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See Tab 78, 1

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Historical notes

for A.S. ...

Nov. 1981

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OFFICE OF THE PRESIDENT-ELECT

WASHINGTON, D.C. 20270

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MEMORANDUM

TO:

FROM: James L. Malone, *JLM* Chairman, Non-Proliferation
Coordinating Committee

SUBJECT: Recommendation for Reagan Administration Non-Proliferation
Policy

Attached is the Recommendation for Reagan Administration Non-Proliferation Policy which has been prepared by the Non-Proliferation Coordinating Committee. This report represents the views of industry groups such as the American Nuclear Society and the Atomic Industrial Forum and incorporates the positions recommended by the Subcommittee on Nuclear Power and Electric Utilities of Governor Reagan's Energy Policy Task Force which was commissioned before the election.

Policy changes recommended by the former Ambassador and Special Representative for Non-Proliferation, when he left office were also available to the Coordinating Committee and have been drawn upon in preparing the report. Ambassador Keith Glennan, a former U.S. Representative to the International Atomic Energy and former Administrator of NASA contributed to the report.

Mr. Kenneth Davis participated actively in the preparation of this report as a special adviser to the Coordinating Committee. Mr. Davis had been commissioned by William Timmons for the Transition Office to consult with outstanding experts in the nuclear community and provide recommendations on matters affecting agencies with nuclear energy responsibilities for the transition teams. In addition, the new Chief Counsel of the Senate Energy Commission participated actively in the work of the Coordinating Committee and in preparing this report.

The report has been coordinated with the transition teams for the State Department, the Department of Energy, the Nuclear Regulatory Commission, and the Arms Control and Disarmament Agency and is to be an integral part of the reports of each of those

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RECOMMENDATION FOR THE REAGAN ADMINISTRATION NON-PROLIFERATION POLICY

Focus of US Non-Proliferation Efforts

The need to stop the spread of nuclear explosives is one of the greatest challenges facing the United States in the 1980s and beyond. The non-proliferation policy of the previous Administration failed to reduce the potential of additional countries for obtaining nuclear explosives. The previous policy emphasized broadly-applied measures to prevent misuse of the nuclear fuel cycle for electrical power generation. These measures, which included attempts to reverse the reprocessing programs of advanced industrial states, alienated those nations whose support is vital to combatting proliferation in regions where its potential is a serious threat. Immediate and effective steps should be taken to redress this situation and to restore US credibility and influence. The effectiveness of the US non-proliferation effort would thereby be greatly enhanced.

Recognizing that the United States is becoming isolated on major non-proliferation and nuclear fuel cycle issues, there should be an immediate US effort to rebuild the international consensus on these questions. Further, it is important that the United States treat proliferation primarily as a security problem. The unnecessary US efforts aimed at countries posing no risk should be discontinued, particularly in view of international energy security needs. Regarding nations where the potential for acquisition of nuclear explosives is a risk to US security interests, US efforts should be vigorously increased, as each situation requires. In particular, the United States should concentrate on understanding and dealing with the motivations and technical efforts of nations now seeking nuclear explosives.

Further discussion of the needed redirection of US policy is contained in the paper at Tab A. Set forth below are the basic criteria which should be adopted by the President-elect as the basis for the non-proliferation policy of his Administration.

Non-Proliferation Policy Criteria

1. The United States should make every effort to restore its credibility and reliability as a nuclear supplier. By enhancing the US role in international nuclear commerce, the United States will thereby strengthen its ability to achieve its non-proliferation objectives through and with the cooperation of other nations.

2. Agencies with responsibilities for non-proliferation policy should be restructured to the extent necessary to provide for centralized formulation and implementation of such policy. This criterion is more fully discussed in the paper at Tab B; the three most critical elements are as follows:

- The NRC responsibility for the issuance of export licenses should be transferred to the State Department. In the future, international activities at the NRC

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should be limited to cooperation regarding health and safety matters, safeguards and physical protection. With respect to export licensing the NRC could contribute its technical expertise in areas such as safeguards and physical protection, but its role should be a consultative one only.

- In the State Department a bureau should be established having sole responsibility within the Department and lead action within the Administration for nuclear affairs. The new bureau should be led by an Assistant Secretary reporting directly to the Secretary of State.
- Officials appointed to positions with responsibility for non-proliferation matters should share the view of the President-elect that nuclear energy is vital not only to this nation's energy security but to that of US trading partners.

3. Non-proliferation policy should be determined and implemented in the context of overall US international security requirements.

Accordingly, the policy of denial of US nuclear supply should be applied only to countries posing a threat to US international security interests.

This does not really follow - with a regime in balance; spread of nuclear capabilities out U.S. exports approach or denial.

4. Existing international arrangements such as the International Atomic Energy Agency (IAEA) and the Non-Proliferation Treaty (NPT) regime should be affirmed as the most credible institutional approach to dealing with proliferation. These institutions should be further strengthened and given greater US support to provide for an improved universal regime for the control of international nuclear commerce.

- US support to the IAEA in the form of financial contribution, manpower and technical advice should be increased significantly.
- INFCE findings which stress further development of strong international institutions should be endorsed as the preferred means of controlling proliferation.
- International exercises under the auspices of the IAEA, such as the effort to develop an international plutonium storage regime, should be vigorously supported.
- Development of improved expertise in the safeguarding of advanced reactor fuel cycles and enrichment, reprocessing and plutonium handling facilities should be sought through US support to the IAEA in furtherance of the need to adequately safeguard new and more sophisticated facilities which will be deployed in the coming decades.

5. The Nuclear Non-Proliferation Act and the Atomic Energy Act should be revised as soon as possible to redress the inadequacies

of the policy of the last four years. Such statutory reform, among other things, should

- Remove retroactive application of new conditions for export with respect to previous supply commitments;
- Disavow unilateral imposition of new controls as a condition of supply;
- Restore US participation in the international development and management of the nuclear fuel cycle; and
- Affirm that existing supply commitments will be honored and that there will be continuity of supply.

6. Pending achievement of needed legislative action, several immediate actions (further discussed on pages 4-5) to reestablish US credibility and reliability should be taken, including the following:

- Requests for retransfer of nuclear material for reprocessing in France or the United Kingdom should be approved without delay, in accordance with statutory requirements.
- Time constraints for processing export actions in the Executive branch should be strictly followed; and
- Following Executive branch approval of an application for an export license, the export should be authorized by Executive Order in each case that the NRC fails to act within the time provided by law.

7. The United States should seek to develop new and expanded commercial relations in the field of nuclear energy with nations which share US non-proliferation objectives.

8. Pursuit of legitimate energy security objectives by other nations should not be hampered by US interference in such sovereign matters. Similarly, US nuclear energy programs should be encouraged to proceed and should be supported in accordance with US energy security needs and US international environmental policy.

- Past US attempts (1) to thwart civil reprocessing programs of several major industrialized nations and (2) to resolve domestic environmental problems in some recipient states, had no real effect on controlling proliferation and only served to injure US international relations. These practices should be disavowed.
- Development of the breeder and other advanced nuclear fuel cycles, enlargement of enrichment capacity and construction and operation of reprocessing and recycle facilities should be supported to provide for long-term US energy needs. As appropriate, such technology should

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really quite
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be shared with nations demonstrating a legitimate need, In addition, US programs to further improve the safeguard-ability of facilities incorporating such technology should be increased and the results of such programs made available to other nations where needed and to the IAEA.

Immediate Actions

Policy Direction

The President-elect should advise each of his principal advisers and appointees who will be concerned with nuclear matters of the elements of his policy. These elements would form the basis for positions appointees would take during confirmation hearings and serve as interim guidance for Executive branch agencies. After January 20, the President's non-proliferation policy should be announced and adequately spelled out in an appropriate forum at the earliest possible time. This would serve to rebut the April 1977 statement and set the tone and framework for implementation of the new policy.

Legislative Action

Statutory change and reorganization should be sought to permit the unimpeded execution of the new policy. Reorganization authority valid until April 1, 1981 could be used to effect some of the changes. Principal elements of a reorganization plan or a bill to amend the Nuclear Non-Proliferation Act and the Atomic Energy Act are contained in a paper at Tab C.

US Nuclear Programs

Existing nuclear programs should be redirected to enhance the use of nuclear power for US and international security needs.

US Export Licensing

- o Legislative action should be sought to transfer licensing authority to the State Department, and this is further described in a paper at Tab D.
- Pending statutory changes, if the Executive branch approves a license and it is not issued by the NRC within statutory time periods, the President should authorize the export by Executive Order as provided in the law. This should be done routinely if license applications are not processed on a timely basis by the NRC.
- o Use of general licenses on a broader scale to facilitate nuclear commerce should be given immediate consideration.

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- o Streamlining of the export license process should continue with emphasis on greater efficiency and issuance of licenses for longer terms and generic programs.
- o Executive Order 12114 and the Unified Procedures thereunder should be terminated, thus obviating the need for the preparation of an environmental document in connection with issuance of export licenses.

Consultations with Other Nations

Consultations should be undertaken with appropriate officials of major industrialized nations and leading developing countries to restore a constructive dialogue regarding non-proliferation objectives and international nuclear commerce, including supplier control over reprocessing and plutonium use. Views of such nations should be accorded proper weight in final policy revisions.

Retransfer (MB-10s) and Reprocessing Approvals

A policy guideline should be announced as soon as possible to provide the basis for issuance of US approvals in a more effective manner, which should include the following elements;

- o Requests for retransfer for reprocessing in the United Kingdom or France will be approved without linkage to other issues and consideration will be given to providing such approvals on a generic or programmatic basis.
- o Reprocessing of US-supplied material in a country of no proliferation risk, such as Japan, will be approved when a need for such processing, such as for waste management, recycle or advanced reactor use, is established.
- o Pending legislative action, once agencies, including the NRC, have been consulted as required by statute regarding DOE intention to approve such requests, DOE approval and State Department concurrence should be implemented (Congressional notification and Federal Register notice) without delay.
 - To facilitate this process, ACDA should inform DOE, on a generic basis, that it does not intend to prepare any Nuclear Proliferation Assessment Statement (NPAS) for such retransfers.
 - Failure of the NRC to provide timely comments regarding the proposed approval should not delay its issuance.

Approval of Plutonium Use

A policy guideline should be announced as soon as possible to provide the basis for issuance of US approvals, which could include the following elements;

- o Use of plutonium separated in the United Kingdom or France can be approved for use in recycle or advanced reactor programs (1) in those countries on a programmatic basis and (2) in other EURATOM nations that pose no proliferation risk on a case-by-case basis and, after further review, on an agreed programmatic basis.
- o Use of plutonium separated in other nations adhering to the NPT that pose no proliferation risk (e.g., Japan) can be approved for use in recycle and advanced reactor programs on a case-by-case basis and, after further review, on an agreed programmatic basis.

Every effort should be made to develop a common position on these matters with other key nations.

Agreements for Cooperation

Pending enactment of changes in the NNPA and the Atomic Energy Act, the statutory program for negotiation of agreements or amendments to existing agreements should be promptly reviewed, and US negotiating positions should be made consistent with the policy of the new Administration. Cooperation under the US-EURATOM agreements should continue by exercise of the waiver provision in the law prior to March 10, 1981.

Enrichment Contracts

- o An aggressive program should be developed immediately to provide the basis for concluding additional enrichment contracts with recipient nations which should include the following:
 - Criteria will continue to provide desirable pricing and flexibility and, to the extent possible, be made more attractive.
 - New contracts will provide a clear US obligation to deliver enriched material in accordance with an agreed delivery schedule. Such commitment to deliver will include issuance of all necessary licenses for export so that the recipient nation will have no greater burden than that imposed upon domestic customers.
- o Existing contracts should be reformed, where necessary and consistent with statutory requirements, to relieve recipient nations of obligations if export licenses are not issued by the United States due to imposition of new conditions after the date of the contract.

Needed Redirection for US PolicyNon-Proliferation Efforts

Denial of nuclear supply and other sanctions have proven to be weak instruments for preventing nations from acquiring capabilities for explosives manufacture. The United States should depend on these measures less than heretofore and give greater weight to reducing motivations to acquire weapons. If denial and sanctions are to be useful at all, success will depend on concerted efforts by the other major industrial nations and by the non-industrial uranium producers. This dependence, and the importance of others in collaborating on security guarantees and resolution of disputes, calls for early efforts to resolve differences with US allies on energy and proliferation matters.

There are only a few states of near-term concern. There are others of a longer term concern, and in these cases vigorous intelligence efforts should monitor the situation closely.

There should be no concern about those industrialized nations with substantial and expanding commitments to nuclear electric power, e.g., Japan and the Federal Republic of Germany.

The United States should continue to discourage the indiscriminate spread of sensitive nuclear technology and facilities. However, the United States should consider cooperation in such areas either in a multinational effort or bilaterally, with those nations demonstrating a legitimate need and where proliferation poses no risk. Slowing the undesirable spread of sensitive facilities should be directed primarily to reducing nations' motivations to acquire them. To the extent that the motivation is concern about timely access to adequate amounts of uranium or enrichment services at competitive prices, stockpiling abroad of fresh fuel could be a promising alternative. Willingness by the United States to store or reprocess foreign spent fuel would reduce the motivation to acquire a national reprocessing capability. A US commitment to assist in the development of fuel cycle support facilities worldwide (e.g., a reprocessing facility in Japan and an enrichment plant in Australia) would also support this objective.

Recognizing that reprocessing is going to occur on a large scale in some countries and that development of at least pilot-scale facilities is likely in some others, the United States should:

-- Vigorously support development of an international plutonium storage (IPS) system, acknowledging that the price of widespread acceptance of such a system will be less strict release conditions than desirable, but that widespread acceptance of IPS will impede the deployment of separated plutonium under national control;

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-- Recognize the limited value of "timely warning" as the predominant criterion for non-proliferation policy, not because "timely warning" is irrelevant, but because past responses to proliferation developments suggest the limited opportunities to make use of it;

-- Seek universal acceptance of full-scope safeguards as a condition of new commitments of nuclear supply; and

-- Support the proposition that IAEA safeguards feasibility should be demonstrated in the design stage of sensitive facilities. Commercial and technical involvement in the nuclear power programs of other countries will permit the United States to influence the content of those programs.

Nuclear Supply Arrangements

The decision to require others to accept US unilaterally-determined changes in existing agreements for nuclear cooperation or supply commitments as a condition for continued commerce has been one of the most offensive elements in the previous Administration's policy. Attempts to implement this objective have had adverse effects on the image of the United States as a world leader with respect not only to nuclear matters but to commerce and foreign policy generally.

US problems in this respect with EURATOM and Japan are of special concern and require early resolution. By the terms of the US-Japan agreement for cooperation, US approval must be obtained prior to reprocessing of US-supplied reactor fuel or use of plutonium separated during such processing. The United States should establish with Japan a cooperative basis that takes safeguards and physical protection into account for generic approvals for reprocessing and plutonium use to support Japanese nuclear energy programs.

The United States is required by the NNPA to seek from EURATOM prior approval rights over (1) reprocessing of US-supplied material and (2) use of the plutonium separated in such processing. In the interim before the right to control reprocessing of US-supplied material is obtained, nuclear cooperation with EURATOM countries can continue only under an annual Presidential waiver. In the renegotiating the US-EURATOM agreements or otherwise reaching a nuclear settlement, the United States should establish the principle of US consent rights, but agree with EURATOM on the criteria for exercising these rights predictably and on a basis that meets the needs of EURATOM countries, which could include programmatic approvals.

The United States must be particularly sensitive to the interests of the other major industrial nations, particularly those most committed to nuclear power, because their support

is essential to deal with security problems of all kinds, including proliferation. The United States cannot expect these countries, of no proliferation risk, to accept US-defined limits on their national nuclear energy decisions. They may be prepared to phase reprocessing and plutonium use so that accumulation of plutonium stocks will be consistent with near-term needs, including what they judge to be adequate buffer stocks. But it is unrealistic to expect them to agree to forego thermal recycle or to constrain reprocessing more severely.

International Programs

The IAEA is the paramount international organization for exchange of technical information on nuclear safety and peaceful nuclear applications. It is also entrusted with responsibility for ensuring through its safeguards activities that nuclear material and facilities intended for peaceful uses are not diverted from such declared purpose. To continue to be successful, the IAEA must meet the needs of all its members in a balanced way; yet, for a variety of reasons, the present balance between the Agency's technical and safeguards programs is under challenge by an increasingly active coalition of non-aligned nations. The focus of US efforts regarding the IAEA should be to:

- o Reverse the trend of the increasing "politicization" of the IAEA;
- o Contribute greater financial, technical and manpower resources to strengthen its international safeguards program in view of the increasing demand on the regime; and
- o Increase support for sound programs of technical assistance, particularly to developing countries.

The United States should play a key role in selecting the next Director General of the IAEA scheduled to be elected in 1981. The US choice for this position should be able to support the above objectives.

In various international studies now under way under IAEA auspices -- on plutonium storage, spent fuel management, and assurances of supply -- the United States has opportunities to restore and expand a consensus on nuclear fuel cycle and non-proliferation questions. The United States should take a leading role in these studies to achieve this end and to ensure that the results contribute to stronger international energy and non-proliferation regimes. With respect to US domestic nuclear programs, consideration should be given to ways in which the United States can contribute to related international efforts in such areas as health, safety, safeguards and physical protection.

The other major international regime -- the NPT -- commands wide support. Certain aspects of recent US non-proliferation policy, however, have led to greater questioning of the continued validity of the NPT and have threatened to erode its future viability. US policy and export activities should fulfill the US obligation under Article IV regarding the "fullest possible exchange" of nuclear supply for peaceful purposes and should recognize that a nation's membership in the NPT regime represents its most important commitment to non-proliferation. Similarly, the United States should weigh its obligations under Article VI of the NPT, as well as other possible non-proliferation advantages, in formulating negotiating positions for nuclear arms control agreements. The NPT regime will suffer demonstrably, if by the next review conference in 1985 significant progress has not been accomplished in limitations on nuclear weapons testing and deployment by the nuclear weapon states.

Non-Proliferation Policy
Implementation in the Executive Branch*

Formulation and implementation of non-proliferation policy have suffered during the last four years due to the existence of a number of offices in the State Department and in other agencies which had overlapping responsibilities. Relatedly, certain officials were given high level mandates, but operating staffs were assigned to different offices. The following restructuring of the agencies involved will permit unified leadership within the Administration:

STATE DEPARTMENT

- ✓ ○ A Bureau of Nuclear Affairs should be created in the State Department under an Assistant Secretary for Nuclear Affairs which will have the responsibility for all non-proliferation, nuclear energy and nuclear weapons matters which are now lodged in the Bureau of Oceans and International Environmental and Scientific Affairs (OES) and the Bureau of Politico-Military Affairs (PM) as well as in certain other units in State and in certain units in DOE, ACDA and the NRC.
- The Assistant Secretary for Nuclear Affairs would have the nuclear responsibilities now ascribed to the OES Assistant Secretary and the PM Director, and formerly to the Ambassador at large and Special Representative of the President for Non-Proliferation Matters and the Deputy to the Under Secretary for Security Assistance and Science and Technology.
- ✓ ○ The Assistant Secretary for Nuclear Affairs would report to the Secretary of State and would have lead responsibility within the State Department on nuclear affairs.
- Three Deputy Assistant Secretaries under the Assistant Secretary for Nuclear Affairs would be responsible for (i) policy development and implementation, (ii) commercial relations and (iii) nuclear weapons and military application. Non-proliferation and international nuclear energy responsibilities now within the Department of Energy or the Arms Control and Disarmament Agency which are duplicative of the responsibilities of these Deputy Assistant Secretaries would be merged into appropriate offices of the new bureau.
- The US Representative to the IAEA would report to the Assistant Secretary for Nuclear Affairs.

* The recommendation regarding the future role of the NRC is discussed in the paper at Tab D.

- o NRC and DOE export functions, when transferred to the State Department, would be placed in the Bureau of Nuclear Affairs in a separate operations office headed by a Director who would report to the Assistant Secretary for Nuclear Affairs.

DEPARTMENT OF ENERGY (DOE)

- o All responsibility for non-proliferation and international nuclear affairs now situated in various offices in DOE, should be centralized, preferably under the DOE Assistant Secretary for Nuclear Energy (NE). After additional review, it may be deemed desirable to transfer all export responsibilities (other than those relating to Restricted Data) to the Bureau of Nuclear Affairs in the State Department. Such transfer will require modifications to the Atomic Energy Act.
- The Office of Nuclear Affairs under the DOE Assistant Secretary for International Affairs (IA) could be transferred to the DOE Assistant Secretary for Nuclear Energy.
- Responsibility for approval of retransfer (MB-10) and reprocessing requests, and exercise of other US controls under agreements for cooperation could be transferred from the IA Office of Nuclear Affairs to the Bureau of Nuclear Affairs in the State Department.
- Responsibility for approval of technology transfers other than those involving Restricted Data should be removed from the DOE Office of International Security Affairs under the Assistant Secretary of Defense Programs (DP) and could be placed in the Bureau of Nuclear Affairs in the State Department.
- Responsibility for non-proliferation now in varying degrees vested in the IA Office of Nuclear Affairs, the Office of Energy Research, the DP Office of International Security Affairs and the NE Office of Non-Proliferation and Environmental Affairs should be centralized, preferably in an office under the DOE Assistant Secretary for Nuclear Energy.
- Responsibility for conclusion and implementation of international technical assistance agreements and enrichment and other supply contracts and for IAEA technical support activities should be centralized, preferably in an office under the DOE Assistant Secretary of Nuclear Energy.

ACDA NON-PROLIFERATION BUREAU

- o Nuclear fuel cycle activities now undertaken in the ACDA/NP Nuclear Energy Division should be transferred to an appropriate office under the DOE Assistant Secretary for Nuclear Energy. Responsibilities of the ACDA/NP Nuclear Exports Division should be partially transferred to the Assistant Secretary for Nuclear Affairs in the State Department. Intelligence activities as well as a certain segment of the export activities of the Nuclear Exports Division should remain, along with the ACDA/NP Safeguards Division, under one or more appropriate ACDA Assistant Directors. The remaining unit and positions will be used to implement ACDA statutory activities in the export process and to be available as a source of safeguards and verification advice to the Bureau for Nuclear Affairs in the State Department.

WHITE HOUSE

- o A member of the NSC staff should be assigned responsibility for all nuclear matters and should coordinate policy issues or requests for Presidential approval. The NSC staff should not act as a point of policy formulation which could interfere with the timely execution of policy by State Department officials.
- o The President should establish a White House nuclear committee with responsibility for advising the President on decisions with respect to (1) major or sensitive nuclear supply commitments; (2) the issuance of Executive Orders when required under the law to achieve overriding US non-proliferation objectives; (3) the termination of nuclear supply for national security reasons; and (4) other major non-proliferation issues.

Revisions to the Nuclear Non-Proliferation Act (NNPA)
and the Atomic Energy Act (The Act)

Immediate steps should be taken in coordination with appropriate members of Congress and their staffs to seek revisions in the present statutory framework governing international nuclear cooperation. Desired revisions should be agreed and a draft bill prepared at the earliest date possible. This approach should be coordinated with the Congress to avoid the introduction of multiple bills. Elements of the bill should include

- o A statement of policy that
 - The United States recognizes and supports the legitimate energy needs of other nations;
 - US supply commitments will be honored;
 - New conditions for nuclear supply will not be imposed unilaterally or retroactively; and
 - The United States will provide material, equipment and technology to nations which present no proliferation risks, on a continual and timely basis.
- o If not accomplished by implementation of a reorganization plan, transfer of the NRC export licensing function to the State Department and discontinuance of other NRC international activities other than cooperation related to health and safety, physical protection and safeguards (Thus, for example, NRC would no longer comment on MB-10 requests or other subsequent arrangements);
- o Subject to further consideration, possibly the transfer from DOE to the State Department of responsibility for approving (1) retransfer (MB-10) and reprocessing requests and exercising other controls under agreements for cooperation, and (2) exports of nuclear technology other than Restricted Data;
- o Elimination of redundant responsibilities vested in different agencies so that each concerned agency would continue to participate in consideration of export matters only to the extent necessary to provide advice consistent with its statutory mandate;
- o Provision for an enhanced US contribution to the International Atomic Energy Agency (IAEA),
 - To permit further development of the IAEA as an institution which could more effectively monitor international nuclear commerce and relieve the need for bilateral control arrangements; and

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- To provide for further development of the international safeguards program including more effective monitoring of sensitive facilities and warning of diversion or misuse in a more real time environment;
- o Clarification of terms and criteria and a clearer definition of the jurisdiction of the Commerce Department to license commodities which have a dual use;
- o Provision for a more specific commitment by the United States to international fuel cycle endeavors;
- o Minimization of the need for Congressional review of Executive branch actions;
- o Limitation or termination of nuclear cooperation only in event of (1) a detonation of a nuclear explosive, (2) an IAEA determination of an abrogation or material violation of a safeguards agreement or (3) a material violation of an agreement for cooperation or other international agreement to which the United States is a party (In this respect, similar modification should be made to the Symington and Glenn Amendments to the Foreign Assistance Act.);
- o Revision of criteria for new or amended agreements for cooperation to require only those controls necessary to insure conformity with non-proliferation policy of the new Administration;
- o Changes in the approach to concluding an agreement for cooperation to
 - Streamline the process,
 - Treat the negotiations as a trade matter, and
 - Provide for commitments to restore US credibility as a supplier; and
- o Revision of the procedures to shorten the time frame for bringing an agreement for cooperation into force, such as by providing
 - For approval of the agreement by the Secretary of State and his transmittal of the agreement to the Congress for a review period which could also be shortened; and
 - That preparation of the NPAS should be discretionary, and that the scope of the NPAS be more narrowly defined.

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NRC ROLE IN EXPORT LICENSING

ISSUE

What should be the role of the NRC in the nuclear export licensing process?

BACKGROUND

At the time of its creation in 1975, the NRC inherited from its predecessor agency the AEC, the function of issuing export licenses for nuclear power reactors, nuclear fuel and major components sold abroad for peaceful uses. The ministerial function performed by the regulatory/licensing staff of the AEC has been broadened and the NRC has taken on a major policy role in the decision-making process for which, subject to Presidential override, it is the final authority. The Nuclear NonProliferation Act of 1978 (NNPA) confirmed this role for the NRC.

From January through October 31, 1980, the NRC issued 464 export licenses and amendments to existing licenses including requests for amendments. Of the 464 licenses issued, 105 were major licenses in three categories: special nuclear material, source material, and reactors. The export licenses considered to be minor include 84 for small quantities of special nuclear material, 31 for source material, 60 for byproduct material, and 184 for components. (NRC also issued 24 import licenses, including amendments.) Approximately eight staff personnel are engaged full-time in this function.

Both the Kemeny and Rogovin Commissions investigating TMI recommended that the export licensing function be removed from the NRC because it tended to distract attention from the primary health and safety functions. Others have argued that it should be transferred to the Executive Branch (presumably, the Department of State) since it involves decisions which are essentially foreign policy decisions for which the agency has no direct responsibility or competence. On the other hand, it is argued that the agency has competence in matters of safeguards and physical protection which are important determinants in deciding whether export licenses should be issued and that this competence should be brought to bear. Strong Congressional forces in both houses have supported a continued role for the NRC in export licensing, but there also are strong forces (led by Senator McClure) who feel otherwise.

There is little doubt that the present NRC role in the export licensing process involves the Commissioners directly in the decisionmaking process on matters in which they must rely heavily, if not exclusively, on the judgments of the Executive Branch (principally, the Department of State). This role also necessitates a major commitment of time on their part. Moreover, there is at least some evidence that the NRC role introduces a measure of uncertainty in the export licensing process which detracts from the desired U.S. image as a reliable supplier.

CONCLUSIONS

The important contribution of the NRC to the licensing process should be in the area of its basic expertise, i.e., safeguards and physical protection. This does not require that it be a final authority in the decisionmaking chain as presently is the case. Rather it should serve in a consultative role subject to strict time limitations.

- To place the responsibility for license issuance in the Executive Branch (i.e., the Department of State) would require amendment of the Nuclear NonProliferation Act which could be accomplished either by a direct amendment legislatively or by a Presidential reorganization pursuant to the Reorganization Act.

- Amendment of the NNPA by legislative action has the advantage that it could be accomplished within the framework of a broader package of revisions to the Act likely to emerge in connection with the mandated Congressional review of the Act this year. A Presidential reorganization conceivably could be accomplished more quickly but unless it was part of a broader reorganization package it would risk becoming a lightning rod for opposition in light of its narrow focus. A reorganization proposal also would be considered by the Government Operations Committee of the Senate where strong opposition from Senator Glenn could be expected. Congressmen Zablocki, Bingham and Clarence Long are also likely to vigorously oppose any shift of licensing responsibilities.

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