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(69FR 55785)

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November 30, 2004 (1:43pm)

Secretary  
US Nuclear Regulatory Commission  
ATTN: Rulemakings and Adjudications Staff  
Washington, DC 20555-0001

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: Proposed Rule on Export of Nuclear Equipment and Radioactive Materials

Dear Secretary:

Honeywell International, Inc. ("Honeywell"), a manufacturer of fire safety products containing trace quantities of radioactive material, is responding to the Proposed Rule published in the September 16, 2004 Federal Register (69 Fed. Reg. 55785) regarding Nuclear Regulatory Commission (NRC) export regulations.

While the NRC is pursuing a laudable goal in monitoring and controlling the export of materials that potentially could be used in a radiological weapon (a so-called "dirty bomb"), 10 CFR 110.23 in both its current and proposed forms is overly broad. Specifically, the regulation does not set a *de minimis* exception for exports of consumer and industrial products containing negligible quantities of radioactive materials.

For example, under 10 CFR 110.23, a product containing *any* amount of americium-241 is under the export jurisdiction of the NRC. A typical ion smoke detector, for instance, contains a tiny quantity of americium-241. The amount of radioactivity emanating from a typical ion smoke detectors is so low (less than one micro-curie) as to be virtually undetectable, and is not in a form that is readily dispersible. Nonetheless, because NRC regulations currently do not contain a *de minimis* exception, an ion smoke detector cannot be exported from the US without NRC authorization. Further, if the export is intended for a country listed in 10 CFR 110.29 – including US allies such as Afghanistan, Israel, India or Pakistan – a specific approval from the NRC is required.

Honeywell raises four issues concerning the proposed rulemaking:

1. Neither public safety nor US foreign policy is served by regulating the export of products containing only negligible levels of americium-241. It is improbable and cost-prohibitive to obtain sufficient americium to create a radiological device by purchasing and disassembling smoke detectors. If aggregated, the total annual volume of ion smoke detectors manufactured by Honeywell in the US would be well below one curie of radioactivity.
2. To the extent that products contain trace amounts of radioactive materials, NRC licensing requirements impede US companies from selling abroad. The uncertainty, costs and delays associated with obtaining specific licenses make it difficult for US companies to sell NRC-licensed goods competitively into

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any of the countries identified in 10 CFR 110.29, thereby adversely impacting sales of any such US products (such as ion smoke detectors).

3. We suspect that the expansion of specific licensing requirements will require more NRC resources, including human resources, than is anticipated by the rule's regulatory analysis – in part because it apparently fails to account for licensing needs resulting from exports of goods (such as smoke detectors) that contain only trace quantities of radioactive materials.
4. Customer access to ion smoke detectors, including those living outside the US, is a matter of public health and safety. The licensing requirements in the NRC's current proposal would impede such access and place public health and safety in jeopardy.

### **Recommendation**

We recommend that 10 CFR 110 exempt gas and aerosol detectors used in fire safety applications from licensing requirements. This could be accomplished most easily by amending 10 CFR 110.9 as follows:

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#### **110.9 List of Nuclear Material under NRC export licensing authority**

...

(c) Byproduct Material [except where housed in a gas or aerosol detectors authorized for distribution to exempt users]

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If NRC is unwilling to fully exempt gas and aerosol detectors from its export jurisdiction, at the minimum it should exempt these products from (a) specific licensing requirements and (b) annual reporting requirements otherwise applicable to exports of americium under a general license. Thus, the final sentence of 10 CFR 110.23(a)(2) and the entirety of 110.23(a) (3) should be revised as follows:

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#### **Sec. 110.23 General License for the export of byproduct material**

(a)(2) ... Exports of americium [*except when contained in gas and aerosol smoke detectors authorized for distribution to exempt users*] and neptunium are subject to the reporting requirements listed in paragraph (b) of this section.

(a)(3) For americium-241, exports to any country listed in Sec. 110.29 must not exceed one curie (308 milligrams) per shipment, or 100 curies (30.8 grams) per year, and must be contained in *gas or aerosol detectors*, industrial process control equipment or petroleum exploration equipment.

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## Conclusion

By adopting this *exemption*, the proposed regulations would address each of the four aforementioned issues, while allowing the NRC to control the proliferation of radiological material.

Sincerely,

Karl M. Laskas  
Manager, Export Compliance & Controls  
Honeywell Automation & Controls

**From:** "Laskas, Karl" <Karl.Laskas@Honeywell.com>  
**To:** "SECY@nrc.gov" <SECY@nrc.gov>  
**Date:** Tue, Nov 30, 2004 12:49 PM  
**Subject:** Comment on Proposed NRC rule on export of radioactive materials

Dear Secretary:

Attached please find Honeywell's comment on the proposed NRC rule on Export and Import of Nuclear Equipment & Radioactive Materials.

Please contact the undersigned if you have any questions or if there are any difficulties in reading the file.

Best regards,

Karl Laskas  
Manager, Export Compliance & Controls  
Honeywell ACS  
1001 Pennsylvania Avenue, NW, Suite 700 South  
Washington, DC 20004  
phone (202) 662-2681  
cell (571) 238-3352  
fax (202) 662-2665

**CC:** "ssh@nrc.gov" <ssh@nrc.gov>

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**Subject:** Comment on Proposed NRC rule on export of radioactive materials  
**Creation Date:** Tue, Nov 30, 2004 12:45 PM  
**From:** "Laskas, Karl" <Karl.Laskas@Honeywell.com>

**Created By:** Karl.Laskas@Honeywell.com

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 SSH CC (Suzanne Schuyler-Hayes)

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