

UNITED STATES GOVERNMENT

Memorandum

TO : W. B. McCool, Secretary
(THRU) H. L. Price, Acting Director of Regulation

FROM : R. Lowenstein, Acting Director
Division of Licensing and Regulation

SUBJECT: PROPOSED REVISION TO PARTS 10 CFR 30 AND 10 CFR 40
AS RELATED TO CUBA

DATE: APR 15 1961

4/21/61
Group m.
Murray

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Attached hereto for Commission consideration is a staff paper which proposes revisions to Parts 10 CFR 30 and 10 CFR 40 to control more stringently the export of byproduct and source material to Cuba.

Attachment:
Staff Paper

THIS DOCUMENT HAS BEEN DECLASSIFIED UNDER
THE PROVISIONS OF EO 12958, DATED 4/17/95

By Authority of 2635 RM
(Declassification Authority/Number)

Date of Declassification 3/9/02

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ATOMIC ENERGY COMMISSION

EXPORT LICENSING POLICY TOWARD CUBA

Report to the Acting Director of Regulation by the
Acting Director of Licensing and Regulation

PURPOSE

1. To consider modification of the Commission's decision on AEC-R 30/23 to take account of Department of State suggestions for revisions in the notice of rule-making and in the public announcement.

SUMMARY

2. At Regulatory Meeting 102 on May 9, 1961, the Commission, among other things,

Approved, subject to coordination with the Department of State, the amendments to 10 CFR 30 and 40 contained in Appendix "C" to AEC-R 30/23, as revised, to become effective upon publication in the Federal Register.

3. By memorandum dated May 18, 1961, (Appendix "A") the Department of State was asked to concur in the text of regulations and the public announcement, and State's guidance was requested on the timing and method for releasing the announcement to the public.

4. The State Department's response is attached as Appendix "B".
In summary, the State Department:

- a. Continues to believe it would be desirable for the Commission to take the proposed action;
- b. Suggests that references to the U.S. - Cuban Agreement for Cooperation be limited to one statement in the Notice of Rule Making and not be made at all in the public announcement;

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This material contains information affecting the national defense of the United States within the meaning of the espionage laws, Title 18, U.S.C., Secs. 793 and 794, the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

Date of Declassification 3/9/02

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meaning of the embargo laws, Title 18, U.S.C.,
Secs. 793 and 794, the transmission or revelation
of which in any manner to an unauthorized person
is prohibited by law.

- c. Suggests Cuba not be carried in a list of Soviet Bloc countries, as proposed, ^{instead,} that Cuba be listed in the same context with, but not as a country included in, 10 CFR 40.90, Schedule A.
- d. Suggests that "the announcement of this change be handled routinely. Should any inquiries be made as to the significance of this action at this time, we suggest that your press officers reply that the timing of this action has no significance. They might amplify this statement along the line that this is a routine action which has been in process for some time and has just recently been reached on the Commission's schedule of business".

5. The staff has no objection to the Department of State's recommendations. The proposed letter to the Chairman, JCAE, which was attached as Appendix "E" to AEC-R 30/23, has been modified to take into account the comments contained in the State Department memorandum. The modified letter is attached as Appendix "B".

6. Pursuant to a request from Commissioner Graham the Division of International Affairs obtained from the Department of State an unclassified memorandum (see Appendix ^F ~~D~~) attesting to their continued belief that it would be desirable for the AEC to bring its procedures into conformity with national export policy respecting Cuba.

STAFF JUDGMENTS

7. The Division of International Affairs and the Office of the General Counsel concur in the recommendation of this paper. The Office of Public Information concurs in recommendation 8c.

RECOMMENDATION

8. The Acting Director of Regulation recommends that the Atomic Energy Commission:

- a. Approve the amendments to 10 CFR 30 and 40 contained ~~in Annex 2 to~~ Appendix "C", to become effective upon publication in the Federal Register;
- [REDACTED]

- b. Find that general notice of proposed rule making and public procedure thereon are unnecessary and would be contrary to the public interest; and that good cause exists why these amendments should be made effective upon publication in the Federal Register without the customary 30-day period of notice;

c. Note that the public announcement attached as Annex-1 to Appendix ~~was~~ ^E will be issued; and

d. Note that the Joint Committee will be informed by letter such as Appendix ~~was~~ ^D.

APPENDIX "A"

MEMORANDUM FOR: Mr. Philip J. Farley
Department of State

May 18, 1961

SUBJECT: EXPORT LICENSING POLICY TOWARD CUBA

This is to inform you that the Commission has approved the staff's recommendation that the AEC's regulations governing the export of by-product and source material to Cuba be amended to reflect consistency with the export restrictions announced by the Department of Commerce with respect to commodities under the agency's licensing jurisdiction. There are attached hereto copies of the proposed "Notice of Rule Making" in connection with amending 10 CFR 30 and 40, as well as copies of the proposed public announcement on this matter.

This action was taken by the Commission subject to confirmation that it still meets with the Department's approval in view of recent developments.

We would also appreciate your concurrence in the text of the regulations and the public announcement, and your guidance on the timing and method for releasing the announcement to the public.

We are prepared to move ahead and place the amendments into effect upon receiving your affirmative response to this memorandum. These documents will of course be declassified upon release.

A. A. Wells, Director
Division of International Affairs

Enclosures:

1. Notice of Rule making
2. Proposed Public Announcement

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Approved

MAY 18 1961

MEMORANDUM FOR: Mr. Philip J. Barry
Department of State

SUBJECT: EXPORT LICENSING POLICY TOWARD CUBA

This is to inform you that the Commission has approved the staff's recommendation that the AEC's regulations governing the export of by-product and source material to Cuba be amended to reflect consistency with the export restrictions announced by the Department of Commerce with respect to commodities under that agency's licensing jurisdiction. There are attached hereto copies of the proposed "Notice of Rule Making" in connection with amending 10 CFR 30 and 40, as well as copies of the proposed public announcement on this matter.

This action was taken by the Commission subject to confirmation that it still meets with the Department's approval in view of recent developments.

We would also appreciate your concurrence in the text of the regulations and the public announcement, and your guidance on the timing and method for releasing the announcement to the public.

We are prepared to move ahead and place the amendments into effect upon receiving your affirmative response to this memorandum. These documents will of course be declassified upon release.

A. A. Wells, Director
Division of International Affairs

- Enclosures:
1. Notice of Rule Making
 2. Proposed Public Announcement

cc: W. B. McCool, Secretary

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DIA:AA/IA DIA:AA/IA DIA:AD/P&T L & R DIA:D-DIR DIRM-DIRECTOR
GAMSON:bb Slawson Bengelsdorf Kratzer Wells
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Appendix B

June 14, 1961

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MEMORANDUM FOR:

Mr. A. A. Wells,
Director,
Division of International Affairs,
Atomic Energy Commission.

SUBJECT: Export Licensing Policy Toward Cuba

Your memorandum of May 18, 1961 addressed to Mr. Farley requested the Department's consideration of the Notice of Rule Making and Proposed Public Announcement relating to changes in the Atomic Energy Commission's Export Licensing Policy Toward Cuba.

We have reviewed your memorandum and attachment with the concerned offices in the Department. We continue to believe, as stated in our replies to your previous inquiries, that the proposed changes in the AEC rules governing exports will serve to bring its procedures into conformity with national export policy respecting Cuba.

We further suggest that the references to the U.S.-Cuban Agreement for Cooperation in the Civil Uses of Atomic Energy should be limited to one statement in the Notice of Rule Making and should not be made at all in the Proposed Public Announcement. In our view, this one statement, including the date when this Agreement entered into force and a reference to where the text of the Agreement may be found in the United States Treaties publication, will serve to remind those persons interested in these rule changes from a business standpoint, of the existence of this Agreement.

With respect to the change in the source material regulations, we have not before carried Cuba in a list of the Soviet Bloc countries such as the schedule in Section 40.90. Paragraph 2 of the proposed Notice of Rule Making could be regarded as a change in our position on that point. This could be avoided by following the same approach in Paragraph 2 as used in Paragraph 1, i.e. listing Cuba in the same context with, but not as a country included in, Schedule A. The suggested revision of paragraph 2 to reflect this point is included in the enclosed documents.

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The enclosed copies of the Notice of Rule Making and the Proposed Public Announcement have been modified as suggested above.

We suggest that the announcement of this change be handled routinely. Should any inquiries be made as to the significance of this action at this time, we suggest that your press officers reply that the timing of this action has no significance. They might amplify this statement along the line that this is a routine action which has been in process for some time and has just recently been reached on the Commission's schedule of business.

Howard Furnas
Acting

Enclosures:

(2) - As stated

[REDACTED]

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APPENDIX

DRAFT LETTER TO CHAIRMAN, JCAE

1. The purpose of this letter is to inform the Joint Committee of action taken by the Commission with respect to its export licensing regulations and export policy toward Cuba. The Department of State supports this Commission action.

2. Heretofore, byproduct material having an atomic number 3 to 83, inclusive, could be exported to Cuba under a general license set out in Section 30.33(b) of the Commission's regulations (10 CFR 30). The Commission has amended its regulations to limit this authorization to byproduct material contained in medicinals or pharmaceutical preparations or in devices, applicators, or appliances designed for use in medical diagnosis or therapy. Persons proposing to export other byproduct material to Cuba are now required to apply for specific AEC licenses.

3. The Commission's source material regulations - 10 CFR Part 40, License of Source Material - have been amended to require that persons proposing to export any quantity of source material to Cuba must obtain a specific license from the Commission. Under a revision of Part 40 published on January 14, 1961, which became effective February 13, 1961, exports to certain countries of up to three pounds of source material, and unlimited quantities of thorium-containing incandescent gas mantles are authorized under general licenses established in the regulations. An amendment to Part 40 provides that these general licenses will not be applicable to shipments to Cuba.

[REDACTED]

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4. It is not expected that this revision will have any significant effect on future exports to Cuba. No applications for the export of source material to Cuba have been received since January 1960 and most of the byproduct material exported to Cuba to date appears to have been for medical purposes. However, this revision will provide the Commission with an opportunity to review applications for non-medical uses on a case-by-case basis.

5. Enclosed is a copy of a Notice of Rule Making which is being sent to the Federal Register for publication.

[REDACTED]

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[REDACTED]

- Effective immediately, the Atomic Energy Commission is modifying its licensing regulations relating to commercial exports to Cuba of radioisotopes and uranium and thorium source materials.
- 2 This action is designed to make the Commission's regulations consistent with actions taken by the U.S. Department of Commerce with respect to exports to Cuba.
- 3 Heretofore, any radioisotope subject to AEC control and having an atomic number 3 to 83 inclusive, could be exported from the United States to Cuba under a general authorization in the Commission's regulations.
- 4 In an amendment to its regulations 10 CFR Part 30 the Commission has now limited this authorization to radioisotopes contained in medicinal, pharmaceutical preparations, or in devices, applicators, or appliances designed for use in medical diagnosis or therapy. Persons proposing to export other radioisotopes to Cuba now are required to apply for specific licenses.
- 5 The Commission's source material regulations -- 10 CFR 40, Licensing of Source Material -- have been amended to require that persons proposing to export any quantity of source material to Cuba must obtain a specific license from the Commission. Under a revision of Part 40 effective February 13, 1961, exports to certain countries of up to three pounds of source material, and unlimited quantities of thorium-containing incandescent gas mantles are authorized under general licenses established in the regulations. An amendment to Part 40 published today by the Commission provides that these general licenses will not be applicable to shipments to Cuba, and that specific licenses must be obtained. Applications for the use of source material for medical diagnosis or therapy will ordinarily be granted.

AEC REVISES EXPORT LICENSING POLICY TOWARD CUBA

PROPOSED PUBLIC ANNOUNCEMENT

[Handwritten signatures and stamps]

Uranium and thorium are controlled by the Commission under 10 CFR Part 40, "Control of Source Material". Certain compounds of uranium and thorium are used as analytical reagents in blood analyses and other medical applications.

8 Uranium and thorium are controlled by the Commission under 10 CFR Part 40, "Control of Source Material". Certain compounds of uranium and thorium are used as analytical reagents in blood analyses and other medical applications. The U.S. Department of Commerce controls the export of cyclotron-produced and naturally occurring radioactive isotopes. Materials are radioisotopes produced in nuclear reactors. nuclear (fissionable) material. In general, byproduct incident to the process of producing or utilizing special yielded in or made radioactive by exposure to the radiation in the Commission's regulation as any radioactive material byproduct material is defined in the Atomic Energy Act and regulation 10 CFR Part 40, "Licensing of Byproduct Material".

7 Radioisotopes are controlled by the Commission through its case basis. to review applications for nonmedical uses on a case-by-case basis. regulation will provide the Commission with an opportunity appears to have been for medical purposes. However, this the byproduct material reported to Cuba before that date Cuba have been received since January 1960 and most of No applications for the export of source material to

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SPECIAL ASSISTANT TO THE SECRETARY OF STATE
WASHINGTON

June 27, 1961

MEMORANDUM FOR:

Mr. Algie A. Wells,
Director,
Division of International Affairs,
Atomic Energy Commission.

SUBJECT: Export Licensing Policy Toward Cuba

I understand from your staff that you desire confirmation of the views expressed in our memorandum of November 16, 1960, regarding export licensing policy toward Cuba. That memorandum, written in response to oral inquiries of your staff, stated our view that it would be desirable for the AEC, with respect to those items over which it exercises export license control, to take action parallel to the controls instituted by the Secretary of Commerce as of October 20, 1960. We continue to believe it would be desirable for the AEC to bring its procedures into conformity with national export policy respecting Cuba.

Our several memoranda on this subject exchanged since last October identify certain administrative judgment factors and contain specific suggestions as to the details of your proposed action.

/s/ Philip J. Farley

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NOTICE OF RULE MAKING

TITLE 10 - Atomic Energy

Chapter I - Atomic Energy Commission

Part 30 - Licensing of Byproduct Material

Part 40 - Licensing of Source Material

These amendments to Title 10 CFR, Parts 30 and 40, are designed to bring the Commission's regulations for the export of by-product and source materials into consonance with the export regulations of the U. S. Department of Commerce with respect to exports to Cuba.

Under the amended regulations export to Cuba of byproduct material having an atomic number from 3 to 83, contained in medical or pharmaceutical preparations or in devices, applicators or appliances designed for use in medical diagnosis or therapy, is authorized under a general license. Applications will have to be filed with the Commission for a specific license for export to Cuba of any other byproduct material or of source material. Individual applications will be reviewed in the light of the existing Agreement for Cooperation with Cuba. The obligations of the United States Government under that Agreement for Cooperation will be observed. Applications for use of source material for medical diagnosis or therapy will ordinarily be granted.

Inasmuch as these amendments involve the foreign affairs functions of the United States, the Commission has found that general notice of proposed rule-making and public procedure thereon are impracticable, unnecessary, and contrary to the public interest; and that good cause exists why these amendments should be made effective upon publication in the Federal Register without the customary 30-day period of notice.

Accordingly, pursuant to the Administrative Procedure Act, the following rules are published as documents subject to codification and are effective upon publication in the Federal Register:

1. Sections (b) and (c) of Section 30.33 are deleted and the following new subsections (b), (c) and (d) are added:

(b) Any licensee may export byproduct material covered by his license to any foreign country except Cuba or countries or areas now or hereafter listed as Subgroup A countries or destinations in § 371.3 of the Comprehensive Export Schedule of the United States Department of Commerce (15 CFR 371.3); provided, that the authority conferred by this paragraph shall apply only to byproduct material having an atomic number from 3 to 83 inclusive.

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- (c) Any licensee may export byproduct material covered by his license to Cuba to the extent that the byproduct material is contained in medicinals or pharmaceutical preparations or in devices, applicators, or appliances designed for use in medical diagnosis or therapy: Provided, that the authority conferred by this paragraph shall apply only to byproduct material having an atomic number from 3 to 83, inclusive.
- (d) The Commission may upon application by an interested person issue a license authorizing (1) the export of byproduct material to a country or area listed as a subgroup country or destination in § 371.3 of the Comprehensive Export Schedule or (2) the export of byproduct material not having an atomic number from 3 to 83, inclusive, or (3) the export to Cuba of byproduct material other than the byproduct material which may be exported under the general license established in Section 30.33(c), above: Provided, that the Commission will not issue a license authorizing such export if, in the opinion of the Commission, the proposed export would be incidental to the common defense and security.
2. Section 40.93 Schedule A is amended to include "Cuba" immediately after "Communist-controlled area of Viet Nam".

FOR THE ATOMIC ENERGY COMMISSION

Secretary

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PROPOSED PUBLIC ANNOUNCEMENT

AEC REVISES EXPORT LICENSING POLICY TOWARD CUBA

Effective immediately, the Atomic Energy Commission is modifying its licensing regulations relating to commercial exports to Cuba of radioisotopes and uranium and thorium source materials.

This action is designed to make the Commission's regulations consistent with actions taken by the U. S. Department of Commerce with respect to exports to Cuba.

Heretofore, any radioisotope subject to AEC control and having an atomic number 3 to 83, inclusive, could be exported from the United States to Cuba under a general authorization in the Commission's regulations.

In an amendment to its regulations 10 CFR Part 30 the Commission has now limited this authorization to radioisotopes contained in medicinals, pharmaceutical preparations, or in devices, applicators, or appliances designed for use in medical diagnosis or therapy. Persons proposing to export other radioisotopes to Cuba now are required to apply for specific licenses. Individual applications will be reviewed in the light of the existing Agreement for Cooperation with Cuba. The obligations of the United States Government under that Agreement for Cooperation will be observed. The uses contemplated by the Agreement for Cooperation include applications in physical and biological research, medical therapy, agriculture and industry.

The Commission's source material regulations -- 10 CFR 40, Licensing of Source Material -- have been amended to require that persons proposing to export any quantity of source material to Cuba must obtain a specific license from the Commission. Under a revision of Part 40 effective February 13, 1961, exports to certain countries of up to three pounds of source material, and unlimited quantities of thorium-containing incompressible gas mantles are authorized under general licenses established in the regulations. An amendment to Part 40 published today by the Commission provides that these general licenses will not be applicable to shipments to Cuba, and that specific licenses must be obtained.

Applications for the use of source material for medical diagnosis or therapy will ordinarily be granted. Other individual applications will be reviewed in the light of the existing Agreement for Cooperation with Cuba. As noted above, the obligations of the United States Government under that Agreement for Cooperation will be observed.

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"Restricted data shall not be controlled under this Agreement, and no materials or equipment and devices shall be furnished."

Article II provides:

(b) Applicable laws, regulations and license requirements of the Government of the United States and the Government of the Republic of Cuba."

(c) The provisions of Article II.

It is contemplated that, as provided in this Article, private individuals and private organizations in either the United States or the Republic of Cuba may deal directly with private individuals and private organizations in the other country. Accordingly, with respect to the subjects of agreed exchange of information as provided in Article III, the Government of the United States will permit persons under its jurisdiction to transfer and export materials, including equipment and devices, to and perform services for the Government of the Republic of Cuba and such persons under its jurisdiction as are authorized by the Government of the Republic of Cuba to receive and possess such materials and utilize such services, subject to:

Partnership provisions of the Agreement for Cooperation between the United States and Cuba, relating to commercial exports to Cuba of source materials, include, under Article VII:

Plutonium and thorium are controlled by the Commission under 10 CFR Part 40, "Control of Source Material". Certain compounds of uranium and thorium are used as analytical reagents in blood analyses and other medical applications.

Radionuclides are controlled by the Commission through its regulation in Part 30, "Licensing of Byproduct Material". Byproduct material as any radioactive material placed in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear (fissionable) material. In general, byproduct materials are radionuclides produced in nuclear reactors. The U. S. Department of Commerce controls the export of cyclotron-produced and naturally occurring radioactive isotopes.

It is not expected that this section will have any significant effect on future exports to Cuba. No application for the export of source material to Cuba have been received since January 1970 and most of the by-product material exported to Cuba to date appears to have been for medical purposes. However, this provision will provide the Commission with an opportunity to review applications for non-medical uses on a case-by-case basis.

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and be subject shall be provided under this Agreement to the Government of the Republic of Cuba or authorized persons under its jurisdiction if the transfer of any such materials or equipment and devices of the production of any such services involves the communication of Restricted Data."

Article III provides, in part:

"Subject to the provisions of Article II, the Parties herein will exchange information in the following fields:

(a) Medical conditions, and operation of research reactors and associated equipment, development and engineering tools and associated equipment;

(b) Health and safety problems related to the operation and use of research reactors."

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