host State control over waste disposal and appropriate review by the affected Compact commission.

The Department of State preferred Option 3, noting that it should ensure, through advance notice of proposed waste imports and exports, the opportunity to control these transactions based on the consent of the importing country. The NRC also favors Option 3. The NRC would eliminate the use of existing general licenses under part 110 for radioactive waste exports and imports except to return sealed sources and other materials to the country of origin to a consignee who is authorized to possess them.

Option 4: Ban imports and exports of radioactive waste except under international disposal agreements.

Comments were about equally divided on this option. Supporters generally favored combining it with Option 3 (specific licensing) to achieve adequate control over imports and exports. One commenter suggested using this combination to ensure that exported wastes do not reappear as contaminated scrap. Those opposing Option 4 thought this option could be inflexible and difficult to implement. One commenter said that there may be little opportunity for public participation and litigation in connection with international agreements negotiated by the Department of State.

The Department of State said there had been no documentation of a waste dumping problem sufficient to justify expending substantial resources developing and negotiating a potentially complex set of agreements with prospective importing countries. The NRC agrees with the Department of State that it is not necessary to require formal agreements with other countries in order to determine the receiving government's acceptance of a proposed shipment of radioactive waste. This can be done by the Department of State in consultation with the receiving government prior to the NRC's issuance of an export license.

Question 2: What are the economic advantages and disadvantages to the import and export of radioactive wastes?

The responses to this question emphasized the current uncertainties

about the number, location, and capacity of domestic disposal sites now being planned, as well as uncertainties in the future domestic demand for storage at those sites, coal factors, etc. The NRC agrees that there are a large number of unknowns and that requiring specific NRC licenses for radioactive waste imports and exports will help ensure that all relevant considerations can be taken into account at the time each licensing decision is made.

Question 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?

Three public interest groups expressed the view that the NRC should not be concerned with economic disadvantages but should limit its concern to public health and safety and the environment. Several commenters (source suppliers and States) recognized an economic disadvantage for U.S. source suppliers if they are not allowed to take back used sources because the sale of a source is often conditioned on later return of the source for disposal. One commenter said that if return of used sources was prohibited by import restrictions, U.S. suppliers would set up foreign companies with a possible negative economic impact on the U.S. One State official commented that on a case-by-case basis there may be health and safety advantages or disadvantages to denying import or export of certain wastes. Others noted that medical sources or instruments, although perhaps a small part of the possible volume of exports and imports of radioactive waste, produced benefits which may offset the environmental cost of disposal. Another commenter believes that waste imports and exports should be minimized, with approvals granted only when necessary to protect the public health and safety and the environment.

The NRC believes that the return of used or depleted sealed sources, gauges, and similar items to the U.S. or to another original exporting country for reconditioning, recycling or disposal may be appropriate for a number of reasons, but especially to help ensure that such materials are handled responsibly and not left in dispersed and perhaps unregulated locations around the world.

Question 3: Would it be in the interest of U.S. foreign policy to assist certain countries with the disposal of their radioactive wastes?

Commenters acknowledged that foreign governments might appreciate any assistance the U.S. could give them on waste disposal, but that the U.S. should provide help on policies, regulations, and institutions for handling wastes, rather than agree to import their waste when we have not solved our own problems in this area.

The NRC believes that specific licensing of low-level radioactive waste (LLW) exports and imports, as contemplated in the proposed rule, will allow important foreign policy considerations to enter into the decision process, but that these considerations would not supersede primary U.S. domestic interests.

Question 4: Does the U.S. have an adequate mechanism to dispose of imported radioactive wastes without adversely impacting the disposal of domestically generated wastes?

Commenters noted that the U.S. has not yet demonstrated its ability to handle disposal of domestic waste under the siting process defined in the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1985. The commenters identified other uncertainties which made the impact of any foreign waste imports difficult to judge. One commenter noted that the intent of Congress under the LLRWPA was to make the States responsible for their own wastes, not imported wastes. An operator of a disposal site commented that current requirements for site use permits and identification of generators ensure appropriate approvals by State regulatory agencies before wastes are imported for disposal and obviate the need for additional regulation of import of waste into the U.S.

The NRC believes the answer to this question depends largely on the success of the LLRWPA's siting process.

Question 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?

Commenters were not sure of the nature of foreign wastes, but some assumed it would be similar to U.S. wastes. There was some concern that imported waste could differ and that control at the generator's facilities could be a problem. There was a view that an accountable agency providing third party inspections would be essential to ensure that foreign waste streams meet Federal and importing States' specific requirements.

The NRC agrees that a verification system would need to be in place to assure that imported wastes meet U.S.

standards. Existing mechanisms could be used for this purpose.

Question 6: What are the views of operators of disposal facilities and State and local governments on the import of radioactive wastes?

The one site operator who responded to the question said the NRC had implied in the ANPR that a Compact site might be required to accept foreign waste unless a change is made in part 110. However, the operator noted that a Compact has the authority to deny access to any out-of-Compact generator, including foreign ones. Several State agencies said that imports should only take place under exceptional circumstances on a case-by-case basis when the environment and public health and safety are at risk.

State agencies, as well as the one local government official that responded to the question, expected that local governments would oppose imports, probably at least into the 21st Century. A regional Compact official stressed his view that Congress did not contemplate foreign imports and exports that would violate a Compact's expressed desires to deny domestic (inter-Compact) imports and exports. The official said that if any foreign imports or exports are approved, specific notice should be given to portal States and impacted Compacts, and financial assurances should be provided to cover accidents.

The NRC notes that neither this question nor any others in the ANPR were intended to show a predisposition to approve radioactive waste imports without regard to the acceptability of the proposed actions to interested States and Compacts. Also, the NRC emphasizes that its exercise of import and export control at the borders of the U.S. is independent of the control which the States and Compacts may possess over radioactive waste while it is in the U.S.

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

Commenters recognized that countries differ widely in their technical competencies, with the major nuclear power-producing countries generally most advanced in waste handling technology. Some commenters said that if any countries are willing to receive U.S.-exported waste, the U.S. should ensure that these host countries have the technical and other competence necessary to handle the waste safely.

The NRC believes that any waste exports should be confined to countries which are willing to receive them and which have regulated waste disposal

programs. The NRC knows of no countries currently willing to receive our wastes.

Question 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 questionable?

Most commenters favored consideration of the capability of the receiving country in order to protect populations and the environment from incompetent disposal activities, as well as for moral and economic reasons. One commenter stated that criteria should be developed and implemented to evaluate host country capabilities prior to licensing. Another suggested that international agreements be used to provide the legal authority for the NRC to consider the capability of the host country.

Among the licensing criteria which the NRC would apply to its review of proposed radioactive waste exports are two which are relevant to this question. The NRC would consider the extent to which the proposed export would minimize public health, safety, and environmental impacts in the U.S. and the global commons. The NRC would also consider whether or not the proposed export would be acceptable to the competent regulatory authority of the receiving country. The NRC does not contemplate any circumstances in which a license would be issued to export to a country without a regulated waste disposal program or to a country whose government is opposed to receiving the waste.

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

Commenters noted that export of radioactive waste might be seen as the solution to the problem of developing low-level waste disposal sites but, unless all U.S. wastes were to be exported, would drive up the cost of disposing of whatever low-level wastes remained for domestic disposal and thus would serve as an economic disincentive to development of new sites.

The NRC agrees that exporting waste may cause more problems than it solves and should only be licensed when a case is made in support of a particular proposal. Any shortage of U.S. disposal capacity would only be a short-term condition.

Question 10: The NRC cannot currently regulate Naturally Occurring

or Accelerator Produced Material. Are provisions needed for the import and export of these wastes, assuming the NRC were given statutory authority over these materials?

Commenters seemed to favor the NRC regulation (and LLW Compact disposal) of accelerator-produced wastes, but were less sure with respect to naturally-occurring wastes such as pipe scale and gypsum piles which might be best left unregulated by the NRC.

As indicated in the question itself, the scope of the NRC's authority is not decided by the NRC but is set by law. At present the NRC does not have regulatory authority over naturally occurring and accelerator-produced wastes.

Question 11: Are there other means to broaden the Commission's information base with regard to transactions of exports and imports of radioactive wastes, exclusive of requiring specific licenses or otherwise revising the NRC's existing regulations?

Commenters suggested that international agencies or diplomatic channels might provide transaction information or that the U.S. might conduct a survey of radioactive materials brokers, processors, and site operators in the U.S. Another suggestion was to require licensees to keep records for NRC review or to submit an annual report to the NRC on waste types, volumes, activities, and destinations.

The NRC appreciates the suggestions which were offered, but has opted for specific licensing as a means of increasing its cognizance and control with respect to radioactive waste imports and exports.

Question 12: What import/export controls and licensing criteria may be necessary for various categories of radioactive waste and under what circumstances should imports and exports be considered wastes?

This broad question produced extensive comments covering the whole spectrum of options. One public interest group opposed NRC controls and asked for a complete ban. Others urged minimization of radioactive waste imports and exports, supporting only those actions necessary to protect health and safety and the environment, but also allowing the return of sealed radiation sources to the manufacturer. One said the NRC should use specific licensing to control international trade in sealed sources and to ban the export of low-level waste generated by the nuclear fuel cycle. Another said the NRC should ban specific waste forms, allowing the return of spent sealed sources to the manufacturer but not directly to a disposal facility except

when such a prohibition of this type would have a detrimental impact on the environment or public health and safety in the U.S. or abroad and when no other safe alternative exists.

Another commenter stated that the NRC's system of regulations, license conditions, and definitions should be used for the rest of the world and that the Resource Conservation and Recovery Act requirements could be used to ensure proper identification and characterization of mixed wastes. Others said that wastes should be accompanied by specific manifests and there should be legal certifications by receivers that they have the authority to accept the waste shipments and wish to accept them. Another said it could be useful for the receiving country to acknowledge the acceptability of the waste import before the export is authorized.

The Department of State recommended that it obtain written consent of the recipient country and ask the country to confirm receipt of the import when it occurs. The Department of State also said that the NRC's rulemaking should exclude:

(a) Waste imports and exports in support of U.S. Government waste research and development testing programs under international arrangements.

(b) Military shipments that the U.S. Government makes to itself, between foreign and domestic bases, pursuant to arrangements with another country, and

(c) Shipments made pursuant to other arrangements concluded between the U.S. and the other governments providing entry and transit through the other nation (e.g., the 1944 Convention on International Civil Aviation).

The NRC accepted several of the suggestions in developing the definitions, exceptions, procedures, and licensing criteria presented in this proposed rulemaking. Regarding the Department of State/Executive Branch recommendations:

(a) International research and development shipments would be excluded from any new requirements because the shipped waste is being sent for research purposes, not just for disposal.

(b) Military and other U.S. Government shipments involving the return of radioactive waste to the U.S. (to an authorized Federal facility) would be excluded; and

(c) Nothing in the proposed new requirements would affect entry and transit rights under international shipping conventions.

Question 13: What assurances can be made that the Below Regulatory

Concern (BRC) policies of various countries are consistent so that radioactive wastes declared to be BRC in the exporting country are indeed BRC wastes to the recipient country?

Several commenters expressed objections to Below Regulatory Concern as a regulatory concept or policy. One said that the problem is best solved by minimizing import and export of radioactive wastes and addressing BRC by specific international agreement when necessary and prior to import or export activity. Another said that BRC policy for imports should be the same as U.S. domestic BRC policy. Yet another commenter observed that it is not clear why a generator of BRC wastes would wish to export them.

The NRC has made no special provision for BRC material in its proposed rule. Future BRC determinations by the Commission may or may not be applied to waste imports and exports under part 110, depending on how they are formulated and on Commission policy at that time.

Overview of the Proposed Rule

The proposed rule would require a person to file an application for a specific license to export or import radioactive waste. The applicant would be required to include information on the volume of wastes, the waste classification, its chemical and physical characteristics, and whether a disposal site operator had agreed to accept the waste. A notice of receipt of each application would be published in the Federal Register. The views of the Executive Branch would be requested from the Department of State on proposed exports, and time would be available for NRC consultations with other Federal agencies and interested States and low-level waste Compacts on proposed imports. The NRC would have exclusive jurisdiction for granting or denying all licenses.

The NRC review would be governed by the following criteria: Would a proposed export or import minimize public health, safety, and environmental impacts in the United States and the global commons? Would a proposed export be acceptable to the competent regulatory authority of the receiving country? And would a proposed export be inimical to the common defense and security interests of the United States?

Following its review, the NRC would recommend to the Commission approval or denial of the license. If the Commission approved the issuance of an import or export license, such license would only authorize the waste material to enter or exit the jurisdiction of the

United States. The NRC import or export license alone would not authorize possession of the material and would not guarantee access to a disposal site in the U.S. Or another country. In the case of waste imports, the NRC would consult with interested States and low-level waste Compacts prior to issuing an import license and generally would not grant a license unless it was clear that the waste would be accepted by a disposal site and its host State and Compact.

Environmental Impact: Categorical Exclusion

The NRC has determined that pursuant to §§ 51.10 and 51.22(c)(1) of this chapter, these proposed amendments to part 110 require neither an environmental impact statement nor an environmental assessment.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0036 and 3150-0027) Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

Existing NRC regulations provide strong regulatory control over the export of strategic nuclear material from a national security (nonproliferation) standpoint, but provide much less control over non-strategic nuclear materials. Many such non-strategic imports and exports qualify for general licenses without specific review or approval by the NRC. (Domestic regulations in the U.S. and abroad, and international transportation regulations, provide the primary regulatory controls for health and safety and environmental

protection purposes.) In fact, the Commission has taken the position in the Philippine Reactor Export Case, and in several materials export licensing cases, that its consideration of health, safety, and environmental impacts of an export is confined to those that affect the territory of the U.S. or the global commons and that the NRC is without jurisdiction to consider impacts upon the citizens of recipient nations. This position was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *NRDC v. NRC*, 847 F.2d 1345 (D.C. Cir. 1981). Executive Order 12114, however, calls for concise environmental reviews by the Executive Branch of any exported reactor or nuclear waste management facility.

National and worldwide concerns about radioactive waste disposal practices have brought attention to the limited focus of the NRC's import and export regulations and the fact that certain types and quantities of radioactive materials, including possible shipments of low-level wastes, may be imported or exported without specific authorization by the NRC and without the NRC's knowledge. The voluntary international Code of Practice on the International Transboundary Movement of Radioactive Waste, which was approved by the IAEA General Conference in 1990 with strong U.S. Government support, provides that exports and international shipments of radioactive wastes which take place only with the prior notification and consent of the sending, receiving, and transit countries. The proposed changes in the NRC's regulations in Part 110 would serve to bring the U.S. into line with these international recommendations.

To the NRC's knowledge, there is no appreciable U.S. import or export traffic in radioactive waste. A possible exception, depending on one's definition of radioactive waste, would be the widely accepted practice, usually rooted in a sales or leasing contract or other agreement, of returning depleted sealed radioactive sources, used gauges, and other instruments containing radioactive materials, and similar medical and industrial items, to the original supplier-manufacturer for recycle or disposal. This practice is generally encouraged by governmental authorities as a way of helping to ensure that the items are handled in a responsible manner at the end of their useful life. By exempting these return shipments from new import or export controls, the NRC believes the proposed regulatory changes involve no significant cost to U.S. companies, the medical community, or other entities which provide or use nuclear equipment

and materials. The changes could affect waste management companies interested in receiving low-level waste imports from other countries. At present low-level imports would be generally licensed under part 110. Under the proposed changes, the imports would require specific import licenses from the NRC and might not satisfy the licensing criteria. However, it is not clear whether this licensing requirement would impose any more difficult obstacle to a prospective waste importer than would the authority given the States and low-level waste Compacts under the LLRWPA to block shipments of LLW into their respective jurisdictions.

Finally, it is noted that legislation to implement the Basel Convention on the Control of Transboundary Movements of Hazardous Waste (1989) may establish an interface in the regulatory import-export control regimes of the Environmental Protection Agency (EPA) and the NRC. That legislation may exempt from the EPA's control regime radioactive waste imports and exports controlled by the NRC in its implementation of the IAEA voluntary Code of Practice on Transboundary Movement of Radioactive Wastes.

In this sense, the alternative to the proposed changes to the NRC's regulations contained in this rulemaking is not to maintain the status quo but, arguably, some form of EPA control.

Overall, the NRC believes that requiring specific NRC licensing of U.S. waste imports and exports is a sound regulatory approach to help ensure that the transactions are subject to approval of the U.S. Government and the consent of other involved parties. This approach will bring the NRC's regulations in line with the recently-adopted IAEA voluntary Code of Practice. The following points influenced the NRC's position on this matter:

A. Only Option 1 of the ANPR, i.e., to continue the use of existing regulations, would not require rulemaking and this option is not acceptable if additional control over imports and exports of radioactive wastes is to be achieved.

B. The international community, including the United States, is committed to establishing a regime to ensure that waste imports and exports do not take place without the consent of the sending, receiving, and transit countries.

C. Specific licensing of radioactive waste exports and imports is a practical means of extending NRC cognizance and control over these transactions while also allowing for consultations and coordination with Executive Branch, State, and local authorities, as

appropriate. Formal Executive Branch coordination would require the Department of State to determine if each proposed radioactive waste export from the United States is acceptable to the government of the receiving country.

D. Sealed sources (and other shipments of source, byproduct, and special nuclear material currently exported or imported under NRC part 110 general licenses) should be allowed to return to a consignee in the country of origin who is authorized to possess them, without need for a specific import or export license from the NRC, in order to avoid undue disruption of commercial activities that embody desirable waste-takeback features.

The proposed rule would ensure that the NRC regulates imported, foreign-generated waste in a manner consistent with the NRC's regulation of domestically-generated waste. By requiring a specific import license from the NRC, the proposed rule would ensure that NRC regulatory requirements would be applicable to any imported radioactive waste resulting from any foreign nuclear operation that, if operated domestically, would be subject to the NRC's licensing jurisdiction.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The new licensing requirements for radioactive waste specifically exclude from additional controls the return of U.S.-origin sealed sources by foreign customers, which is the principal type of existing commercial activity which otherwise might have been adversely affected. In all, the proposed amendments of the general licenses contained in part 110 are expected to result in fewer than ten new export and import licenses per year.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and, therefore, a backfit analysis is not required.

List of Subjects to 10 CFR Part 110

Administrative practice and procedure. Classified information. Criminal penalties. Export, import. Incorporation by reference. Intergovernmental relations. Nuclear materials. Nuclear power plants and reactors. Reporting and recordkeeping requirements. Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 181, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 946, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2082-2085, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). § 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475, (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 88 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 88 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30-110.35 also issued under 5 U.S.C. 553.

For purposes of sec. 223, 68 Stat. 956, as amended (42 U.S.C. 2273), §§ 110.20-110.29, 110.50, §§ 110.120-110.129 also issued under secs. 181b, and 1, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and (i)); and § 110.7b, as issued under sec. 181, 68 Stat. 949, as amended (42 U.S.C. 2201(i) and §§ 110.7a and 110.53 are also issued under sec. 181a, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 110.2 is amended to add the terms *country of origin* and *radioactive waste* to read as follows:

§ 110.2 Definitions.

As used in this part,

Country of origin means the country which has previously exported specified radioactive materials to another country.

Radioactive waste means any material that contains or is contaminated with source material, special nuclear material or byproduct material, for which no use is foreseen, and any other imported radioactive material resulting from any foreign nuclear operation that, if operated in the United States, would be subject to the NRC's licensing authority, and for which no use is foreseen.

3. In § 110.21, the introductory text of paragraphs (a) and (b) are revised, and a new paragraph (c) is added to read as follows:

§ 110.21 Export of special nuclear material.

(a) Except as provided in paragraph (c) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

(b) Except as provided in paragraph (c) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28 or § 110.29:

(c) The general licenses in paragraphs (a) and (b) in this section do not authorize the export of special nuclear material in radioactive waste, other than special nuclear material in radioactive waste that is being returned to the country of origin to a consignee who is authorized by such country to possess the material.

4. In § 110.22, paragraph (a) introductory text, and paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 110.22 Export of source material.

(a) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

(b) Except as provided in paragraph (d) of this section, a general license is issued to any person to export uranium or thorium in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29. A person may not export more than 1,000 kilograms per year to any one country.

(c) Except as provided in paragraph (d) of this section, a general license is issued to any person to export uranium or thorium in individual shipments of 1 kilogram or less to any country listed in § 110.29. A person may not export more than 100 kilograms per year to any one country.

(d) The general licenses in paragraphs (a), (b), and (c) of this section do not authorize the export of source material in radioactive waste, other than source material in radioactive waste that is being returned to the country of origin to a consignee who is authorized by such country to possess the material.

5. In § 110.23, the introductory text of paragraphs (a) and (b), and paragraph

(c) are revised and a new paragraph (d) is added to read as follows:

§ 110.23 Export of byproduct material.

(a) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

(b) Except as provided in paragraph (d) of this section, a general license is issued to any person to export americium-241 to any country not listed in § 110.28, except that exports of americium-241 exceeding 1 curie per shipment or 100 curies per year to any country listed in § 110.29:

(c) Except as provided in paragraph (d) of this section, a general license is issued to any person to export bulk, undispersed tritium in individual shipments of 100 curies or less to any country not listed in § 110.28 or § 110.29. No person may export more than 10,000 curies per year to any one country.

(d) The general licenses in paragraphs (a), (b), and (c) of this section do not authorize the export of byproduct material in radioactive waste, other than byproduct material in radioactive waste that is being returned to the country of origin to a consignee who is authorized by such country to possess the material.

6. In § 110.27, paragraph (b) is revised to read as follows:

§ 110.27 Imports.

(b) The general license in paragraph (a) of this section does not authorize the import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment or the import of radioactive waste, other than radioactive waste that is being returned to the United States to a consignee who is authorized by the NRC or an NRC Agreement State to possess the material or to a United States Government or military facility which is authorized to possess the material.

7. In § 110.31, paragraph (f)(5) is redesignated as paragraph (f)(6) and a new paragraph (f)(5) is added to read as follows:

§ 110.31 Information required in license applications.

(f) * * *

(5) For proposed exports or imports of radioactive waste, the volume, classification, and physical and chemical characteristics of the material; and for proposed imports of radioactive

waste, the industrial or other process responsible for generation of the waste, the ultimate disposition of the waste, and the status of the arrangements for that disposition, i.e., agreement by a Regional Low-Level Waste Compact or state to accept the material for disposal.

8. In § 110.40, paragraphs (b) and (c) are redesignated (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 110.40 Commission review.

(b) The Commission shall review an application to import or export radioactive waste.

9. In § 110.41, paragraphs (a)(7) and (a)(8) are redesignated as paragraphs (a)(8) and (a)(9), and a new paragraph (a)(7) is added to read as follows:

§ 110.41 Executive branch review.

(a) * * *

(7) An export involving radioactive waste.

10. In § 110.44, paragraph (c) is revised to read as follows:

§ 110.44 Issuance or denial of license.

(c) If, after receiving the Executive Branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under the Atomic Energy Act, the Commission will publicly issue a decision to that effect and will submit the license application to the President. The Commission's decision will include an explanation of the basis for the decision and any dissenting or separate views. The provisions in this paragraph do not apply to Commission decisions regarding license applications for the export of byproduct material or radioactive waste.

11. In § 110.70, paragraph (c) is redesignated as paragraph (d), and new paragraphs (b)(4) and (c) are added to read as follows:

§ 110.70 Public notice of receipt of an application.

(b) * * *

(4) Radioactive waste.

(c) The Commission will also publish in the Federal Register a notice of

receipt of an application for a license to import radioactive waste.

Dated at Rockville, MD, this 22nd day of April 1992.

For the Nuclear Regulatory Commission,
Saameel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-9828 Filed 4-27-92; 8:45 am]

90LJMS 0004 7989-01-80

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3084-AA73

Review of Rights and Capacities

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is soliciting public comment on the rights and capacities in which deposit accounts are maintained and for which the FDIC provides deposit insurance coverage. This action is being taken to assist the FDIC in complying with the provision of the Federal Deposit Insurance Corporation Improvement Act of 1991 (the "Improvement Act") which requires a review of such rights and capacities.

DATES: Written comments must be received on or before June 29, 1992.

ADDRESSES: Written comments should be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F-400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898-3838]

FOR FURTHER INFORMATION CONTACT: Jay Colter, Financial Analyst, Division of Research and Statistics, (202) 898-3924, or Claude A. Rollin, Counsel, Legal Division, (202) 898-3985, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429.

SUPPLEMENTARY INFORMATION: Section 311 of the Improvement Act provides that, during the one-year period after its enactment, the FDIC shall conduct a review of the rights and capacities in which deposit accounts are maintained and for which deposit insurance coverage is provided. The Improvement

The International Transboundary Movement of Radioactive Waste

A CODE OF PRACTICE

IAEA Member States adopt principles to prevent "dumping" of radioactive wastes

In September 1990, Member States of the International Atomic Energy Agency took an important step for strengthening the safety and environmental record of radioactive waste management and disposal.

They adopted, by consensus, an international code of practice governing the movement of radioactive wastes across national borders.

The code was requested by the IAEA General Conference in 1988 following reports on illicit transfer

and disposal of hazardous wastes — a practice commonly called "dumping" — in the territories of developing countries, notably in Africa. No case of dumping that involved radioactive waste has been reported.

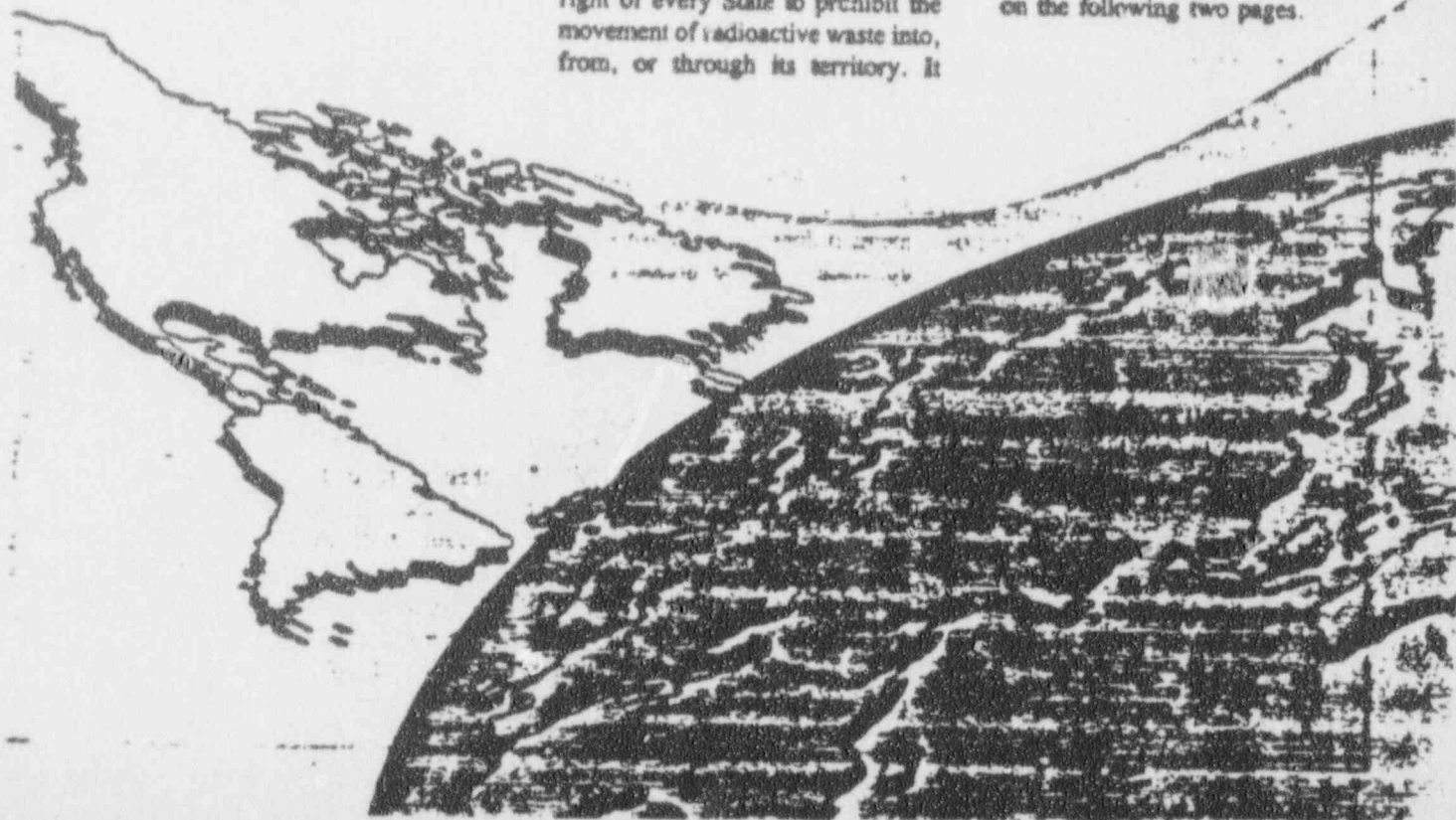
The code builds upon and reinforces a strong existing international foundation for environmental and public safety in the handling of radioactive waste. Experts from 20 countries who were convened by the IAEA to research and draft the code found no need to create new norms in this field.

The code affirms the sovereign right of every State to prohibit the movement of radioactive waste into, from, or through its territory. It

further requires that transboundary movements of radioactive waste take place in accordance with internationally accepted safety standards and respective national laws and regulations, and with prior notification and consent of the sending, receiving, and transit States.

While the code is not legally binding, its adoption by consensus underscores the political commitment of the IAEA's 112 Member States to prevent any unauthorized transboundary movement of radioactive waste.

The full text of the code appears on the following two pages.



Text of the Code of Practice

The Group of Experts,

(i) Taking note that nuclear power generation and the utilization of radioisotopes involve the generation of radioactive waste,

(ii) Aware of the potential hazards for human health and the environment that could result from the improper management or disposal of radioactive waste,

(iii) Aware of public concern about any unauthorized international transboundary movement of radioactive waste, particularly to the territory of developing countries, and the danger of improper management and disposal of such waste,

(iv) Aware of the need to continue to promote high standards of radiation protection worldwide and to strengthen international co-operation, both multilateral and bilateral,

in the field of nuclear safety and radioactive waste management,

(v) Emphasizing that such co-operation should take into account the needs of developing countries and may include the exchange of information, the transfer of technology and the provision of assistance,

(vi) Taking into account the IAEA's safety principles, which require, *inter alia*, that "policies and criteria for radiation protection of populations outside national borders from releases of radioactive substances should not be less stringent than those for the population within the country of release",¹

(vii) Taking into account the IAEA safety standards and guidelines relevant to the international transboundary movement of radioactive waste, including standards and guidelines for radiological protection, the safe transport of radioactive material, the safe manage-

ment and disposal of radioactive waste, the safety of nuclear facilities and the physical protection of nuclear materials,

(viii) Recalling the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency,

(ix) Mindful of the relevant principles and norms of international law,

(x) Taking into account the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and other relevant international instruments, and

(xi) Recognizing the global role of the IAEA in the area of nuclear safety, radiation protection and radioactive waste management and disposal;

DECIDES that the following Code of Practice should serve as guidelines to States for, *inter alia*, the development and harmonization of policies and laws on the international transboundary movement of radioactive waste.

I. SCOPE

This Code applies to the international transboundary movement of radioactive waste.

It relies on international standards for the safe transport of radioactive material and the physical

protection of nuclear material, as well as the standards for basic nuclear safety and radiation protection and radioactive waste management; it does not establish separate guidance in these areas. Further-

more, this Code, which is advisory, does not affect in any way existing and future arrangements among States which relate to matters covered by it and are compatible with its objectives.²

II. DEFINITIONS

For the purpose of this Code:

"radioactive waste" is any material that contains or is contaminated with radionuclides at concentrations or radioactivity levels greater than the "exempt quantities"³ established by the competent authorities

and for which no use is foreseen.⁴ "disposal" means the emplacement of waste in a repository, or at a given location, without the intention of retrieval.

"management" means all activities, administrative and operational, that are involved in the handling,

treatment, conditioning, transportation and storage of waste.

"competent authority" means an authority designated or otherwise recognized by a government for specific purposes in connection with radiation protection and/or nuclear safety.

III. BASIC PRINCIPLES

General

1. Every State should take the appropriate steps necessary to ensure that radioactive waste within its territory, or under its jurisdiction or control is safely managed and disposed of, to ensure the protection of human health and the environment.

2. Every State should take the appropriate steps necessary to minimize the amount of radioactive waste, taking into account social, environmental, technological and economic considerations.

International Transboundary Movement

3. It is the sovereign right of every State to prohibit the movement of radioactive waste into, from or through its territory.

4. Every State involved in the international transboundary movement of radioactive waste should take the appropriate steps necessary to ensure that such movement is undertaken in a manner consistent with international safety standards.

5. Every State should take the appropriate steps necessary to ensure that, subject to the relevant norms of international law, the international transboundary movement of radioactive waste takes place only with the prior notification and consent of the sending,

receiving and transit States in accordance with their respective laws and regulations.

6. Every State involved in the international transboundary movement of radioactive waste should have a relevant regulatory authority and adopt appropriate procedures as necessary for the regulation of such movement.

7. No receiving State should permit the receipt of radioactive waste for management or disposal unless it has the administrative and technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards. The sending State should satisfy itself in accordance with the receiving State's consent that the above requirement is met prior to the international transboundary movement of radioactive waste.

8. Every State should take the appropriate steps to introduce into its national laws and regulations relevant provisions as necessary for liability, compensation or other remedies for damage that could arise from the international transboundary movement of radioactive waste.

9. Every State should take the appropriate steps necessary, including the adoption of laws and regulations, to ensure that the international transboundary movement of

radioactive waste is carried out in accordance with this Code.

International Co-operation

10. The sending State should take the appropriate steps necessary to permit readmission into its territory of any radioactive waste previously transferred from its territory if such transfer is not or cannot be completed in conformity with this Code, unless an alternative safe arrangement can be made.⁵

11. States should co-operate at the bilateral, regional and international levels for the purpose of preventing any international transboundary movement of radioactive waste that is not in conformity with this Code.

Role of the IAEA

The IAEA should continue to collect and disseminate information on the laws, regulations and technical standards pertaining to radioactive waste management and disposal, develop relevant technical standards and provide advice and assistance on all aspects of radioactive waste management and disposal, having particular regard to the needs of developing countries.

The IAEA should review this Code as appropriate, taking into account experience gained and technological developments.

Notes

¹ *Safety Principles and Technical Criteria for the Underground Disposal of High-Level Radioactive Wastes*, Safety Series 99, 1989.

² Nothing in this Code prejudices or affects in any way the exercise by ships and aircraft of all States of maritime and air navigation rights and freedoms under customary international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and under other relevant international legal instruments.

³ "Exempt quantities", in relation to radioactive waste, are levels of radionuclide concentration, surface contamination, radiation and/or total activity below which the competent authority decides to exempt from regulatory requirements because the individual and collective effective dose equivalents received from them are so low that such levels are not significant for purposes of radiation protection. Such exempt quantities should be agreed by the competent authorities in the

countries concerned with the international transboundary radioactive waste movement.

⁴ Spent fuel which is not intended for disposal is not considered to be radioactive waste.

⁵ The above would not apply to waste which is associated with, or results from, a service provided by the sending State to the receiving State and which is subject to a contractual arrangement between them that such waste be returned to the receiving State.

**Events leading to the Code of Practice on the
Transboundary Movement of Radioactive Waste**

MAY 1988

In response to reports of illicit transfer and disposal of industrial and toxic wastes in Africa, the summit conference of the Organization for African Unity (OAU) passes a resolution calling for international action against such dumping practices. The resolution requests the International Atomic Energy Agency, United Nations Environment Programme, and a number of other organizations to take measures to prevent such actions and to assist African countries in establishing appropriate mechanisms to monitor and control them.

JUNE 1988

● The Secretary-General of the OAU writes to IAEA Director General Hans Blix about the OAU's resolution and requests the IAEA's "intervention and support" to forestall dumping practices.

● At the request of Nigeria's Ambassador, the OAU resolution is discussed by the IAEA Board of Governors, the Agency's 35-member policy-making body.

● Responding to concerns about the alleged dumping of radioactive waste in Koko, Nigeria, the IAEA sends an expert there on a fact-finding mission at the request of the Government. The mission concludes that the "suspected waste" was not radioactive.

SEPTEMBER 1988

Meeting in Vienna, the 32nd regular session of the IAEA General Conference passes a resolution sponsored by African States condemning all nuclear waste dumping practices. It authorizes the IAEA to organize a technical working group of experts to formulate a code of practice to guide international waste transactions.

MARCH 1989

In Basel, Switzerland, an international treaty negotiated under the auspices of the United Nations Environment Programme is adopted. The convention restricts shipments of hazardous wastes across borders.

MAY 1989

At the IAEA in Vienna, the technical working group of experts meets to begin work on researching and drafting a code of practice for international transactions involving radioactive wastes.

FEBRUARY 1990

At its second meeting, the technical working group of experts adopts a draft code of practice on the transboundary movement of radioactive waste. The code is forwarded to the IAEA Board of Governors for consideration at its June meeting.

SEPTEMBER 1990

Meeting in Vienna, the 34th regular session of the IAEA General Conference adopts the code of practice by consensus.

Working Group of Experts

Participating countries

(22-25 May 1989)

Participants

Argentina
Australia
Belgium
Canada
Cuba
Czechoslovakia
Egypt
France
German Democratic Republic
India
Indonesia
Iraq
Japan
Mexico
Nigeria
United Kingdom
United States
USSR
Zaire

Observers

Federal Republic of Germany
Commission of the European
Communities (CEC)
International Maritime
Organization (IMO)
Nuclear Energy Agency of the Orga-
nisation for Economic Co-operation
and Development (NEA/OECD)

(5-8 February 1990)

Participants

Argentina
Australia
Belgium
Canada
China
Cuba
Egypt
France
German Democratic Republic
India
Indonesia
Iraq
Japan
Mexico
Nigeria
Sweden
United Kingdom
United States
USSR
Zaire

Observers

Austria
Czechoslovakia
Federal Republic of Germany
Netherlands
Switzerland
CEC
IMO
NEA/OECD
United Nations Environment
Programme (UNEP)

Honorable Jolene Unsoeld

- 2 -

United States may accept plutonium from dismantled nuclear weapons in the former Soviet Union as a means of reducing the risk of nuclear proliferation. The United States may also accept spent research reactor fuel containing highly enriched uranium from institutes in foreign countries, as a means of safeguarding against nuclear proliferation.

I hope you find this information useful in responding to your constituent's concern.

Sincerely,

Original signed by/Dennis Rathbun

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures: As stated

OFFICE CONCURRENCES

OIP/ESSC AD: OIP/ESSC
EOHemby *EH* RDHaber
2/2/94 2/2/94

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MNordlinger
2/2/94

OCA *[Signature]*
DKRathbun
2/2/94

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CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Ltr to Rep Unsoeld
2. TYPE OF DOCUMENT Correspondence Hearings (Qs/As)
3. DOCUMENT CONTROL Sensitive (MRC Only) Non-sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

Congressional Committee

Subcommittee
5. SUBJECT CODES
(a) _____
(b) _____
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6. SOURCE OF DOCUMENTS
(a) _____ 5520 (document name _____)
(b) Scan- (c) _____ Attachments
(d) _____ Rekey (e) _____ Other _____
7. SYSTEM LOG DATES
(a) 3/7/94 Date OCA sent document to CCS
(b) _____ Date CCS receives document
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