

ORIGINAL

RETURN TO SECRETARIAT RECORDS
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC SESSION

on

GENERAL BRIEFING ON INTERNATIONAL PROGRAMS
AND DISCUSSION OF SECY 77-616 - EXPORT/
IMPORT REGULATIONS PART 110

Place - Washington, D. C.

Date - Wednesday, 11 January 1978

Pages 1 - 101

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on January 11, 1978 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

CR 6018
WHITLOCK
All

UNITED STATES NUCLEAR REGULATORY COMMISSION

PUBLIC SESSION

on

GENERAL BRIEFING ON INTERNATIONAL PROGRAMS
AND DISCUSSION OF SECY 77-616 - EXPORT/
IMPORT REGULATIONS PART 110

Wednesday, 11 January 1978

Room 1130
1717 H. Street, N.W.
Washington, D.C.

The meeting was convened at 9:42 a.m., Joseph
Hendrie, Chairman, presiding,

BEFORE:

- CHAIRMAN JOSEPH HENDRIE
- COMMISSIONER RICHARD T. KENNEDY
- COMMISSIONER VICTOR GILINSKY
- COMMISSIONER PETER BRADFORD

NRC STAFF SPEAKERS:

- Carlton Stoiber
- Mr. Pedersen
- James Devine
- James Shea
- Michael Guhin
- Joe LaFleur
- Howard Shapar
- Tom Dorian
- Marvin Peterson
- Clifford Smith
- Mr. Page

P R O C E E D I N G S

(9:42 a.m.)

CHAIRMAN HENDRIE: If we could come to order.

I am glad so many of you were able to turn out for what is an uncommonly cold morning for what seems to me seems to be something less than a raging hot subject, but maybe I misread it.

The Commission will have this morning a general briefing on International Programs and some background discussion on the proposed Export-Import Regulations, Part 110.

The Commission has received the Staff papers on the latter matter relatively recently considering the volume of the materials presented, and I do not expect the discussion this morning, then, to run beyond background discussion and placing the thing in context.

Of course, if my colleagues have been up all night studying these papers and are prepared to go forward, why I guess I could abstain and give way to their judgment. But my guess is that we will prefer to look at these things in some more detail than the time has allowed.

Now, the first part of the discussion, the general briefing on International Programs, is one of a series of general orientation briefings by the Staff, trying to take a major area of Commission business and to put the various pieces that lie in that area into appropriate relations one

1 with another. And that is my principal interest this morning.

2 Lee?

3 MR. GOSSICK: All right, Mr. Chairman.

4 The briefing has been broken down into two parts,
5 as you have indicated.

6 Mr. Shea will cover the first part, the overall
7 International Programs activities.

8 And then Mr. Shapar will handle the Export-Import
9 Regulations Part 110.

10 Jim?

11 MR. SHEA: Well, I believe you were all provided
12 with a copy of the outline of our briefing, which shows the
13 various elements that we will consider today. And basically
14 we will be proceeding through that handout step-by-step to
15 cover NRC's International Programs across the board.

16 We are not just addressing the work done specific-
17 ally and directly by the Office of International Programs in
18 this briefing, but covering work done throughout the Com-
19 mission, to give you an overall view on what is going on
20 internationally within NRC.

21 This is all coordinated within IP, but a lot of
22 the work is done directly elsewhere.

23 In general, this is a pretty active and expanding
24 area for the Commission and there is quite a bit to cover.

25 I hope to get through the overview briefing on international

1 activities of the Commission in approximately an hour -- perhaps
2 a bit more -- and leave the second half of the time for the
3 discussion of the Export-Import Regulations.

4 So if I could walk through the handout, the first
5 page of that simply lists the contents of the briefing which is
6 broken down according to four broad areas, the underlined
7 areas there; export-import licensing, international safeguards
8 and physical security policy, nonproliferation policy and
9 health and safety policy and cooperation.

10 Page two of the handout is the overall outline of
11 our briefing today, and we have a vugraph which will be left
12 up through the presentation showing that, so that you can see
13 where we are as we walk through each of these in detail.

14 I plan to cover, after discussing the agencywide
15 objectives in the international area, each of these four
16 broad areas very generally and then come back to each of them
17 and cover them in detail, and then the last hour on the Export
18 rule.

19 Page three of the handout, then, lists, the overall
20 agency objectives which we have in the international area
21 with the second and third of the items listed --

22 CHAIRMAN HENDRIE: Hold on a second.

23 MR. SHEA: Excuse me.

24 (Pause.)

25 MR. SHEA: So that is the overall briefing outline.

1 which we will leave up as a vugraph.

2 (Slide.)

3 Page three lists the overall agency objectives
4 that we see in the international area with the second and
5 third items, international safeguards and physical security
6 and nonproliferation policy combined on page three, since they
7 closely interrelate. And those are the reasons we see for
8 doing what we do, trying to insure both careful and timely
9 review of our export and import applications consistent with national
10 security and nonproliferation policy and our statutory re-
11 sponsibility, while at the same time trying to clarify and
12 stabilize procedures and criteria for export-import licensing.

13 The international safeguards area, physical security
14 and nonproliferation policy; we see this as part of the overall
15 U.S. effort to strengthen international safeguards, physical
16 security and nonproliferation measures while at the same time
17 we have to look at the licenses case-by-case to insure the
18 exports will not be inimical to U.S. national security.

19 The final category, health and safety policy and
20 cooperation; we see that as basically contributing in two
21 broad areas:

22 Helping to improve U.S. public health and safety
23 through obtaining information on nuclear reactor experience from
24 other countries, often on facilities that are very similar to
25 those in the U.S. We can sometimes get advanced warning of

1 problems which can help U.S. public health and safety.

2 The other side of the coin is that we assist other
3 countries and become part of -- support the U.S. foreign
4 policy objective by helping nuclear programs in other coun-
5 tries.

6 I might mention in covering these broad areas that
7 there are a number of offices of NRC that participate in these
8 international activities and IP works closely with offices
9 such as NMSS in particular in all of these areas, especially
10 export-import licensing and international safeguards and
11 physical security areas, where the policy and technical as-
12 pects are often closely intertwined and work closely to make
13 sure that both of these are properly reflected for the
14 Commission.

15 ELD is involved in many of these areas as well,
16 from looking at these problems from the legal side. I and E
17 comes in, particularly in export-import licensing and safe-
18 guards and physical security aspects. And then they look at
19 the -- that proper attention is given to the protection of
20 export shipments within the U.S. before they leave and in
21 some other areas as well. Standards helps develop standards,
22 for example, the U.S. IAEA Safeguards Agreements.

23 Health and safety exchanges find NRR, research,
24 particularly closely involved.

25 If I could move to page four of the handout and

1 start to go through each of these four areas a bit more de-
2 tailed, still giving you a quick once-over.

3 We have two basic areas: licensing procedures and
4 licensing criteria that we deal with.

5 The new Export-Import Regulations, Part 110 are
6 to be considered in the second hour. It is a major activity
7 that we now have ongoing. The rule for this was published
8 for public comment June 30th and we are now ready to receive
9 Commission comments on the redraft of the rule which was for-
10 warded to you approximately a month ago, with the aim of
11 publishing a a final effective rule as soon as possible.

12 We in the procedures area have made some strides
13 in the past year and have tried to improve our procedures and
14 criteria by obtaining generic approval from the Executive
15 Branch with regard to certain of the minor export cases. As
16 you know, we sent over to the State Department for Executive
17 Branch review the major and minor applications and send the
18 majors up to the Commission, basically, and if there are
19 policy implications, some of the minors as well.

20 But to try to improve the process and reduce the
21 paperwork, we went to the Executive Branch and received their
22 concurrence in certain categories in the licenses being re-
23 viewed only by NRC. If they involve certain amounts of source
24 material and larger amounts of plutonium and what-not, why
25 they would still go to the Executive Branch for review, but

1 others would be done just by the Staff.

2 This is just being implemented, just was begun in
3 November. So we are really just starting to implement that.

4 COMMISSIONER GILINSKY: Could you remind us of
5 the rule that distinguishes major from minor?

6 MR. SHEA: Could you detail that, Mike?

7 MR. GUHIN: Major from minor cases; the standard
8 rule to date has been that any -- a case which involves one
9 effective kilogram or more of special nuclear material, or
10 10,000 kilograms of source material for any facility, whether
11 it is a research reactor or power reactor, or any case which
12 has policy implications, would be considered a major case
13 and forwarded for Commission review.

14 As we get into later, there is a slight suggested
15 modification to this in the proposed rule.

16 And the generic approval of the Executive Branch
17 is really focused on the lower levels, lower limits, even
18 in the minor case category.

19 MR. SHEA: It looks like about perhaps 30 percent
20 of the minor cases which we used to forward to the State
21 Department will be saved as a result of this change. It is
22 not by any means 100 percent, a really high percentage.

23 Then moving on, page four, to the licensing cri-
24 teria efforts, we have four basic activities there. One is
25 to implement nonproliferation legislation upon its passage.

1 The Commission then would have to approve a pro-
2 posed rule to incorporate the export criteria which are man-
3 ated by the legislation into the rule, Part 110, and also have
4 to incorporate expanded NRC export responsibilities into that.

5 Second there is revising the regulations for cer-
6 tain minor exports which would require Commission approval
7 of a proposed rule for public comment. We hope to have that
8 up to you next month.

9 We are reassessing certain license exemptions for
10 source material exports which we hope to have the Commission
11 review in February.

12 And the Defense Department has come to us and asked
13 about exempting certain of their exports of source material
14 used in munitions. And we are working with them to come up
15 with a proposed rule; it looks like later this month that
16 should be before you.

17 So that is an overview of the export area.

18 If I could move on to page five --

19 COMMISSIONER GILINSKY: Let's see; why would we be
20 licensing Defense Department exports, anyway?

21 MR. GUHIN: I am glad you asked that.

22 (Laughter.)

23 MR. GUHIN: We asked ourselves that question, I
24 think, some time ago, too, in the initial request from De-
25 fense when they had to send some munitions even to U.S. bases

1 overseas, the antetank munitions with depleted uranium pri-
2 marily.

3 The question is -- it is a question of under the
4 law, that under the law there is no exemption at this stage
5 for source materials for special nuclear materials. So what
6 they are doing is seeking a specific exemption for source mat-
7 erial contained in munitions, either for their own forces
8 overseas, which in the first instance a year ago we said was
9 not an export anyway, because it was always under U.S. control.

10 COMMISSIONER GILINSKY: But if we are -- and a
11 nuclear weapon would presumably be exempt.

12 MR. GUHIN: If it were -- no; technically, it is
13 still source material.

14 COMMISSIONER GILINSKY: Oh, you mean just the
15 source material.

16 MR. GUHIN: Right.

17 COMMISSIONER GILINSKY: Not the --

18 MR. GUHIN: Special nuclear is exempt and they
19 can send that. But they cannot -- they can send a nuclear
20 weapon but they cannot send a 155 shell with depleted uranium
21 in it.

22 COMMISSIONER GILINSKY: How extraordinary.

23 MR. GUHIN: It is. And they --

24 MR. GOSSICK: But that is not a nuclear weapon.

25 CHAIRMAN HENDRIE: You get a feeling of --

1 MR. GUHIN: No; it is not a nuclear weapon.

2 CHAIRMAN HENDRIE: -- of the barn being locked
3 after -- never mind.

4 (Laughter.)

5 MR. GUHIN: So this is one of the things that --
6 it has never arisen, in fact, until the development of the use
7 of depleted uranium in shells --

8 COMMISSIONER GILINSKY: Is this taken into account
9 in all of these studies of reinforcing NATO and all that?

10 (Laughter.)

11 COMMISSIONER BRADFORD: How often do we get a
12 license request of that sort? I don't remember having seen
13 one.

14 MR. GUHIN: We have only had one which was about
15 a year ago. And it wasn't a license request; it was a letter
16 requesting an exemption from an export license. And in that
17 instance what they were doing was sending it to a U.S. base
18 overseas where it would remain under control. So the answer
19 to that which was staff around all the offices, was that does
20 not constitute an export because it never leaves our control.

21 At the same time, of course, there is discussion
22 with allies and others as to how they would ever get this
23 stuff out of the country; cooperation with our allies. And
24 at that stage, they came in and requested and we have been
25 working with them since on defining a basic exemption which

1 would allow this.

2 So there has been no license request as such; only
3 a request for one specific license exemption and now for a
4 broad exemption.

5 COMMISSIONER BRADFORD: So that one could conclude
6 from that that in the last two years, there haven't been any
7 exports of this sort.

8 MR. GUHIN: No; there have not, not to our knowledge,
9 at all.

10 MR. GOSSICK: Isn't there a general exemption of
11 some sort for depleted uranium in aircraft uses, aileron
12 balances and that sort of thing, that we also export in our
13 sales of aircraft.

14 MR. GUHIN: That's true. There is a general license
15 which allows the export of depleted uranium.

16 MR. GOSSICK: Counter weights.

17 MR. GUHIN: Counter weights, shielding and this
18 kind of thing.

19 MR. SHEA: The next area appearing on page five --

20 CHAIRMAN HENDRIE: Just before you go ahead; is
21 it clear that the Commission's basic statutory authority would
22 allow it to cover the matter of these munitions, course mat-
23 erial for these munitions, with an exemption by rule? Or do
24 we have to go back -- should we go back and think about
25 legislation?

1 MR. SHAPAR: Up until now there hasn't been a real
2 question on it, about our authority.

3 MR. STOIBER: I think my preliminary review would
4 indicate that we can do it by rule, since the statute fairly
5 broadly allows us -- categories.

6 COMMISSIONER KENNEDY: I can't hear you.

7 MR. STOIBER: The statute gives the Commission
8 very broad authority to regulate classes of materials and
9 quantities of materials that are not significant for controlled
10 purposes.

11 COMMISSIONER KENNEDY: Okay.

12 MR. SHAPAR: So I think we have authority to do
13 what we want to do --

14 COMMISSIONER KENNEDY: All right; fine.

15 MR. SHAPAR: -- under statutory authority.

16 COMMISSIONER KENNEDY: Please go ahead.

17 MR. SHEA: On the international safeguards and
18 physical security area, just quickly listing the activities
19 there, the Staff is helping the Commission develop approaches
20 on international safeguards aspects of nuclear exports. This
21 has been ongoing for awhile and we anticipate continuing through
22 the spring.

23 COMMISSIONER GILINSKY: What does that mean?

24 MR. SHEA: Well, this is addressing the question of
25 the international safeguards reviews by the Staff and the

1 Commission on particular export cases --

2 COMMISSIONER KENNEDY: What does that mean?

3 MR. SHEA: -- reviewing the --

4 COMMISSIONER GILINSKY: That's what I said.

5 MR. SHEA: Well, that in general is what it is.

6 It involves in particular --

7 COMMISSIONER KENNEDY: I know, but --

8 MR. SHEA: -- taking into account the --

9 COMMISSIONER KENNEDY: -- in general, what is
10 what? I don't know what you said.

11 MR. SHEA: Well, the international safeguards
12 area involves materials accounting and control safeguards,
13 in particular, as distinct from physical security matters.
14 That term has a different meaning internationally and dom-
15 estically.

16 In international safeguards reviews, why one takes
17 a look at the international safeguards whether they are pre-
18 sent and in effect within the -- and that is a question that
19 we posed to the Executive Branch and they come back and
20 indicate to us that the safeguards are in place; the Staff
21 then reviews these.

22 And that is one of the elements that is considered
23 in an export.

24 Physical security is also considered separately.
25 And that is an area that we have under review at this time.

1 COMMISSIONER GILINSKY: It is still not clear to
2 me what it is that you are doing. Are you coming up with
3 criteria for Commission action? Or are you defining more care-
4 fully our responsibility in this area, or what?

5 MR. SHEA: Well, it is at a formative stage. It
6 really involves, I think, some elements of both, taking a look
7 at this across the board in the light of information that
8 has been presented regarding safeguards aspects in general,
9 and some of this involves these problems that might be in-
10 volved with safeguards.

11 COMMISSIONER GILINSKY: Are you talking about
12 clearing up the problem that has developed in NMSS, in that
13 they have taken the view that they can't independently assess
14 the safeguards at this point, or --

15 COMMISSIONER KENNEDY: Is that the position they
16 have taken?

17 MR. GOSSICK: With regard to material control and
18 accounting, that generally is the issue that is involved here.

19 COMMISSIONER KENNEDY: When you say generally is
20 the issue, I guess we ought --

21 MR. GOSSICK: That is the issue.

22 COMMISSIONER KENNEDY: As long as we have raised
23 the issue, we ought to be sure we understand what the issue
24 is clearly, so that everybody knows. I am not sure that I
25 do, in the way that it has been phrased so far.

1 What is the issue, precisely?

2 MR. SHEA: Well, the issue is essentially that the
3 technical staff in reviewing exports from the standpoint of
4 safeguards, presence of international safeguards, has found
5 that they do not have the information on which to make a
6 detailed technical assessment of international safeguards,
7 as they do, for example, with physical security matters.

8 And that is --

9 COMMISSIONER KENNEDY: What is the nature of the --

10 MR. SHEA: the nature of the problem.

11 COMMISSIONER KENNEDY: --detailed information which
12 they had to give them the basis for a detailed technical as-
13 sessment of physical security?

14 MR. SHEA: In the case of physical security, the
15 Staff has information which is obtained from visits to the
16 nuclear installations in other countries, review of their
17 physical security programs in general. Both the NRC Staff and
18 the Executive Branch visit these installations and know in
19 detail what these facilities have in the way of physical
20 security protection and the national programs for protection.

21 That is reviewed by the Executive Branch and --

22 COMMISSIONER KENNEDY: In every case, or on a
23 spot check sort of basis?

24 MR. GUHIN: It is really -- every case in terms
of a country, but when coming to a particular country, then

1 it is a review of the national program and then visits to --

2 COMMISSIONER KENNEDY: So it is review of a national
3 program?

4 MR. GUHIN: Right, representative facilities,
5 that's right, to look at their basic measures, and then how
6 they may be implemented and different kinds of facilities, but
7 not every facility.

8 COMMISSIONER KENNEDY: So it may be a little in-
9 accurate to refer to the detailed information available in a
10 specific case; wouldn't you say that was right?

11 MR. GUHIN: Yes; you would be looking at their
12 national program.

13 COMMISSIONER KENNEDY: Thank you.

14 MR. GUHIN: That's across the board.

15 COMMISSIONER KENNEDY: Thank you.

16 MR. SHEA: There is a distinction between the
17 physical security which has been traditionally viewed as a
18 bilateral activity between the U.S. and the other countries,
19 and the international safeguards area where the IAEA has
20 handled that matter for a variety of countries.

21 COMMISSIONER KENNEDY: And the IAEA is responsible
22 for this?

23 MR. SHEA: That's right. They have been given
24 that --

25 COMMISSIONER KENNEDY: The U.S. has accepted that

1 responsibility?

2 MR. SHEA: -- responsibility.

3 Yes.

4 COMMISSIONER KENNEDY: -- on the part of the IAEA,
5 and fostered it, as I understand it, is that correct?

6 MR. SHEA: And pushed very actively for it; yes.

7 COMMISSIONER GILINSKY: Well, let me understand it.
8 Is this first bullet in effect dealing with the problem we
9 have just been talking about?

10 MR. SHEA: Yes; that's right. That is one of the
11 activities of the Staff, to help develop that area.

12 COMMISSIONER KENNEDY: What is it that is being
13 developed?

14 MR. SHEA: Well, the Staff is working on how it
15 takes into account the state of development of international
16 safeguards and the problems that have been indicated there
17 in its review on exports. And it is hoping to recommend to
18 the Commission how it would handle its responsibility in this
19 regard.

20 The Commission makes non-inimicality determinations
21 on exports, taking into account all factors that are involved;
22 the safeguards, physical security --

23 COMMISSIONER KENNEDY: Taking into account all
24 factors?--

25 MR. SHEA: All factors.

1 COMMISSIONER KENNEDY: -- one of which is safe-
2 guards?

3 MR. SHEA: One of which is safeguards and includes
4 a number of other factors as well. And it is looking at that
5 factor in particular, and how the Commission factors that as-
6 pect into its overall nonimicality determination; that is the
7 basic question here.

8 COMMISSIONER KENNEDY: Now, that is different from
9 the way I understood the formulation earlier. I thought that
10 it was trying to determine what it was the Staff should do in
11 its own analysis.

12 Now you are saying it goes beyond that, but rather
13 to determine how the Commission should factor safeguards into
14 its decision. Those are two different things.

15 MR. SHEA: That's right. Both --

16 COMMISSIONER KENNEDY: Which is which?

17 MR. SHEA: Well, both would be done. Both are
18 being looked at, the Staff's responsibilities and the Com-
19 mission's as well. They are interrelated.

20 Maybe Cliff Smith would like to elaborate.

21 MR. SMITH: When you are talking about the office
22 of NMSS and the export licenses, let me just go back a bit.
23 Initially, on export licenses, when I first came, I noticed
24 that our office simply said that it concurred in the export
25 of this license.

1 And I raised the question as to -- with respect
2 to international safeguards, material control and accounting;
3 what did the term concur mean?

4 And the Staff's response was the term concurrence
5 meant that that particular country was a signator to the IAEA.
6 And I said: Well, what does that mean? Does it mean do we
7 know whether or not the country has actually implemented the
8 international safeguards in this particular area?

9 No; it does not. And that began to bother me.

10 COMMISSIONER KENNEDY: Now, wait.

11 Am I not correct that the Executive Branch has
12 informed us in these matters that the country has implemented?

13 MR. SMITH: No; only that the country has agreed,
14 but not that they have actually implemented. And let me just
15 go on --

16 COMMISSIONER KENNEDY: Do you have a copy of one
17 of these things handy so that we can get some indication of
18 what the Executive Branch actually says?

19 MR. SMITH: At this point in time, the SSIR report
20 came out --

21 COMMISSIONER KENNEDY: I am not talking about the
22 SSIR report, I am talking about --

23 MR. SMITH: I know; I am just trying to --

24 COMMISSIONER KENNEDY: -- what the Executive Branch
25 tells us. That is the only question I have at the moment.

1 We can get to the other one later.

2 MR. SMITH: The only thing I am trying to tell you
3 is what has evolved and what NMSS was doing, what it is doing
4 now.

5 COMMISSIONER KENNEDY: I had a specific question.
6 I just had a specific question. I want to hear the rest of
7 it, but I had a specific question:

8 What did they tell us? What do they tell us?

9 MR. GUHIN: If I may generalize for a minute, they
10 tell us that -- whether or not a specific IAEA safeguards agree-
11 ment is in effect, and the fact of their being enforced is a
12 matter of public knowledge. One knows whether they are
13 enforced or not enforced.

14 And so the two things that you do know is: one,
15 that they are -- that the agreement with the country is in
16 effect, and that the safeguards are enforced, or are in
17 the process of being enforced or implemented.

18 You know that, for example, in Uradom cases, in
19 there, they give the detailed list of sort of the time schedules
20 as to when IAEA is supposed to come in and supplement, and be
21 applied in large parts, as well as some of the Uradom safe-
22 guard arrangements and have verification on that.

23 So those are basically the two things you do know:
24 is that the --

25 COMMISSIONER KENNEDY: Okay.

1 So in fact we are aware that A, there is an agree-
2 ment for this, and B, that the agreement has been implemented.

3 MR. GUHIN: Yes.

4 COMMISSIONER KENNEDY: Is that correct?

5 MR. GUHIN: Those are the two things; yes.

6 COMMISSIONER KENNEDY: Okay.

7 MR. SMITH: I don't think we would agree that it
8 has been implemented. We have no information as to the degree
9 of implementation or how well it has been implemented.

10 At this time, the SSI came out, which itself raised
11 questions about the adequacy of the implementation of IAEA
12 safeguards in certain countries to which we were exporting
13 material.

14 And it seems to me that we ought to be clear that
15 when NMSS concurred in an export license; what is it that they
16 were concurring on? Are we in effect saying to the Commission
17 that it is our professional opinion that this material can be
18 adequately safeguarded.

19 In the area of physical security we do make actual
20 visitations to these countries and look, either on a country-
21 wide basis or on a spot-specific basis, and we get detailed
22 information.

23 So we -- from the standpoint of physical security,
24 the --

25 COMMISSIONER KENNEDY: Could I ask --

1 MR. SMITH: -- Staff feels now we are --

2 COMMISSIONER KENNEDY: Could I ask the grounds on
3 which we do that? We do that on the grounds of bilateral
4 arrangements; do we not?

5 MR. SMITH: That's correct. That's correct.

6 COMMISSIONER KENNEDY: The reason we don't do it
7 in respect to safeguards is because there is an international
8 agreement to which we have subscribed. Is that correct?

9 MR. SMITH: That's correct.

10 COMMISSIONER KENNEDY: Okay.

11 MR. SMITH: So the point is that the Staff has
12 felt confident, based on the information that it has in saying
13 that from a physical security standpoint, for HEU shipments,
14 of course, that we feel comfortable, based on what we have,
15 that the material could be adequately safeguarded.

16 The Staff is not presently in that posture with
17 respect to material control and accounting. And so right at
18 the present time I am writing the Commission a memorandum in
19 effect saying: What is it that you would like from the Staff?
20 If by concurrence on an export license you mean that you would
21 like our independent assessment that that material can be
22 adequately safeguarded from a material control and accounting,
23 we can't give that because we don't have the information upon
24 which to base that.

25 Now, we also are not privy, of course, to all of the

1 other pieces that go into the Executive Branch's decision-
2 making that such an action would not be inimical to the common
3 defense and security of the United States.

4 I have said to the Staff that in my opinion, that
5 is the Commission's judgment to make.

6 So at the present time that is why you have seen
7 the statement that you have seen and shortly you will be re-
8 ceiving a memorandum asking for your guidance as to what it is
9 you would like the Staff to be looking at.

10 Physical security, we can say. In the area of
11 material controls and accounting at the present time, we can-
12 not.

13 CHAIRMAN HENDRIE: Okay.

14 I think the Commission understands the point well
15 enough.

16 I would like to go away from this rather detailed
17 discussion of a specific point to allow the briefing to move
18 forward across the broader area, and hopefully in the time
19 remaining still provide the broader view of these matters that
20 I would like us to have this morning.

21 MR. SHEA: The second item on page five in the
22 safeguards area; NRC's contributions to comprehensive U.S.
23 action plan for strengthening international safeguards. That
24 should be down to you shortly this monthly, our comments on
25 that.

1 The third area is implementation of the U.S./IAEA
2 safeguards agreement for licensed facilities. We are preparing
3 regulations to be reviewed by the Commission and issued for
4 public comment. We are working closely with the State Depart-
5 ment to insure that their efforts to present this to the
6 Congress will be coordinated with the NRC efforts in developing
7 the regulations.

8 The last item is really a part of improving safe-
9 guards in specific areas. They are listed as IAEA information
10 circular on state systems of accounting and control, and
11 working on a technical support program in safeguards and
12 technical effectiveness criteria.

13 COMMISSIONER BRADFORD: Jim, coming back for a min-
14 ute there at US/IAEA safeguards, what specifically does that
15 rule out -- require; just --

16 MR. SHEA: Well, we do have a little more detail.
17 Basically, it includes asking the licensed facility to report
18 on activities within the facility, preparing detailed reports
19 on the nuclear materials which they have.

20 Some of the facilities will be selected by the
21 IAEA for actual inspections by the IAEA inspectors. We anti-
22 cipate a limited number, maybe no more than a dozen at any given
23 time. That is in general what it is; reporting requirements
24 and acceptance of inspections.

25 Physical security, the other half of this, is on

1 page six, and we have four areas of activity there; assisting
2 the international implications of the U.S. domestic upgrade
3 and alternative courses of action. That would follow Commission
4 action on the domestic upgrade issue. You will be receiving
5 briefings on this shortly from NMSS.

6 Contributing to the development of an international
7 physical security convention. That is a bit off in the future.
8 There is substantial international effort underway to do that.

9 Reviewing foreign countries' physical security
10 programs; we just touched on that. And that is done in re-
11 viewing particular exports as they come up.

12 And finally, looking at the physical security as-
13 pects of international transports.

14 COMMISSIONER GILINSKY: Could I go back to that
15 previous point.

16 Are we -- do we participate in all the Executive
17 Branch visits?

18 MR. SHEA: We do now have an opportunity, and usually
19 do, I believe, participate in --

20 MR. PAGE: Since early '76.

21 MR. SHEA: Since early '76.

22 Page seven, we move to a new area; nonproliferation
23 policy. What we have there include the nonproliferation
24 legislation, model agreement for cooperation being developed
25 by the Executive Branch.

1 fuel return policy with DOE doing a Draft Environmental Impact
2 Study.

3 And finally, the ongoing contributions to the
4 international fuel cycle evaluation and the nonproliferation
5 alternative systems assessment program.

6 COMMISSIONER GILINSKY: Let me stop you again.

7 On this spent fuel policy, we were at one time going
8 to have a seminar, an international seminar, on safety problems
9 associated with spent fuel. What ever happened to that?

10 MR. SHEA: That is being planned for the end of
11 February, February 28th to March 2nd.

12 COMMISSIONER GILINSKY: I see.

13 MR. SHEA: We have a note later as to the details
14 on that.

15 COMMISSIONER KENNEDY: You will be talking about
16 later in this?

17 MR. SHEA: That's right. That comes under health
18 and safety, the way we have structured it, so that is mentioned
19 just very briefly.

20 And finally, we do participate in an interagency
21 subgroup specifically devoted to questions of highly enriched
22 uranium exports.

23 COMMISSIONER KENNEDY: Are you going to say some-
24 thing more specific about the nature of our contribution to
25 the INFCE and NASAP programs?

1 We are trying to enhance our consultative arrange-
2 ments with the Executive Branch on U.S. nuclear export acti-
3 vities.

4 COMMISSIONER GILINSKY: What are these arrangements
5 at the present time? Are they informal? Are they written
6 down?

7 MR. SHEA: Well, they are not specifically written.
8 I believe the legislation would pin them down more specific-
9 ally. Is that right, Mike?

10 And there is an interagency coordinating group
11 which serves as, I think, a very good review group for these
12 various matters. In a later slide, we have this detailed.

13 COMMISSIONER GILINSKY: Do we sit on that?

14 MR. SHEA: Pardon?

15 COMMISSIONER GILINSKY: Do we sit on that?

16 MR. SHEA: Yes, we do. We participate in that
17 very actively. When it comes to NRC exports why, of course,
18 we stand aside and reserve our right to make recommendations to
19 the Commission and so on. But we are able to consult and
20 coordinate on a variety of other areas as well through that
21 mechanism, such as retransfers and what ever.

22 And they are listed later; the various areas, in a
23 later slide, which we will go through a bit more in detail,
24 if I can hold that until later.

25 The third area is the implementation of spent

1 MR. SHEA: Well, I hadn't planned to. I could
2 generally outline that NRC is participating along with a number
3 of the Executive Branch agencies in many of the working groups
4 of INFCE.

5 COMMISSIONER KENNEDY: What is the nature of that
6 participation?

7 MR. SHEA: Well --

8 COMMISSIONER KENNEDY: Are they full members, or
9 observers, contributors, or what are we? We provide technical
10 expertise or what?

11 MR. SHEA: We provide our technical expertise. We
12 are contributors. We are not heading up any of the working
13 groups. We are -- we plan to present NRC's technical exper-
14 ience and background for the benefit of the group. We parti-
15 cipate in meetings in the U.S. and abroad, but under the over-
16 all aegis of the U.S. leaders.

17 COMMISSIONER KENNEDY: Does the Staff write tech-
18 nical papers for these people, or --

19 MR. SHEA: At this point is it in a very early stage.
20 We have not prepared any. We might be called upon to do that,
21 and certainly to review other papers that are prepared by
22 others. We might well be --

23 COMMISSIONER GILINSKY: Who coordinates the Staff
24 effort in this area?

25 MR. SHEA: Well, Lee is the coordinator for this

1 effort.

2 MR. GOSSICK: I have kept control of it so far, and
3 I just sent you up another summary status report, I guess,
4 yesterday, that indicates the nature of these activities that
5 are going on, and the roles being played by various Staff
6 members. We have got, you know, all of the Staff in one way
7 or another, practically, are involved in this. We have got
8 NRR and NMSS, Standards, I and E -- I guess I and E to a small
9 extent.

10 MR. SHEA: Then the NASAP effort is related to
11 that. That is coordinated by a group within NRC which is
12 headed by NMSS. Then there is -- the overall effort is really
13 centered in DOE and NRC provides its contributions on that.
14 That will serve as technical input, U.S. -- technical input
15 to the INFCE effort.

16 COMMISSIONER KENNEDY: Has the estimate been made
17 of the volume or quantity or whatever, measurement, of the
18 Staff resources being devoted to these projects?

19 MR. GOSSICK: We figure that right now we have got
20 probably somewhere between 10, maybe as high as 20 percent
21 of about six people's time involved. We are not sure just
22 where that is going to go.

23 COMMISSIONER GILINSKY: So you are saying really
24 about one manyear?

25 MR. GOSSICK: Well, it is at least that now. I

1 think that from the looks of this thing it is going to grow.

2 COMMISSIONER GILINKSY: That's not an awful lot.

3 MR. GOSSICK: It is going to grow. It is going to
4 grow as we move further on this. It is still sort of in the
5 formative stages. There have been a lot of meetings, this
6 sort of thing, getting this effort organized. And I think we
7 will see that the workload on us, the task that we will be asked
8 to do, will grow to a considerable extent.

9 MR. SHEA: Page eight details the next area; the
10 health and safety policy and cooperation, the fourth broad
11 area.

12 And there we have a number of things going on. The
13 first is a major Staff study to help the Commission develop
14 its policy on health and safety aspects of reactor exports,
15 and in general, safety assistance to countries initiating
16 nuclear power programs.

17 These were initiated as two separate efforts. We
18 see them as closely related and combined the two for purposes
19 of analysis. This is looking at various aspects which we will
20 detail later, and should be completed within the next couple of
21 weeks.

22 The next item, IAEA reactor safety standards
23 program, is an ongoing activity, on which we don't have any
24 immediate action.

25 COMMISSIONER KENNEDY: To go back to this for a

1 components that are exported might be in some way reviewed or
2 certified for their safety before they leave, looking at --

3 COMMISSIONER KENNEDY: As a matter of assistance
4 to other countries, not as a matter of requirement of the law
5 affecting U.S. exports; is that correct?

6 MR. SHEA: That is the context in which it has
7 been reviewed.

8 COMMISSIONER KENNEDY: All right; fine. I wanted
9 to be sure of what the Staff is looking at.

10 MR. SHEA: That's right; options for the Commission
11 in this area.

12 The second area, reactor safety programs ongoing,
13 activities to which NRC makes a substantial contribution,
14 particularly in Bob Vanoke's (phonetic) group.

15 On the international reach of NEPA, the Commission
16 requested study which has been ongoing for some time, we hope
17 to have at least a status report to you very soon and a tech-
18 nical analysis that continues to be ongoing.

19 COMMISSIONER KENNEDY: Can I ask how this study
20 relates to the activities which I understand are ongoing in
21 the CEQ in the same area?

22 MR. SHEA: Well, perhaps I might ask Carlton to
23 address that. He recently attended a meeting of CEQ and has
24 been closely involved in those efforts.

25 MR. STOIBER: You have a short memorandum from me

1 second. I may have missed something. I am not exactly sure
2 what is involved in safety policy for reactor exports as con-
3 trasted with safety assistance. What is a safety policy for
4 reactor exports?

5 MR. SHEA: The intent there was to look at the --
6 what the Commission might do or should do in connection with
7 its responsibilities in licensing nuclear exports. It now looks
8 at, for example, the national security aspects, certainly, on
9 reactor exports; safeguards, physical security and other
10 aspects, seeing that they are satisfactory.

11 At this point, the Commission in line with the
12 Burger action decision, has not felt that it was required to
13 take into account the impacts in foreign countries in the
14 health and safety area of its reactor exports.

15 We are looking at that area.

16 COMMISSIONER KENNEDY: That was a statement of the
17 interpretation of the law; was it --

18 MR. SHEA: Interpretation of the law, as I under-
19 stand it.

20 We are looking at whether there are some things
21 that the Commission might do in the health and safety area
22 to try to assist other countries with their nuclear power pro-
23 grams, perhaps in an intensified way, because of this -- be-
24 cause we are exporting these U.S. reactor to other countries.

25 We are also looking at elements, such as whether

1 describing the conversations at CEQ last Friday at a major
2 interagency meeting, to discuss the nature of regulations which
3 CEQ intends to promulgate concerning foreign impacts of
4 environment statements.

5 COMMISSIONER KENNEDY: Intends to promulgate or
6 proposes to. There is a slight difference in nuance.

7 MR. STOIBER: That's right.

8 COMMISSIONER KENNEDY: I am not sure which it is.
9 That's why I am asking.

10 MR. STOIBER: Well, I am not sure, either. I think
11 the CEQ intends to promulgate them. I am not sure that some
12 other agencies would agree with that.

13 COMMISSIONER KENNEDY: There is some --

14 MR. STOIBER: There is a proposal --

15 COMMISSIONER KENNEDY: There is some difference of
16 view as to the legalities of their promulgation; is that
17 correct?

18 MR. STOIBER: Yes; there is.

19 COMMISSIONER KENNEDY: Thank you.

20 MR. STOIBER: And these views are now in prepara-
21 tion by the various agencies who will submit them within the
22 next 10 days to two weeks to CEQ. And then presumably that
23 question, if there is enough difference, will be elevated to
24 the President or other policy makers in the Executive Branch.

25 MR. SHAPAR: The legal question applies not only to

1 the international CEQ proposals, but domestic as well.

2 CHAIRMAN HENDRIE: What is the -- could I ask:
3 What is the date of ERDA-1542.

4 MR. GUHIN: April 1976.

5 CHAIRMAN HENDRIE: So that is a recent --

6 MR. GUHIN: That's right.

7 CHAIRMAN HENDRIE: Thank you.

8 MR. SHEA: Next element, impacts of R&D export
9 activities where a state is doing a generic analysis. And
10 NRC is staying close to that. We will send it to the Com-
11 mission about March.

12 COMMISSIONER GILINKSY: State is doing a generic
13 analysis of nuclear R&D exports, or all R&D exports?

14 MR. SHEA: Just nuclear R&D.

15 COMMISSIONER GILINSKY: What is an R&D export?

16 MR. GUHIN: Well, it could be anything from material
17 going to a research reactor or any kind --

18 COMMISSIONER GILINSKY: Are you talking about
19 research activities --

20 MR. GUHIN: Or development.

21 COMMISSIONER GILINSKY: Research reactor, related
22 activities.

23 MR. GUHIN: Yes, precisely, or to a developmental
24 reactor, say, larger than normal, which is still part of
25 an experimental program.

1 COMMISSIONER GILINSKY: But these are all U.S.
2 exports, commercial exports.

3 MR. GUHIN: All U.S. nuclear exports, yes.

4 COMMISSIONER GILINSKY: That's what I meant.

5 MR. GUHIN: Yes.

6 COMMISSIONER KENNEDY: Does it apply to training
7 activities?

8 MR. GUHIN: That, interestingly enough, there has
9 only been one initial meeting on this interagency-wise. That
10 question was not brought up, I think, in defining the basic
11 scope. But is surely not precluded at this stage. I don't
12 know.

13 COMMISSIONER GILINSKY: Does that include exchange
14 agreements of all kinds.

15 MR. GUHIN: In terms of Department of Energy,
16 particularly, exchange agreements and particular reactors, I --

17 CHAIRMAN HENDRIE: But it hangs, doesn't it, Mike,
18 on exports?

19 MR. GUHIN: Exports.

20 CHAIRMAN HENDRIE: If you export something, a
21 material, a component. I don't know whether the exporting of
22 professional expertise, after you have trained the guy, falls
23 in that category or not.

24 COMMISSIONER KENNEDY: It has often in the technology
25 transfer issue. That is the reason for my question.

1 MR. GUHIN: Technology transfer may well be looked
2 at, exchange of technology.

3 COMMISSIONER GILINSKY: Now, is this to fill the
4 gap in ERDA-1542? Is that the point of it?

5 MR. GUHIN: Well, I am not sure one could give it
6 that precise motivation, but I think it is clear that 1542
7 covered power activities and that it was so defined and so
8 constricted. And in the process of looking at the renego-
9 tiation of, not so much existing agreements but rather new
10 agreements for cooperation in the research area, it became
11 clear to the department that this generic kind of statement
12 was in order.

13 So, indeed, it would in effect, at any rate, supple-
14 ment that.

15 COMMISSIONER GILINSKY: When was this initiated?

16 MR. GUHIN: It was initiated about a month ago.

17 COMMISSIONER GILINSKY: I see.

18 CHAIRMAN HENDRIE: Onward.

19 MR. SHEA: Onward?

20 The next one, the next three, really, are three
21 items that have some relationship. The Staff recently sent
22 to the Commission a security plan for foreign assignees to the
23 NRC Staff, people who come here for anywhere from perhaps four
24 months to two years to learn the nuclear safety business. And
25 we have one element of that which I will cover in detail later

1 that we would like to bring back to the Commission and ask for
2 new guidance on.

3 Transfer of nonmilitary classified information to
4 foreign countries has become of increasing importance. We
5 have a Staff paper which proposes a way to do that, which will
6 be -- it is just about ready for sign-out. It should be down
7 in the next week or two.

8 The protection of foreign information given in
9 confidence is a problem area for the Staff and the Commission.
10 We receive a good deal of this foreign information that is
11 provided to us in confidence. And the question is how to
12 protect it from disclosure.

13 COMMISSIONER KENNEDY: I thought we had that situa-
14 tion fairly well under control. I thought that we had worked
15 out understandings with --

16 MR. SHEA: I might ask Joe LaFleur to describe
17 the situation.

18 MR. LA FLEUR: That's why we put it on here, because
19 we did do a lot of work on this in the last couple of years.
20 We do have a good policy developed, but there are still some
21 loose ends, and there is a possibility also that the Executive
22 Order about classifications will change slightly, which --

23 MR. SHEA: There is a statement in there that bears
24 close looking at.

25 MR. LA FLEUR: What we tried to do, when we made our

1 decisions a year or so ago, we knew there were some loose ends,
2 but we figured we had to get some statistical data, such as
3 some experience with how many documents are involved and how
4 serious they are and that kind of stuff.

5 We now have accumulated some of that and we also
6 have experience with a couple of FOIA cases. So we will come
7 back to the Commission now in a few months and say: These
8 are the changes that we think are needed.

9 CHAIRMAN HENDRIE: More perfecting than a develop-
10 ment from scratch.

11 I think that is fair. Oftentimes your outlying
12 bullets cite things that need to be done and you are just
13 getting started. If you are just getting started, if you have
14 got some things that are well along and are essentially ac-
15 complishments, why; good.

16 MR. SHEA: If we could now turn to these four areas
17 once again in a bit more detail, following this overview.

18 Export licensing is first. If you look at page
19 10 there, you will see a chart that is a little bit busy, but
20 shows the situation on the licenses over the past year.

21 As you know, they are sent from NRC to the Executive
22 Branch for review. And this shows the breakdown month-by-month
23 through the year of those in the State Department, those at
24 the Commission for review, and those within the NRC Staff.

25 Those in the NRC Staff include ones newly received

1 from the applicant which we are processing, on the way out to
2 State. Sometimes we find further information is needed and
3 we have to go back to the applicant. There is a lot of paper-
4 work involved in logging it in and so on. Maybe after about
5 two weeks, typically, it goes out to the Executive Branch where
6 it normally resides for some months.

7 We will get into licensing times a little bit in
8 the next --

9 COMMISSIONER KENNEDY: Could I ask: Over the three
10 years in which we have been engaged in this process now, has
11 that length of time, that is, the length of time that it has
12 resided in the Executive Branch, increased notably?

13 MR. SHEA: I believe it has. I haven't done a de-
14 tailed analysis on this, but in looking at typical cases, why
15 I believe it has.

16 There are some that have been there, for example,
17 for two and a half years. Now, there are often are very spec-
18 ial reasons why the State Department needs a lengthy review on
19 those.

20 But this was a period during which U.S. nuclear
21 policy went through major reassessments, for example, highly
22 enriched uranium exports were given much more close scrutiny.
23 They are going to the President now, the larger quantities.

24 And so in general the times have increased.

25 COMMISSIONER KENNEDY: Could you make an analysis

1 for me of that? No great rush, but I would like to see such
2 an analysis: What has the record been over that three years,
3 and then any kind of an assessment that you might make as to
4 the reasons for changes that you see, and also, any implica-
5 tions that you see in that analysis for the Commission.

6 I had in mind, for example, the oft-repeated charge
7 that the Commission sits on licenses. And I have the impres-
8 sion that that might not be quite accurate, at least not as
9 accurate as some would believe. And I would like to get some
10 idea what that means.

11 If, indeed, the cure for this, as some suggest, is
12 a limitation on the Commission's period of time for action,
13 they may be looking at the wrong problem.

14 And so I am just -- it would be helpful if you
15 could do that.

16 MR. SHEA: We could certainly undertake to do that.

17 CHAIRMAN HENDRIE: Jim, the slide as presented is
18 the number of licenses pending by month; true?

19 MR. SHEA: That's correct, for a total pending.

20 CHAIRMAN HENDRIE: Okay.

21 MR. SHEA: These are at the end of the month.

22 CHAIRMAN HENDRIE: And I am pleased to note that
23 the number hanging in the Commission offices is almost uni-
24 formly smaller than the number hanging in other places. So
25 that is at least a minor satisfaction.

1 (Laughter.)

2 CHAIRMAN HENDRIE: I note that the application
3 received numbers --

4 COMMISSIONER KENNEDY: It is the difference between
5 quantity and quality there.

6 (Laughter.)

7 CHAIRMAN HENDRIE: Thank you.

8 Well, the numbers run up and down, but are in the
9 range, probably mid-range, 20 to 30. This is per month?

10 MR. SHEA: Per month, the numbers that came in in
11 that particular month to NRC, new applications.

12 CHAIRMAN HENDRIE: Now the general level of total
13 things pending seems to hang around 160 to 170. The fact
14 that it is pretty constant across the year, why, you have got
15 20 or 30 a month coming in one end, suggests to me that there
16 must in fact be 20 or 30 a month going out the other end.

17 MR. SHEA: Out the door.

18 CHAIRMAN HENDRIE: And I ask for your affirmation.

19 MR. SHEA: That's correct. That is basically it.
20 And you are right; the numbers do tend to stay; they sometimes
21 increase, but they are pretty constant.

22 CHAIRMAN HENDRIE: Well --

23 MR. SHEA: Yes. We do issue --

24 CHAIRMAN HENDRIE: It is not an inconsequential
25 rate of processing, even with all of the difficulties in the

1 system.

2 MR. SHEA: I would note in the context of your
3 suggestion that the number in the Staff aren't too high. I
4 should call your attention to the increase from October to
5 December.

6 COMMISSIONER KENNEDY: Well, it is only 100 percent.

7 MR. SHEA: It is only 100 percent. This wasn't
8 because of Christmas leave. It is mostly due to the institu-
9 tion of the generic review process and we just don't send
10 them to State in as great a number -- we had to keep them for
11 a certain interval of public notice, and so on. So that is
12 the reason for that. We will probably have to start afresh
13 in '78.

14 The next chart, page 11 is -- you can follow it
15 there. It shows the number of cases in the dark curve, the
16 cases pending in the NRC Staff; that is, before going to the
17 Commission for review, more than three weeks after Executive
18 Branch review.

19 I have personally taken this as a figure of merit
20 for the Staff. In the future we might be able to reduce it
21 even further, but it is a target that I have set for getting
22 the papers out of the Staff and up to the Commission. And it
23 has been a little tough to meet, as you can see there, in the
24 early part of the year. We had a pretty high number that had
25 been there more than three weeks. This is partly due to the

1 number of the cases that come back from the State Department.
2 They don't come back five a month or 10 a month. They go in
3 spurts as you can see by the dashed curve.

4 And there is at least some correlation, as you would
5 expect, between surges in the group from State and the backlog
6 in the Staff. Working with a limited Staff dealing with
7 a lot of high priority issues, this does tend to back up.

8 Another factor is that some of these are pretty com-
9 plex cases and require extra Staff review time, ones with
10 interventions which are coming in in increasing numbers. Par-
11 ticularly in that May to August period, we had a number of those
12 come through.

13 So we got down in May. It started to creep up and
14 we beat it back down. Now we are at zero, but we have some
15 toughies that are just coming in and more in prospect, so that
16 will be a constant struggle to keep it down.

17 The Export-Import Regulations on page 12, just -- I
18 think we have already covered that pretty well, the rules
19 here. We hope to get it implemented by April, subject to your
20 review. It will be covered in the second hour.

21 Page 13 is going back again to the minor exports
22 that I mentioned earlier, and it gives you an idea of our
23 schedule for that. Hopefully we will get our analysis down to
24 you this month and have it published as a final, effective
25 rule in April, and the substance of the revisions are listed

1 there at the bottom of page 13.

2 Unless you have some questions, I propose to pass
3 over that and in the interest of time, move on to the next
4 chart, page 14, which goes into these exemption issues which
5 we talked about earlier.

6 There are two basic categories there. We are look-
7 ing at the merits of continuing to exempt certain source mat-
8 erials from agreement for cooperation requirement, and the
9 factors that we see there.

10 Then there is the Department of Defense exports
11 that we mentioned earlier, and where that stands.

12 And these are in the January, February period that
13 we see these papers coming down to you for review.

14 The next broad category is the international safe-
15 guards, physical security policy work, and page 16 gives you
16 the idea of the schedule for the new action plan for strengthen-
17 ing international safeguards that has been the subject of
18 considerable attention within the State Department and the
19 Executive Branch in recent months and in which NRC has actively
20 participated.

21 Our paper to you should be down this month. The
22 interagency steering group on international safeguards is
23 working hard to make sure all the elements of that plan are in
24 place and develop an implementation schedule.

25 COMMISSIONER GILINSKY: Now, let's see. What

Does

1 your paper cover that you are sending down?

2 MR. SHEA: The paper that is coming down has two
3 basic aspects to it. One is to forward the state action plan
4 draft, which you had earlier, but including in that the com-
5 ments that the Staff has provided to the State Department
6 on the elements of the plan, where there was full Staff agree-
7 ment.

8 We may also be providing to you some issues for
9 resolution by the Commission. It is not quite clear yet whe-
10 ther we will have any issues, but they will be flagged for you;
11 that is, new matters that we would want the Commission to con-
12 sider.

13 As far as taking those to the Executive Branch,
14 we didn't feel that --

15 COMMISSIONER GILINKSY: Oh, this would be a plan
16 which would then be circulated among the various agencies?

17 MR. SHEA: That's right. It is -- the Commission
18 did receive the initial draft of this action plan, and the
19 Staff has taken in comments.

20 The revised plan we will circulate to you as well,
21 and keep you posted on where that stands, and we can take any
22 comments at any time that you have, back into the State
23 Department, which is coordinating this effort.

24 The next one, page 17, is the US/IAEA safeguards
25 agreement which points out that it has about a 10-year history.

1 and is now stepping into high gear, the negotiations with the
2 IAEA, the specifics about the implementation of the agreement
3 are completed. And the implementation is going to occur
4 here during 1978, the specifics of the --

5 COMMISSIONER GILINSKY: Let me ask you; to go back
6 to that safeguards action plan. Did we receive a paper on
7 that?

8 MR. SHEA: Yes. There was a Commission paper.

9 COMMISSIONER GILINSKY: I didn't remember it.

10 MR. SHEA: Back in December, I believe it was,
11 which gave the State draft.

12 And there will be opportunities to continue. State
13 has established a special working group of their interagency
14 steering group to address this subject. So I am optimistic
15 that there will be a concerted focus on this and a real con-
16 centration of effort to upgrade safeguards in the future. The
17 commitment has been there, but it has been a little diffused,
18 I think, up until now.

19 Page 17, the --

20 MR. STOIBER: Jim, before you do that --

21 MR. SHEA: Yes.

22 MR. STOIBER: Can I ask one question on the
23 IAEA safeguards implementation agreement. Do you know when
24 the State Department intends to forward that to the Congress?

25 MR. SHEA: They are not decided yet. I had a recent

1 conversation with the State people. They have -- let me give
2 you a status report on that -- they have forwarded through the
3 Secretary of State to the President, the papers related to
4 this, including materials that could be used in transmitting
5 this to the Senate. But the timing has not yet been decided
6 upon and I have asked that there be very close coordination
7 with us on that.

8 COMMISSIONER KENNEDY: I would ask in following
9 that: Would we propose to issue a proposed rule implementing,
10 before this matter had been submitted to the Senate?

11 MR. SHEA: No; that is what I referred to as having
12 very close coordination with the Executive Branch on our rule
13 and submission.

14 COMMISSIONER KENNEDY: So on page 17, the February
15 1978 ought to be in parentheses or something?

16 MR. SHEA: Well, that's right. That is a good
17 point.

18 CHAIRMAN HENDRIE: Or have a note on it: condi-
19 tional upon appropriate action with regard to --

20 MR. STOIBER: That was my point. Before we have
21 a message to the President submitting this, I think our state-
22 ment of consideration might look rather strange, proposed rule.

23 MR. SHEA: That's right. Either way, which ever
24 goes first, it could cause the President some problem.

25 I think it will probably be February before we have

1 the rule down to the Commission for approval. We say January
2 here, but I think it is more likely to be February. This has
3 taken a lot longer than I envisioned, and I think a lot of
4 other people did, because it involves a number of complex
5 factors and a lot of people to review it.

6 Page 18 gets into the matter of international im-
7 plications of U.S. domestic physical security upgrade and gives
8 you an idea of what is going on there. That is really con-
9 tingent on the domestic upgrade review and tying that into
10 international activities.

11 The next broad area is nonproliferation policy. And
12 there we have noted that NRC has expanded its consultative
13 relationships in the last year and a half to review certain
14 of the Department of Commerce applications and some from DOE.

15 They are noted there: retransfers and so on.

16 COMMISSIONER GILINSKY: Are these specific cate-
17 gories of applications?

18 MR. SHEA: Could you describe that?

19 MR. GUHIN: Excuse me?

20 MR. GOSSICK: They are on the next page.

21 MR. GUHIN: They are on the next page.

22 MR. SHEA: The next page describes the --

23 COMMISSIONER GILINSKY: No; but I mean, is it at
24 their discretion, or there is an agreement that specific cat-
25 egories of applications will be forwarded to us?

1 being consulted would be expanded under the pending legisla-
2 tion into the -- particularly into the technology, nuclear
3 technology export category.

4 COMMISSIONER GILINSKY: I notice for some items
5 it says no consultation. Does that mean we simply do not
6 furnish comments on those categories of exports, or what?

7 MR. GUHIN: At this stage, there have not been mech-
8 anisms established, for example, in the technology area, it
9 was not an area where we were consulted before. These kinds
10 of cases may come before this group. And, of course, if they
11 come before the group, we would have an opportunity to comment.

12 But there is no formal consultative rôle recognized,
13 whereas there is in these areas where it says consultation.

14 Now, on munitions exports, I believe I am correct
15 in saying that the paper that went before Commission said
16 we shouldn't be consulted on that, that this is an area that
17 doesn't come within this agency's --

18 COMMISSIONER GILINSKY: What is the nature of our
19 relationship to Eximbank Nuclear Projects?

20 MR. GUHIN: Well, I think that has been -- in the
21 past, that there has been consultation and discussions between
22 the Eximbank on proposed projects. That in the early days,
23 as I understand it, was not particularly the responsibility of
24 the Office of International Programs.

25 What there has been to date, perhaps Marvin Peterson

1 out the matter internally.

2 But they do ask our advice on, you know, the likeli-
3 hood of an export license being granted if current policies
4 are the same. We don't provide any commitments, but we do
5 explain what our policy on licensing is.

6 COMMISSIONER GILINSKY: Who do they ask on the
7 Staff?

8 MR. GUHIN: I have not been consulted. I would like
9 to take this program a little step further back, though, to
10 some of the developments that have happened, as I understand
11 them, at any rate, in their approach which has more or less made
12 it coincide in some respects with the licensing process.

13 As Carlton explained, in the absence of a really
14 statutory basis or what have you for even an interim commit-
15 ment or advisory commitment, something like this, I understand
16 that the Eximbank now on the reactor projects -- at least this
17 has happened in specific instances -- the actual disbursement
18 of funds will await the issuance of a license.

19 And, of course, what this says, this, among a lot
20 of other things, has resulted in, I think, reactor export
21 licenses, the applications being submitted far in advance of
22 the time that they used to.

23 Particularly in the old AEC days, these were really
24 the very last stage in the process. And the issuance of
25 licenses is now moving further and further towards, at least

1 could comment on, if he does know.

2 MR. PETERSON: There have been very few of these
3 recently, but the nature of events, consultation with the
4 Commission to determine if we have any particular interest
5 in this --

6 COMMISSIONER KENNEDY: How is that interest sought?
7 How do they go about it?

8 MR. PETERSON: They have an interagency group --
9 I can't recall the exact title right now -- but they meet to
10 review the preliminary plan.

11 MR. STOIBER: The real difficulty here involves
12 the potential financing of the Eximbank of reactor exports
13 for which there is no license by the Commission. And one of
14 the problems that the Eximbank foresaw was the possibility
15 that they would grant a major loan for a facility which failed
16 to receive a Commission license. And the United States Govern-
17 ment would essentially be left holding the bag, with a large
18 quantity of money loaned to a country that was not actually
19 buying a U.S. reactor.

20 So there were discussions with us about whether it
21 would be possible for some kind of interim commitment to be
22 given by the Commission for that kind of a situation.

23 We said that we didn't see any way in which that
24 could be done under our statute.

25 And generally what they have been able to do is work

1 closer to some of the first stages of the process. In fact,
2 we get applications where there may not even be a contract
3 existing at the time, but that there is a viable proposal in
4 the offing or in the hopper, and at this stage they are coming
5 then, because of the fact that one of the matters being the
6 whole Eximbank financing aspect.

7 CHAIRMAN HENDRIE: Okay.

8 Onward.

9 MR. SHEA: Onward.

10 The next page, page 22, would be a description
11 of what is in store in implementing nonproliferation legisla-
12 tion. We touched on these already, particularly the first
13 one, incorporating the export licensing criteria, such as
14 safeguards, physical security and reprocessing controls and
15 whatever into the 110.

16 The second area there; increased NRC responsibility,
17 notes the pending legislation calls for NRC to license signi-
18 ficant components that are now licensed by Commerce, and also
19 for NRC to have an expanded consultation on other Commerce
20 exports.

21 This might wind up with our getting into, for
22 example, heavy water areas, items that are on the Zanger
23 list and so on.

24 The Staff is preparing an impact analysis.

25 COMMISSIONER GILINSKY: Would we or wouldn't we?

1 What category would heavy water fall into?

2 MR. SHEA: I think that would probably be considered
3 a significant component; don't you think, Mike; maybe reactor
4 grade graphite would be another; these sorts of areas would
5 be NRC's responsibilities. I think mostly the people's in-
6 terpretation of this wording is very --

7 COMMISSIONER GILINSKY: And right now these go
8 through Commerce?

9 MR. SHEA: Right.

10 COMMISSIONER KENNEDY: Would Commerce under normal
11 circumstances inquire of us as to our views on heavy water
12 exports?

13 MR. GUHIN: That would probably be considered in
14 this interagency group on which we would have an opportunity
15 to provide our views, and in this sense, be consulted.

16 It would be only -- Commerce -- we do have an op-
17 portunity to look at some of these cases and have had over the
18 last year and a half.

19 I think pending the establishment --

20 COMMISSIONER KENNEDY: Commerce is not, however,
21 obligated to take our view.

22 MR. GUHIN: Well, when you are consulted, no agency
23 is obligated to take your views; yes, sir.

24 CHAIRMAN HENDRIE: Under the nonproliferation
25 legislation, the licensing function for these things would

1 MR. GUHIN: I think any agency, the way the mech-
2 anism works, I think any case which is significant is brought
3 before the group and any agency can suggest that any of its
4 cases or another agency can suggest that different types of
5 cases be looked at.

6 So there is no limitation as to what categories
7 would be considered.

8 COMMISSIONER GILINSKY: So there are no specific
9 guidelines, in other words?

10 MR. GUHIN: Not as far as I am aware, that have
11 been developed in the group at this stage.

12 MR. SHEA: With this coordinating group, why the
13 matters are brought up before the group; there is an opportunity
14 for NRC to look into just about all important exports. I
15 believe that mechanism --

16 COMMISSIONER GILINSKY: So it is really through our
17 participation in this group that we are consulted on these
18 matters?

19 MR. SHEA: I think that is a fair statement.

20 MR. GUHIN: At this stage, yes. We were consulted
21 before in a different mode, for example, in the Commerce
22 component cases, by visiting Commerce once a week and looking
23 at lists. And, of course, I think that option is still open.

24 But it is primarily this group, and as noted at the
25 bottom of the chart here, the NRC responsibilities in terms of

1 actually move to us, or would there be a compulsory -- would
2 Commerce still issue, but there would be a compulsory okay from
3 us?

4 MR. GUHIN: The way the legislation is written at this
5 stage, as I understand it, is that it would call for us to do
6 a review which is in its early stages in anticipation of
7 legislation, to determine which of the Department of Commerce
8 export categories or what their exporting, would be significant
9 in terms of a proliferation or export control, that we would
10 then license what ever we determined --

11 CHAIRMAN HENDRIE: Okay.

12 So it would actually --

13 MR. GUHIN: It would actually shift.

14 CHAIRMAN HENDRIE: The paper would actually say
15 NRC at the top.

16 MR. GUHIN: It would come into us instead of to
17 them.

18 COMMISSIONER GILINSKY: Well, we would have to make
19 that initial determination that it falls into that category.

20 MR. GUHIN: Yes.

21 MR. STOIBER: We would have something like three
22 months to promulgate rules identifying the category of exports
23 that we would handle.

24 MR. SHEA: We have noted impact there of -- it looks
25 like a few extra people would be needed to handle this if it

1 all comes to pass.

2 Then the next area, the last one, again in detail,
3 health and safety policy in cooperation reviews again the
4 matters we talked about earlier, the two-part study of health
5 and safety that is described a little more here in the first
6 half of that page.

7 And then the second half -- well, it covers the
8 second half of the study, really; looking at questions like
9 what should be the size of the NRC effort and what criteria
10 should be applied in deciding whether to provide assistance,
11 and should assistance be bilateral or through the IAEA.
12 Generally, we have worked through the IAEA except in special
13 cases. And we are looking at the pros and cons of that and
14 the other criteria as well.

15 We anticipate that being down earlier, in January
16 rather than in February, as stated at the bottom of 24.

17 Mike would like to make a comment.

18 MR. GUHIN: I dislike stepping backwards, but I
19 would like to clarify one thing on the consultative arrange-
20 ments with Commerce, because we did look at it both in terms
21 of the legislation and existing arrangements.

22 But in terms of actual reactor components that are
23 licensed by the Department of Commerce, that since our ini-
24 tial arrangements with them in April of '76, we call that
25 formal Staff coordination because we actually have a veto in

1 that area. Commerce well recognizes that, that the applica-
2 tion or license will not be issued until we formally say: Yes,
3 indeed, we have no problems or no objection. So that has been
4 the one area under -- recognized under the Act, that the
5 components have been shifted to them, but they give us a formal
6 veto over issuance of those.

7 MR. SHEA: We turn to health and safety on page
8 25 where we have a description of our current program for
9 safety assistance abroad broken down into various categories.

10 COMMISSIONER GILINSKY: Let's see if I understand
11 you back on 24. You did talk about finding ways to encourage
12 countries to develop their own regulatory system and conduct
13 full reviews and so on, and not to rely merely on these once-
14 over IAEA reviews, which are really intended to kind of
15 facilitate their own activities, rather than to serve as a
16 review -- as reviews in themselves.

17 MR. SHEA: That's right, and the first -- no;
18 second bullet there, particularly notes that; design to
19 encourage self-help rather than reliance on U.S. expertise.
20 And that was very much in mind in the Staff study. We had
21 some specific ideas about how to do that that will be de-
22 veloped and will be coming down to you.

23 There are some IAEA so-called agency projects in
24 which there are some requirements that the agency imposes
25 in this area, and they might be extended to all assistance.

1 So that is a very important consideration and
2 really one of the criteria that we are assuming in this;
3 that it has to be self-help rather than a substitute.

4 Page 25 describes the program, as I said. And
5 it ranges from training, people going to various international
6 meetings, bilateral exchanges, to bring students over for
7 training courses, foreign assignees come onto the NRC Staff.
8 We have had 13 so far. We have three or four on board most
9 of '78, and then bilateral planning meetings on advice and
10 assistance.

11 Now, here is where we note the seminar in the
12 footnote that is coming up. We call it an international train-
13 ing meeting now, I guess, for a few days, which we are doing in
14 cooperation with the IAEA. And DOE will also participate.
15 There will be a number of lectures by the NRC Staff and also
16 the possibility of a visit to a facility.

17 Is that likely to come off?

18 MR. LA FLEUR: We're trying to find a place to take
19 them where they will see something other than just lectures;
20 either a place where there is hardware there, or a place where
21 there is a modification of an existing pit going on. So we
22 have arranged for the outfit that --

23 MR. GUHIN: Ginna.

24 MR. LA FLEUR: -- to come down and give a canned
25 talked they have, or that they have prepared and given several

1 times before, of the modification of their pits. It should
2 be a very interesting add-on to show a real case.

3 COMMISSIONER GILINSKY: Do you have any idea how
4 many participants you are going to have?

5 MR. LA FLEUR: Well, the invitation went out to all
6 the countries that have a program active or getting planned.
7 And we have also added all the people we deal with, with
8 separate notices on it. And I hope we will get at least 45
9 to 50.

10 COMMISSIONER KENNEDY: But we don't know yet?

11 MR. LA FLEUR: No, we don't know yet.

12 MR. GUHIN: We don't have the returns yet.

13 MR. LA FLEUR: The IAEA said they would sponsor
14 a few people, people who need financial help, like a handful,
15 and would consider more if there was request for it. We will
16 encourage them to help as many people who need financial help
17 on that.

18 MR. SHEA: The next one, I think, has been pretty
19 well covered, the international reach for NEPA review.

20 So I think we can move to page 27 and I don't think
21 we have to go into those too much in detail. We will be seeking
22 Commission guidance on the security plan for foreign assigness,
23 specifically with respect to guidelines for protecting prop-
24 rietary information.

25 And I think the others are pretty well covered.

1 Now, turning to page 28, next to your slides,
2 it is an attempt to give you an idea of our bilateral exchange
3 program and what kinds of information, on page 28, the Staff
4 is seeking to obtain from its foreign exchanges.

5 The categories are listed there with some specifics
6 given. It would be very helpful to have all of these to be
7 able to improve the safety of U.S. facilities; general health
8 environmental protection data, for system safety, quality
9 assurance requirements, construction and operating data and
10 incident reports are of particular interest because of the
11 direct safety impact, and of course, physical security and
12 safety research areas as well.

13 Now, the next graph at page 29 attempts to give
14 you a quick overview of our bilaterals and how we go about
15 trying to obtain the information that is listed.

16 We have working relationships with people in
17 16 arrangement countries, over twice that number of actual ar-
18 rangements. And we are collecting information that, of course,
19 is used for briefing papers and talking points for the
20 Commission, but we are also getting many routine reports on
21 safety research criteria and construction and operating
22 information.

23 We finally have good access on ad hoc problems
24 and questions that we can raise. And that, of course, depends
25 a lot on your individual relationships with the countries.

1 And frequent meetings we find very helpful, rather
2 than just relying on mail channels.

3 We have fairly high confidence that we will hear
4 of foreign experience on serious new LWR problem. And we are
5 trying to take steps to increase the chances that we will hear
6 about that.

7 Some recent examples are given there where we have
8 gotten data from some of the agreement countries; Japan,
9 Germany particular; France, also, on incidents and safety-
10 related and terrorists activities as well.

11 We are trying to establish a program of regular
12 meetings at no more than six to nine-month intervals with
13 Germany and Japan where the bulk of U.S. type LWRs would be
14 found. And we have had one each of those and we are about
15 due for another one in Germany, which is now being planned.

16 We are trying to systematize our routine informa-
17 tion process. We surveyed the Staff for information needs
18 as shown in the previous chart, establishing priorities
19 this spring and then try to implement it over the next few
20 years.

21 Page 30 outlines problems that we have to face.
22 This takes Staff to do and that is one reason we haven't --
23 it hasn't moved faster in the past. We hope to be able to
24 do more as we have added some people.

25 Most countries, I should say, do not compile and

1 report data as we do. They do not have the Gray Book approach.
2 But we are trying to get the data in as close to Gray Book
3 from as we can.

4 The problems with information provided in confi-
5 dence, we have to address how to protect that so that we
6 will be assured of continuous flow from the other countries.
7 Sometimes we have to reassure them. They are not sure how
8 this FOIA will affect them, for example.

9 COMMISSIONER KENNEDY: You said recent FOIA exper-
10 ience. Does that suggest that you have had an experience re-
11 cently which has caused us difficulties in this regard?

12 MR. SHEA: Can you describe that, Joe?

13 MR. LA FLEUR: I think it has been more just --
14 of an assurance of things that we were doing which would
15 hold up --

16 COMMISSIONER KENNEDY: I see.

17 MR. LA FLEUR: Three cases; one where we had our
18 appeal and we gave them information that we thought proper
19 in light of our relations with the countries involved and
20 (inaudible).

21 MR. SHEA: The translation, of course, was costly,
22 and we have to watch our resources.

23 Thirty-one gives you a little overview of what might
24 be coming up in the way of additional exchange agreements.
25 Some are pretty well advanced; Belgium, Canada and Israel might

1 well have signings in the next few months, and Egypt is less
2 certain.

3 Page 32 --

4 CHAIRMAN HENDRIE: These are exchange agreements
5 on health and safety matters of mutual interest --

6 MR. SHEA: That's right.

7 CHAIRMAN HENDRIE: -- in the health and safety
8 regulations?

9 MR. SHEA: That's right; information. We provide
10 them with documents we have published. They tell us about
11 their experiences as well.

12 CHAIRMAN HENDRIE: Right.

13 MR. SHEA: And we have a number of those already.

14 Thirty-two just lists the papers for your conven-
15 ience, in one place, that are referred to throughout the
16 presentation with their target date.

17 The regulation on the U.S./IAEA safeguards agree-
18 ment, the fifth item, really should be February.

19 And you see quite a few bunched up there in
20 January. We hope to have them down. Some might slip over
21 into February, but we are trying hard to keep them on track.

22 I guess that covers the first portion of the
23 briefing, the overview of international activities.

24 If there are no further questions, we could move
25 on to the export regulations.

1 (Pause.)

2 MR. SHEA: Oh, yes. I should mention -- Joe
3 reminded me -- we have plans for trying to develop a safety
4 exchange agreement with the Soviet Union that we are not quite
5 sure will come to pass, but the Soviets have invited a U.S.
6 team, composed primarily of NRC personnel, to come over to the
7 Soviet Union starting about the end of this month to visit
8 facilities in the Soviet Union and to discuss possible safety
9 exchange with them.

10 And later they would come back and visit the U.S.
11 Probably we think it would be February or March.

12 And we sent a Commission paper down which I think
13 you probably just received. We have constructed a proposed
14 team for that which I believe will be just going to you this
15 morning, identifying the particular individuals that we pro-
16 pose to send.

17 And we would -- we are facing a tight time on this
18 and would hope to have Commission approval of this, if we could,
19 by tomorrow, in order to be able to tell the Soviets that we
20 do plan to come and these are the people. They have to know
21 the names at this point in order to have a meeting occur two
22 and a half weeks later; visas and check out and so on.

23 We hope this will lead to further useful exchange.

24 Well, shall we move on to the regulations?

25 CHAIRMAN HENDRIE: Please do.

1 MR. SHEA: We have a two-part presentation planned
2 in which Mike Guhin will give a little introduction and touch
3 on the more substantive aspects of the rule that he has been
4 closely involved with, and then Tom Dorian -- ELD -- it is
5 Tom Dorian, I think --

6 MR. SHAPAR: Tom Dorian.

7 MR. SHEA: And Howard is it, are planning to describe
8 the procedural aspects, which really I think are the bulk of
9 the rule.

10 Before turning it over to Mike, I would just like
11 to thank everyone that worked long and hard on the export
12 study group on this effort. It was a very demanding and
13 challenging amount of work that was involved, long hours and
14 a lot of nights, to put this together; particularly Tom Dorian
15 from ELD and Mike and Carl Stoiber and Trip Rothchild from
16 OGC, people from OPE and NMSS as well, contributing along the
17 way. So I think that was a very good effort.

18 So, Mike, why don't you talk a little bit about
19 what is in there on the substantive aspects.

20 MR. GUHIN: I would like to just give a brief
21 overview.

22 In effect, I will confine my remarks to the first
23 subpart to the proposed rule going up to stopping before you
24 hit enforcement, and from that point on, Tom will take over
25 in terms of all the procedural aspects and (inaudible) there.

1 I plan only to give an overview and touch on a few
2 points. There is no need to go through these in detail be-
3 cause in large part; in fact in most part, what we have before
4 us in these initial parts, the substantive regulations here,
5 are really precisely what we have in our existing regulations.

6 The attempt here is to take the portions which are
7 scattered in Part 40 and Part 70 and Part 50 and Part 36,
8 and pursuant to the Commission's directive, to consolidate
9 these and put them into one comprehensive -- and I would
10 add comprehensible -- set of regulations in this regard so that
11 we can -- it will be much more easily available to people and
12 we hope much more easily understood.

13 The major effort has been to consolidate and in
14 substance, they remain essentially the same. There has been
15 an effort, I think, and a very good effort particularly on the
16 part of ELD and one of my staffers, to, however, take this
17 and simplify it as well, so that in part it is not only con-
18 solidated, but it has been simplified.

19 It has also been updated. However, we found in the
20 existing regulations (inaudible), for example, in the areas
21 where restrictions were to apply, in some cases no longer
22 existed. And so in this sense, and really a nonsubstantive
23 sense, they have simply been updated in terms of restrictions
24 or trade restrictions in this kind of area, or the countries
25 to which certain materials may go only under specific license

1 would like to clarify at the outset that by definition, cases
2 which involve intervention petition or cases which involve
3 nonparties -- countries which are not parties to the nonpro-
4 liferation treaty, or cases which involve changed circumstances
5 from the last export, by definition, would not be considered
6 routine by the Staff.

7 COMMISSIONER GILINSKY: What do you have in mind
8 when you say changed circumstances?

9 MR. GUHIN: Well, I think of -- let's take an
10 example. If you had a country and for one reason or another
11 you had information that it was not living up to the parti-
12 cular obligations, or at least that there was some question
13 as to whether certain obligations were being entirely ful-
14 filled; or if you had a country reported to the IAEA Board
15 of Governors as not fulfilling its safeguards agreement.

16 MR. SHAPAR: Or if they concluded a peaceful ex-
17 plosion.

18 MR. GUHIN: Right; that would be the most obvious.

19 COMMISSIONER GILINSKY: That was in quotes.

20 MR. GUHIN: I would like to also note that the
21 regulations do provide, of course, that as you know, we send
22 up -- we try on a monthly basis to send up lists, separate
23 lists, of actual licenses received. This is separated out from
24 the big basic pending licenses list. And the regulations
25 would note, of course, other cases which the Commissioners

1 and not under a general license, for example.

2 With that brief introduction, I would just like to
3 touch on what I consider to be really only the two or three
4 items which the Commission at this stage may wish to note,
5 and then call attention to.

6 One was discussed earlier or hinted at earlier;
7 was the question of delegating. The Staff is recommending that
8 the Commission delegate authority to the Staff to issue li-
9 censes on what it calls routine reloads of low enriched reactor
10 fuel.

11 And I would like to clarify that a bit. A large
12 part of this came about from the Staff's review and from the
13 several comments that the licensing process itself be ex-
14 pedited in those areas where people thought that it could be
15 expedited.

16 One of the comments -- or several comments focused
17 on more exemptions or more general licenses; as we have noted
18 earlier, that will be part of a different study. That is a
19 substantive issue involving exempting or having new general
20 licenses and that will be to the Commission shortly.

21 As I say, this part of this rule does not get into
22 substantive changes from existing regulations.

23 One of the areas where the Staff considered though,
24 and has come with this recommendation on routine reloads,
25 that the Staff be given authority to act on those cases; I

1 or the Commission's staff -- the Commission may request re-
2 view of any case at any time, and of course, the Commission's
3 staff may forward any case which it believes warrants Commission
4 review, although it may not technically fall into a certain
5 category.

6 The only other point I would like to clarify on
7 this Staff recommendation and suggestion is that it should be
8 kept clearly in mind that we are only talking about subsequent
9 exports to the same reactor. We are not talking about the
10 reactor itself, nor are we talking about the initial core.
11 What we are talking about here is that once the Commission
12 authorizes the reactor and the initial core, which usually
13 happen in two separate licensing actions, in fact, that at
14 that stage in the absence of any changed circumstances or
15 intervention or something very obvious, that these would be
16 considered routine reloads to be acted on by the Staff.

17 The only other two areas --

18 COMMISSIONER KENNEDY: You said unless there was
19 intervention.

20 MR. GUHIN: Unless there was an intervention, yes;
21 absolutely.

22 The only other two areas that I would like to --

23 COMMISSIONER KENNEDY: Can you visualize a case in
24 which there wouldn't be?

25 MR. GUHIN: In which there wouldn't be?

1 We have some today.

2 COMMISSIONER BRADFORD: Mike?

3 MR. GUHIN: Yes.

4 COMMISSIONER BRADFORD: Does the rule still con-
5 template the possibility that in a situation in which the
6 Commission for some reason had concern with the overall frame-
7 work of export policy; how easy is it at that point to suspend
8 a procedure like this for X-period of time?

9 MR. GUHIN: I think it would, if you are -- in a
10 generic sense --

11 COMMISSIONER BRADFORD: Yes.

12 MR. GUHIN: -- in other words, if there are ques-
13 tions which come across the board, in that sense I think it
14 could be suspended, although my gut reaction would be there
15 would be some obligation to at least note as a policy matter
16 that it has been suspended. If we have a rule which says that
17 routine things would come before the Staff and not go fur-
18 ther, if generically there were to more routine matters in
19 that category, then I think -- of course, it could be sus-
20 pended.

21 I would like Carlton or Howard to address that.

22 MR. SHAPAR: The Commission could, of course, grant
23 exemptions from any of its own rules as long as it is not
24 prejudicial to the rights of --

25 COMMISSIONER GILINSKY: Now why is a practice like

1 this part of a rule?

2 MR. GUHIN: The rule defines, in effect, what --
3 it sets forward for the public's knowledge and, of course, for
4 the applicant's knowledge and clarification, the licensing
5 review procedures. And part of the license review procedure
6 in effect has been what is normally reviewed by the Commission
7 and what is normally not sent to the Commission for review.

8 COMMISSIONER GILINSKY: Well, why does this have
9 the --

10 MR. GUHIN: Force of rule.

11 COMMISSIONER GILINSKY: Yes; why is it a rule rather
12 than simply a statement of the way we do our business?

13 MR. DORIAN: Well, it is actually both. The rule
14 is so drafted that the Commission doesn't have to do anything,
15 in terms of how the rule is framed. But we are going out to
16 the public and saying that these are our procedures and we are
17 going to try to adhere to them. And to that extent, we are
18 on public record that we are going, to extent the Commission
19 sees fit adhere to these policies.

20 COMMISSIONER GILINSKY: But I mean, suppose you
21 depart from this rule, would you then have to notice this in
22 the Federal Register and --

23 MR. SHAPAR: It depends how substantial the depart-
24 ure is.

25 COMMISSIONER GILINSKY: No; suppose you simply have

1 a Commission review of a license which would not normally re-
2 ceive Commission review.

3 MR. GUHIN: No. This was carefully considered, I
4 might add, by ELD and ourselves, largely because the issue
5 arose in a study group, in other words, if we put in our
6 normal procedures -- and you will notice there are not only
7 ways of exempting and provisions calling for whenever a
8 Commissioner or the Commission wishes to see it before it
9 or whenever the Staff wants to.

10 But I think it even said normally will be reviewed.
11 So its built in, its own flexibility that we don't have to
12 go through a rule change if there are, you know, some changes
13 in this review process.

14 However, as Howard had noted, I think if there were
15 substantive and in a sense standing changes going to occur,
16 then one would logically go ahead and change that --

17 MR. SHAPAR: (Inaudible) federal agencies in accord-
18 ance with the Administrative Procedure Act, to publish their
19 delegation of authority in the Federal Register.

20 COMMISSIONER BRADFORD: In terms of the situation I
21 asked about before; if you wanted for some reason to suspend
22 the practice across the board for awhile, would that require
23 notice on that, or could it be done on an expedited basis?

24 MR. SHAPAR: I think it could be done on an exped-
25 ited basis, but if you are going to be doing that, I think you

1 would want to tell the world.

2 COMMISSIONER BRADFORD: Sure.

3 MR. SHAPAR: But it would --

4 (Simultaneous discussion.)

5 MR. SHAPAR: -- to say that whereas the Staff has
6 certain functions with respect to an export and the Commission
7 has; if you want to change the internal delegation, which is
8 really what it is, it certainly couldn't be construed generally
9 as prejudicial to the rights of any third party.

10 COMMISSIONER BRADFORD: You said federal agencies
11 routinely publish their internal delegations in the Federal
12 Register?

13 MR. SHAPAR: A summary of them; yes, they certainly
14 do.

15 COMMISSIONER BRADFORD: In regulation form?

16 MR. DORIAN: Some yes; some no.

17 MR. SHAPAR: Some yes; some no. Right.

18 The Commission, of course, has done that in its
19 Part 0.

20 COMMISSIONER KENNEDY: All its delegations are.

21 MR. SHAPAR: Yes.

22 MR. DORIAN: The idea here was to highlight for the
23 public an aspect that had been somewhat shrouded to the public
24 before. They were unclear exactly what the Commission was
25 doing, what the Staff was doing and what the interaction was

1 between the Nuclear Regulation Commission and the Executive
2 Branch. And what we did was just highlight as we could what
3 the procedures were.

4 MR. SHAPAR: So anybody who is interested in ex-
5 ports can look at one part of our regulations and find out all
6 they would need to know about exports, was the basic thinking
7 behind it.

8 COMMISSIONER BRADFORD: Is there actual operative
9 legal significance to having it in the regulations versus to
10 publishing it in the Federal Register, not in regulation form?

11 MR. SHAPAR: Well, I suppose someone could make the
12 argument that if you didn't comply with your own regulations,
13 they perhaps could try to except the action, but the usual
14 legal rule there is some sort of prejudice. I think under
15 ordinary circumstances it would be very difficult to make out
16 prejudice.

17 MR. STOIBER: I don't think that would arise in
18 this case, because as the rule is framed, the Commission can
19 at any time indicate that a certain license or category of
20 licenses has policy significance. If for some generic reason
21 you felt that all your licenses had policy significance because
22 of some general problem with IAEA safeguards or the like, all
23 you would have to do under this rule was issue a general state-
24 ment to the effect that now the Commission finds for this
25 reason that all its licenses have policy significance, and

1 therefore, that would essentially eliminate the delegation
2 procedure.

3 MR. SHAPAR: Is the question, then, directed both
4 ways; of additional delegation to the Staff, as well, or --

5 COMMISSIONER BRADFORD: I hadn't thought of it that
6 way, but if there were additional delegations to the Staff,
7 I assume you would want to make them part of the regulations.

8 MR. SHAPAR: I would think so, yes.

9 COMMISSIONER GILINSKY: Well, let me ask you this,
10 Howard:

11 Suppose in approving a reactor export and a first
12 core, the Commission felt that in this case, subsequent re-
13 loads ought to be examined by the Commission. Would it be
14 necessary to publish that in the Federal Register?

15 MR. SHAPAR: You mean in all cases?

16 COMMISSIONER GILINSKY: No; in that case.

17 MR. SHAPAR: In that case, I think in accordance
18 with the provision just mentioned that you could feel that
19 special circumstance, for what ever reasons you had, dictated
20 your personal review of that situation.

21 I would also suggest though, that if you felt that
22 the second reload ought to be looked at under all circumstances,
23 then I would advise you to change the rule.

24 MR. GUHIN: Let me go on --

25 COMMISSIONER KENNEDY: Even if that decision were

1 to be made on an individual, successive basis.

2 MR. SHAPAR: Yes.

3 CHAIRMAN HENDRIE: Onward.

4 MR. GUHIN: Let me just touch on two -- briefly
5 touch -- on two other points that I think are either somewhat
6 changed from the rule that we proposed in June, which was
7 published for public comment; three brief areas:

8 One, you will notice that in the proposed rule,
9 there is an obligation which we put on ourselves to -- this
10 is 110-40 on page 91 -- to inform the applicants whenever the
11 license review at the NRC takes more than 60 days after we re-
12 ceive the Executive Branch's views.

13 I think this is a self-explanatory provision. Under
14 this, as Jim had mentioned earlier, we are making every effort
15 now to keep the Staff's review as short as possible and to get
16 the major cases to the Commission to provide as much time as
17 possible at the earliest possible date.

18 When we say we will also tell the applicant, inform
19 the applicant of the reasons for why the application is taking
20 longer than 60 days, here, of course, it is accepted that this
21 would not involve any classified information but would gen-
22 erally say where the application stood.

23 And the only other --

24 MR. DORIAN: Let me add there, Michael:

25 That this as the legislation is now being drafted,

1 at least the version that passed the House -- and correct me
2 if I am wrong, Paul -- is consistent with that legislation.

3 MR. STOIBER: I think that needs some development.
4 The 60-day time period is part of a series of suggested amend-
5 ments to the Senate bill which will probably be revived in
6 this session, and would be consistent with that provision.
7 It is not in the House bill as I understand it.

8 MR. GUHIN: Okay.

9 Briefly, two other things. In Part 110-50, in
10 reviewing the proposed rule and the public comments, we reached
11 one of these areas where we were in effect levying -- either
12 levying dual requirements, or it wasn't clear which require-
13 ments would be met under our domestic regulations and which
14 would be met under our export.

15 And so the items on both packaging and physical
16 security have been clarified and I think revised to reflect
17 the realities in terms of exported and imported materials.

18 In brief, it is that the export licensee himself,
19 for example, materials, is under normal circumstances not the
20 packager of the material and that the packager in all cases
21 would be subject to our domestic regulations and would fall
22 under certain requirements there.

23 When this is the case, the regulations make clear
24 that the export licensee himself does not have the responsibility
25 to meet that which is met by someone else, but that he would

1 have responsibility not to accept an export or import when he
2 sees that it does not meet these requirements.

3 The rules also clarify that the export licensee
4 will have the responsibility for physical security arrangements
5 unless these arrangements have been assumed by someone else
6 within this country, for example, a shipper or packager, and
7 that he notifies the NRC that someone else has this responsi-
8 bility.

9 If he does not do so, then the regulations make
10 clear that it is his responsibility to protect these strategic
11 quantities or significant quantities of special nuclear mat-
12 erial.

13 The only other change, I think, from the proposed
14 rule in June, the published rule in June, is that in that rule
15 we had included some specific information requirements and
16 this is not in the rule you have before; it is in the side-by-
17 side, and it was in the old 110-33(f), which was page 14 of
18 the side-by-side. It requested some specific information when
19 the application was for formula quantities of special nuclear
20 material; that is, five kilograms or more of high enriched
21 uranium or two kilograms or more of plutonium and uranium 233.

22 It was suggested by some commentators that this kind
23 of information would be more appropriately obtained through
24 government channels rather than in the licensing process.

25 The Staff agreed with that and, in fact, in the Executive

1 Branch's review and the governmental exchanges, as you know,
2 of high enriched uranium and research activities involving
3 high enriched uranium, involves quite an extensive review.

4 What we would just like to assure here is that
5 there is no question that this information will be made avail-
6 able to the Commission and the Commission staff, indeed, in the
7 review process itself, but it was just simply a clarification
8 that that information would come through these government
9 channels rather asking the applicant.

10 I think one that was particularly sensitive in
11 that regard, was the way the first requirement was written in
12 the proposed rule published in June, sort of said, you know,
13 how much high enriched uranium do you have in the country
14 and assigned to that reactor.

15 Well, one could read that both ways. If you are
16 talking how much is assigned to the reactor which you proposing
17 export at this time, that was a fairly limited and logical
18 question.

19 However, if one split that and said how much high
20 enriched uranium in the country, that was really a process --
21 a bit of information which one felt, and I think other, some
22 foreign commentators were on it -- that that would most approp-
23 riately come through government channels, but surely, again,
24 be considered as part of the licensing process, or in the
25 licensing process.

1 The only last item I would like to add, as it is
2 noted in the cover memorandum, and I believe in the statement
3 of considerations, is that as you know, the effort began, in
4 effect, quite some time ago, in fact, before, maybe at least
5 about the same time there was effort, some pending legislation
6 dealing with this area, and that the export group, of course,
7 has kept this in mind as it has developed its rule and has
8 noted in the paper for the Commission that the proposed rule
9 is consistent with legislation and that the recommendation is
10 that it can go forward on its own merits and need not await
11 legislation.

12 But also the items in legislation such as substan-
13 tive export criteria covering application of safeguards and
14 these kinds of things as noted could readily be incorporated
15 into this new Part 110 once legislation is enacted.

16 MR. SHAPAR: If there is sufficient reason, if you
17 find the regulation satisfactory to promulgate them and not
18 wait for the legislation, because the substantive criteria
19 could be taken from the legislation and can be easily cranked
20 into these regulations now written, in the form of an amend-
21 ment.

22 MR. GUHIN: That completes my portion.

23 COMMISSIONER KENNEDY: Could you do me a favor
24 at some convenient time; send me a copy of the, as I understand
25 it, 24 letters of comment? Could you send me a copy of those

1 letters?

2 CHAIRMAN HENDRIE: Other comments by the Commission?

3 (No response.)

4 MR. SHEA: Tom Dorian could proceed to describe the
5 procedural aspects.

6 COMMISSIONER GILINSKY: Could I ask you something
7 about the general licenses? There seems to be a list of
8 countries listed on page 83, and there are a bunch of other
9 conditions and restrictions and constraints listed in the
10 nearby pages. And where does all this come from?

11 MR. GUHIN: Essentially from our existing regula-
12 tions, except for the fact that the list has been updated and
13 reviewed by the Executive Branch and --

14 COMMISSIONER GILINSKY: Recently?

15 MR. GUHIN: Well, in the process of doing this rule.

16 COMMISSIONER GILINSKY: When was that?

17 MR. GUHIN: Within the last year, with the export
18 study group actually preparing this rule and the draft rule,
19 say, in the earlier portions of 1977, that -- we had some
20 restrictions against -- I don't know whether -- Port Arthur
21 and Port Darien in some areas which were really no longer --
22 you no longer had --

23 (Laughter.)

24 -- a way of knowing --

25 COMMISSIONER GILINSKY: Since 1905.

1 (Laughter.)

2 MR. GUHIN: But essentially, this reflects two
3 things: It reflects existing controls on exports to commun-
4 ist bloc countries, and the way that they were formulated in
5 our existing regulations.

6 And there has been no substantive change in this
7 regard, other than some--

8 COMMISSIONER GILINSKY: There seem to be different
9 rules for tritium and so forth, and they all seem to have
10 their good countries and bad countries. And I just wondered
11 whether it all couldn't be simplified.

12 MR. GUHIN: Well, let me add in this regard that
13 the proposed -- discussed earlier, the paper which would come
14 up, which would look at some minor -- at some exempting --
15 exempting certain minor categories from agreements or
16 cooperation and some more general licenses, one of the things
17 that is noted in there is that it would also include what the
18 Staff and the Executive Branch determine to be the elimination
19 of unnecessary restrictions and definitions in terms of
20 communist and noncommunist countries.

21 So I think this paper itself, coming up hopefully
22 later this month, would indeed clarify these sections sub-
23 stantially and I believe, would it not do away especially with
24 a lot of the exemptions and the details of exemptions, so it
25 would become very, very much simpler.

1 MR. PETERSON: The exemption for by-product material
2 would come out entirely, would be (inaudible) under the general
3 licensing (inaudible), one of the minor changes.

4 MR. GUHIN: So the answer is yes; they can be
5 simpler and we hope they will be.

6 COMMISSIONER BRADFORD: What is the process in
7 which -- in drawing up schedule A, by which one includes
8 Czechoslovakia and Hungary but doesn't include Rumania and
9 Poland.

10 MR. GUHIN: I think that deals with the basic
11 U.S. Governmental trade control pattern which is under the
12 Department of Commerce, for example, or what have you. I
13 believe in the latter case you have differences because of
14 the most favored nation.

15 MR. PETERSON: There is special favortism toward
16 Poland or Rumania as far as export controls, but if you look
17 at the detailed general license itself, we do have Rumania
18 and Poland included, in addition to the schedule A countries
19 under the particular general licenses.

20 So it is not a flat out favortism toward --

21 COMMISSIONER GILINSKY: I notice you also include
22 Latvia, Lithuania and Estonia, which I think is a noble senti-
23 ment.

24 (Laughter.)

25 MR. PETERSON: This list, by the way --

1 COMMISSIONER GILINSKY: Is that the standard?

2 MR. GUHIN: Yes, it is included in the other list,
3 also, isn't it?

4 MR. PETERSON: We draw from the Commerce Department,
5 essentially, for the list. It is identical to what they use
6 and it is approved by the State Department, since we have not
7 recognized the Soviet take-over countries since 1940, we
8 legally, have to put them in.

9 MR. DORIAN: By the way, most favored nation treat-
10 ment only means equal treatment.

11 CHAIRMAN HENDRIE: Onward.

12 MR. SHEA: Tom?

13 MR. DORIAN: I would like to cover four matters, or
14 highlight four matters for the Commission.

15 One is the format of the hearing, the second is
16 public notice procedures, the third is access to classified
17 information, the fourth is the substantive criteria, and then
18 end with a footnote on which there has been some Staff disagree-
19 ment until now, and the Staff has resolved that disagreement.

20 Beginning with the first point, the format of the
21 hearings, under the Commission's guidelines to the Staff,
22 they asked the Staff to examine what kinds of hearings or
23 what kind of a hearing is required under the Atomic Energy
24 Act and under the Administrative Procedure Act.

25 The Staff examined that and decided, looking at the

1 Atomic Energy Act, specifically Section 189(a), and looking at
2 the Administrative Procedure Act, Section 5 of that, specific-
3 ally the foreign affairs function exemption under the Admini-
4 strative Procedure Act, looking at the legislative history,
5 and what other agencies do, the general structure of govern-
6 ment, and particularly noting the nature of the issues, noting
7 that sensitive foreign policy and national security information
8 is involved, that what kind of a hearing is required is the
9 kind of hearing that we have tried to give in the rule, and
10 that is a hearing -- if one is required and that is if there
11 is standing, that the required interest has been shown, or
12 the Commission wants to grant a hearing under its discretionary
13 procedures, the kind of hearing could be of the type that is
14 a legislative model.

15 That in turn is divided into two parts. We could,
16 for example, have a hearing consisting of written comments
17 -- as the procedures are detailed in the rule, or addition
18 or separately from if the Commission sees fit, we could have
19 a hearing where it was actually called an oral hearing.

20 We have tried also in light of the public comments
21 received after we published the proposed rule to look at what
22 ways we could expedite the licensing procedure, at the time
23 noting that under the Act, we have to make sure that there is
24 the required public participation when standing has been shown.

25 What we have done -- and I won't cite the rule; it

1 is Section, by the way, 110-83(f). In response to the public
2 comments, we have said that the rules specify that the Com-
3 mission would not conduct a new hearing on an issue adequately
4 explored in a previous hearing unless there are two conditions
5 that were met:

6 One, unless a hearing request or intervention pet-
7 ition establishes an interest which may be affected, and that
8 is by the way -- if you are looking at the page number it is
9 page 100 of the rule that we submitted to you.

10 So, if a person has standing, that means that we
11 have to give that person some kind of hearing, and the some
12 kind of hearing is detailed. Again, we go back to procedures
13 of outlining the rule.

14 The other unless is that the Commission can de-
15 termine that changed circumstances or new information warrant
16 a new hearing.

17 If these two conditions are not met, the Commission
18 does not have to give anyone a hearing, unless it wants to
19 give someone a discretionary hearing of some type.

20 Turning to the import licensing hearings, we wanted
21 to make sure that a participant in the import licensing hearing,
22 establishing that his interest may be affected, may be accorded
23 additional procedural rights under domestic licensing prac-
24 tices with respect resolution of domestic factual issues
regarding the public health, safety and environment, and with

1 respect to the protection of the U.S. public, again, domestic
2 theft, diversion and sabotage.

3 And this, to the extent that such issues are
4 separable from the nondomestic issues associated with license
5 applications.

6 And we have drafted the rule to give the Commission
7 leeway to look at the kinds of procedures it wants to give
8 to people asking for import licensing hearing, assuming that
9 they have met the standing test.

10 Also, in connection with domestic practices, we
11 have said that the domestic licensing procedures, that is,
12 the adjudicatory hearing procedures, would be applicable to
13 a proceeding involving the imposition of a civil penalty on
14 either -- on an import or export license.

15 And, finally, to make sure that the foreign affairs
16 function exemption allows the Commission adequate room to
17 structure a hearing, we incorporated that provision in rule-
18 making hearings, also, the foreign affairs function exemption
19 simply says where foreign affairs functions are involved, the
20 Commission can tailor its proceedings in light of its foreign
21 affairs responsibilities.

22 Turning to the second point I mentioned we would
23 be looking at -- it is public notice, and that is we have
24 changed the public notice procedures from what we presently
25 have.

1 At the moment, we notice in the Federal Register
2 an application received on a utilization facility an issuance
3 of a license for a utilization facility.

4 We would go further -- and this is in light of
5 several comments received -- we would notice in the Federal
6 Register, application received on one effective kilogram or
7 more of special nuclear material and is, by the way, also
8 concurrent with the information that the Staff sends up to the
9 Commission where the Commission itself is going to be looking
10 at the license application.

11 And the Staff proposes to notice in the Federal
12 Register, also, 10,000 kilos or more of source material where
13 a license application is received, again, it's in the paper
14 that goes to the Commission.

15 Beyond these, none of the comments asked us to
16 notice any of the minor license applications received. It seems
17 that there is no interest in looking at issues involved in
18 that, and we propose not to notice that in the Federal Register.

19 The third point, access to classified information.
20 We have checked with the State Department. There was a little
21 bit of a misunderstanding between the Commission and the
22 State Department in connection with the rule of the State
23 Department vis-a-vis the Commission in regard to the classified
24 information the State Department sends to the Commission in
25 connection with export license matters.

1 The Executive Branch has agreed that the rule
2 will not limit the flow of essential classified information
3 between the Executive Branch, the State Department particularly,
4 and the Commission.

5 The rule would only apply to classified information
6 introduced into a hearing. And the hearing procedures are --
7 with regard to classified information, are detailed in subpart
8 K. Essentially, there has to be a notice of intent to intro-
9 duce, or have security clearance procedures and rather de-
10 tailed requirements. They are very similar to the Commission's
11 domestic practices.

12 The fourth point, the substantive criteria, those
13 are -- we have not included them in the rule and that is the
14 substantive criteria presently being examined by Congress.
15 These would give a little bit more meat and bones to the
16 common defense and security judgment that we presently make.

17 These are being discussed by Congress and the rule
18 has been so drafted that whenever new legislation passes, we
19 can simply incorporate them into the rule.

20 And as I said in regard to the footnote, where there
21 has been some Staff disagreement, that disagreement has been
22 resolve. It was in connection with the Staff viewpoint on
23 discretionary hearings that would be forwarded to the Commission
24 and at the same time made public.

25 The way we have drafted the rule as we proposed to

1 the Commission -- let me read it to you so it is a little bit
2 more specific -- it goes as follows:

3 "The views of the Commission staff and
4 Executive Branch on whether a hearing should be
5 held as a matter of discretion will be placed
6 in the public document room upon receipt by the
7 Commissioners, except to the extent that:

8 1) These views are classified, or

9 2) Involve information which the Com-
10 mission staff or the Executive Branch has de-
11 termined would adversely affect the common
12 defense and security or the conduct of U.S.
13 foreign policy, if released at that time.

14 The Commission will review any Commission
15 staff decision to withhold its views."

16 COMMISSIONER GILINSKY: Well, let's see: Why
17 wouldn't that then be classified, if it falls in that cate-
18 gory?

19 MR. DORIAN: Foreign policy; there might be sensi-
20 tive discussions with other countries which may not be in some
21 way classified, or haven't yet been classified, which we may
22 in some way receive from the Executive Branch.

23 MR. GUHIN: Another clarification would be, I think,
24 would be is what you might put into a broad category of hearsay
25 or gossip. In other words, I think, the important thing is

1 that we all understand, is that most of our classified inform-
2 ation and even sensitive information comes from other agencies,
3 and it comes from our dealings and interaction with other
4 agencies and our knowledge of what is going on.

5 Now, we may say in unclassified form that if one
6 were to hold or not to hold a hearing, it could have a certain
7 impact, and then one may add; in a certain context of an inter-
8 national activity or country.

9 And then one could add something sensitive, for
10 example, with regard to what is going on in another agency with
11 respect to that very issue, although that in itself may not
12 be classified.

13 Or it may not have even developed to a point in
14 that agency where it is something that -- with the exception
15 of our contacts, that we would be involved in, but that we are
16 aware of it and do know of it.

17 And I think it would be difficult to automatically
18 say those kinds of things are classified. In fact, what this
19 has done is built in a flexibility of keeping classification to
20 a minimum and keeping it to only those things which are indeed
21 truly classified, but allowing the communications process for
22 things which may not be but which are nonetheless sensitive,
23 particularly in terms of developments, either internationally or
24 internally.

25 COMMISSIONER BRADFORD: Mike, what exemption under

1 Freedom of Information Act would that type of thing fall under?

2 MR. GUHIN: Well --

3 COMMISSIONER BRADFORD: In other words, if it is
4 not classified and you have this informal classification pro-
5 cess.

6 MR. GUHIN: Right. I am not sure, Depending on
7 the case I could probably --

8 MR. SHAPAR: If it is not classified, it would have
9 to be to the Commission given in confidence.

10 MR. GUHIN: Confidence.

11 MR. STOIBER: Or it could possibly be Exemption 9.

12 MR. GUHIN: Is that the one that deals with the --
13 that's the one I am thinking of, but it --

14 COMMISSIONER BRADFORD: What is it?

15 MR. STOIBER: Frustrate.

16 MR. GUHIN: Frustrate.

17 COMMISSIONER BRADFORD: Frustrate what?

18 MR. STOIBER: Frustrate the Commission's ability
19 to conduct its activities or programs

20 MR. PAGE: Exemption 5. Generally, Staff views
21 on a discretionary hearing, it will be held outside of a
22 proceeding context, it would generally be Exemption 5, as
23 far as recommendations go.

24 Here what is proposed is that virtually all cases
25 of Staff's views on discretionary hearings, may be contained

1 in a Commission paper, will be placed in the Commission public
2 document room, unless there is something classified or some-
3 thing sensitive involved, and the Staff thinks it is particu-
4 larly sensitive, but not classified, then the Commission will
5 have to concur on withholding it from the public before it
6 is done.

7 MR. GUHIN: Let me clarify:

8 I don't think it is anticipated on the part of the
9 Staff at all that -- no office, I think, -- that this would
10 be something that would be frequently utilized as such, but
11 that to draw a strict boundary which did not provide for this
12 kind of information to be part of coherent comprehensive pack-
13 age to the Commission did not make sense to us, in other words,
14 that there should be that flexibility to put all the informa-
15 tion in one document.

16 MR. PEDERSEN: I would just add that as Mike and
17 Jim pointed earlier, we do participate a great deal in these
18 interagency subgroup meetings and so on, and there we pick up
19 information about motivations and intentions and potential
20 actions that are predecisional in terms of those agencies,
21 that may nonetheless be extremely useful to you in considering
22 the substance of your decision or perhaps the timing of a
23 decision you may make.

24 I for one would be extremely reluctant to put that
25 kind of information in a document if I was sure it was going to

1 be made public, not only because it might jeopardize the de-
2 cisional process in the other agency, but certainly it would
3 jeopardize our ability to interact effectively on these sub-
4 groups where we in fact are made privy to some of this inform-
5 ation.

6 I think we have built in a clear safeguard where the
7 Commission can overrule the Staff on this and order that it
8 do be made public.

9 I think it would be unwise if the Commission didn't
10 recognize this and provide itself the ability to receive this
11 kind of information, if in fact it was truly useful.

12 COMMISSIONER BRADFORD: I think I can see the need
13 for it. I just wanted to make sure it was legal.

14 (Laughter.)

15 MR. PEDERSEN: Well, that's not my area.

16 (Laughter.)

17 MR. DORIAN: Let me add as a "by the way," that
18 once the Staff has used and has forwarded these views to the
19 Commission, these views -- it will notify the petitioners and
20 the applications that it has placed these views in the public
21 document and upon request, it will provide these people with
22 these views.

23 So we have gone one step further, once we have it.

24 COMMISSIONER KENNEDY: I am sorry, Tom; it noti-
25 fies them that it has been put in the public document room --

1 MR. DORIAN: And if -- it notifies them.

2 COMMISSIONER KENNEDY: Yes.

3 MR. DORIAN: And if they say: Look; I am in
4 California --

5 COMMISSIONER KENNEDY: I see.

6 MR. DORIAN: -- send me a copy, please, and then
7 we are going to say: Okay; fine; sure.

8 COMMISSIONER KENNEDY: Okay.

9 MR. DORIAN: So, anyway, we have tried to balance
10 -- expedite hearing procedures, try to make the rule as crisp
11 and readable and as simple as possible and tried to -- in one
12 part of the regulations, take someone who would like to apply
13 for license or would like to intervene in some proceeding,
14 lead them through from the beginning to the end and make them
15 understand exactly what we are trying to do, so that we have,
16 I think, negotiated this rather delicate balance to expedite
17 hearing procedures on the one hand and making sure that there
18 is the necessary and appropriate public participation in these
19 hearings and the licensing process.

20 MR. STOIBER: If I may, I would like to make one
21 comment on your timing of approval of the rule. I know that 134
22 pages is quite a mouthful. But I think there are some reasons
23 you ought to consider for moving as quickly as possible on
24 this.

25 And I think one of those is the pendency of this

1 court proceeding. From the President's remarks in Dehli, we
2 understand that another license is perhaps on the way shortly.

3 (Laughter.)

4 And I think the Commission could well be handicapped
5 in its ability to deal with that license if we have not made
6 some progress on the rule by that time.

7 COMMISSIONER KENNEDY: Why?

8 MR. STOIBER: The reason I say that is that I note
9 that the court in July, when it rescinded its order holding up
10 the next earlier follow-on license, noted in footnote 3 of its
11 decision its -- I guess I would have to say pique, or irrita-
12 tion at the fact that the Commission had not put a rule in
13 place prior to this time.

14 In the argument back in December of '76, we noted
15 that the procedures for the rule were underway. The court in-
16 quired about when the rule would be in place, and they are
17 obviously holding back on their decision until such time as
18 the rule is on the street. And I think it could be troublesome
19 there.

20 The other factor I would mention is also the
21 legislation that has been talked about here. The rule has
22 been drafted so that what ever comes out of the legislation
23 can be easily incorporated.

24 And I think the Congress -- I have had a number of
25 inquiries, also -- feels that it would be benefitted in its

1 consideration of its legislation by having the rule in place,
2 also.

3 MR. SHAPAR: Has the Commission given any public
4 statement about the time in which it intended to put out the
5 rule? It seems to me that they --

6 MR. STOIBER: Well, in June in testimony before the
7 Foreign Relations Committee -- the International Relations
8 Committee of the House, I believe former Chairman Rowden in-
9 dicated that he thought the rule would be in place by this
10 autumn, September. And we are a good deal past that now.

11 So I would urge that we try to get this in place
12 as soon as possible.

13 CHAIRMAN HENDRIE: Let me say -- yes; Peter?

14 COMMISSIONER BRADFORD: I do have some questions
15 about the hearing process. I can pursue them certainly with
16 some of these people on my own.

17 Do we contemplate another meeting on the document?
18 Obviously, we will have to do something more in order to approve
19 it, but I wonder --

20 CHAIRMAN HENDRIE: Yes. It has come up as consent
21 calendar item. What I would like to do is ask you to take due
22 note of the urgings for action and try to meet with International
23 Program to straighten out the points you have.

24 And after -- I don't know -- after a week or some-
25 thing like that, I will ask the secretary to see what the state

1 of the concurrent sheets and progress on them is from you all,
2 and see whether individual consultations in your offices are
3 better, or whether we need to meet again as a Commission --

4 COMMISSIONER KENNEDY: If there are going to be
5 changes in the regulation, I would assume that they would be
6 run by all of us before --

7 CHAIRMAN HENDRIE: Of course.

8 MR. GUHIN: If I may clarify --

9 COMMISSIONER KENNEDY: As a matter of procedure
10 and thinking of our own rule.

11 MR. SHAPAR: We wouldn't have it any other way.

12 COMMISSIONER KENNEDY: I know you wouldn't. That's
13 why I was saying that.

14 (Laughter.)

15 MR. GUHIN: After this very lengthy discourse and
16 all the things that are going to be coming before you, it has
17 dawned on me at the very end of the briefing, there will be
18 one other thing along with the others.

19 In the process of commenting on the rules, there
20 were three State comments, which I think are worth noting,
21 about the import of waste material for disposal in the United
22 States.

23 There were two things I would like to clarify;
24 they were only talking about low level waste. There is no
25 question that high level waste is subject to a specific import

1 license as such, and so therefore, would have to come under
2 specific review.

3 The concern by the states was that the way that
4 the import general license is now written, that technically
5 it would be possible for the licensee to import waste for
6 disposal.

7 We worked already to quite some extent in terms of
8 discussing this with NMSS. There is question as to whether
9 when they got it in, they could actually dispose of it.

10 So it is an issue, and we are now looking at it,
11 both NMSS and ourselves, in terms of whether it would be
12 best handled in the domestic licensing context rather than
13 touch the import rule, or by a conforming change here or what-
14 ever.

15 But it is an issue which will be taking some weeks
16 or even a few months, to resolve.

17 And again, I would point out that it is a technical
18 issue, that one need not worry about the low level waste as
19 such, flowing into this country for disposal at this time,
20 although it is a legitimate concern on the parts of the states,
21 having this clarified.

22 COMMISSIONER KENNEDY: I thought we made some
23 national policy statement to the effect that we thought that
24 might be helpful to spent fuel --

25 MR. GUHIN: That is essentially high level waste.

1 The spent fuel would come under the high level waste, and
2 that is a whole different category which we discussed earlier.

3 MR. SHAPAR: Only when it would enhance our non-
4 proliferation objectives.

5 COMMISSIONER KENNEDY: Right.

6 CHAIRMAN HENDRIE: I take it that the Staff pro-
7 posal on 616 includes the recently agreed upon paragraph to
8 Section 110-90, Sub(c), which was circulated as a separate
9 piece of paper, that that paper said we have got one area where
10 we are still arguing. And here is a thin paper that says we
11 have agreed.

12 And I assume the Staff's proposal includes this,
13 so if I say I concur, for instance, with 616, that you will
14 understand that it includes --

15 MR. SHAPAR: That's the one Mr. Dorian read.

16 MR. GUHIN: That's the one he just covered, right.

17 CHAIRMAN HENDRIE: Okay.

18 I want to thank the Staff for this extended briefing
19 and discussion this morning. I think it was a good coverage
20 of the International Program area and of the rule.

21 And I think it is very helpful discussion, very
22 helpful information.

23 Thank you.

24 (Whereupon, at 11:47 a.m., the hearing in the
25 above-entitled matter was adjourned.)

