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PROPOSED RULE **PR 110****(69FR 55785)**

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To: <SECY@nrc.gov>
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Subject: Comments on Proposed Rule Change to Export/Import of High-risk Radioactive Materials

(12)

Following are comments on proposed changes to NRC rules governing export and import of radioactive sources (69 FR 55785-55790, 16 September 2004):

In 1984, radiation safety officials discovered that a teletherapy unit had been stolen from a clinic in Juarez, Mexico, broken up, and sold as metal scrap. The containment of the 400 Ci cobalt-60 source was breached resulting in the scattering of 6,000 1 mm x 1 mm pellets, each containing 70 mCi, in Juarez and elsewhere in Mexico. The radiological safety consequences were unprecedented causing radiation injuries and contamination. The teletherapy unit had earlier been exported from the U.S. The export met applicable U.S. requirements. The clinic, however, was not licensed by the Mexican government to possess the source nor was the Mexican government notified of the export. Following the accident, the NRC discussed rule changes to its export regulations to address these deficiencies (reference: E. Marshal, ³Juarez: An unprecedented radiation accident,² Science 223:1152-1154; 1984). But, no changes were made.

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Twenty years later, the NRC is proposing changes not for radiological safety reasons but to address security issues. The proposed rule still fails to address radiological safety. Further, it does not fully address security concerns.

Earlier this year, I was informed by the head of the radiation safety regulatory agency for a Pacific Rim country that two used teletherapy units had been exported from the U.S. to that country without assurance that the units complied with applicable radiation and patient safety standards and without prior notice to the government (reference: J.O. Lubenau, "Exporting radioactive sources: Do it right," guest editorial, Operational Radiation Safety supplement to Health Physics, August 2004). The proposed NRC rule change does not address the former and incompletely addresses the latter.

The U.S. government (USG) should not allow the export of new or used medical devices using radioactive sources absent assurance of compliance with radiation and patient safety standards. Reuse or recycling of radioactive sources is endorsed by the IAEA in its Code of Conduct on the Safety and Security of Radioactive Sources ³consistent with considerations of safety and security² (emphasis added). The USG supports the implementation of the IAEA Code. The NRC should conform its export regulations to include radiation and patient safety considerations as well as security especially with respect to export of used sources.

The proposed rule, while otherwise conforming NRC export regulations to the IAEA Code with respect to security, does not incorporate a critical link in the security chain governing the transfer of radioactive sources, namely, requiring that intended recipients of exported sources confirm the sources have been received. To not require this in export regulations leaves open the opportunity to divert undetected a source intended for export.

In summary, the Commission should approve the proposed rule subject to modifications to address these deficiencies. Exports of radioactive sources

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and devices containing them, especially medical devices, should not be licensed absent assurance of their complying with standards for radiation safety and, when applicable, for patient safety. Confirmation of receipt by intended recipients of radioactive sources scheduled for export should be required to complete the security linkage governing transfers.

The foregoing are the opinions of the writer only and do not represent the views of nor have been approved by the Center for Nonproliferation Studies of the Monterey Institute of International Studies.

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