

Rulemaking Comments

From: Smith, Brooke
Sent: Wednesday, September 09, 2009 7:55 AM
To: Rulemaking Comments
Subject: FW: DOE comments on 10 CFR Part 110
Attachments: 10 CFR 110 - DOE consolidated comments 9.8.2009.doc

DOCKETED
EISNRC

September 8, 2009 (9:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

-----Original Message-----

From: Thacker, Heather [mailto:Heather.Thacker@hq.doe.gov]
Sent: Tuesday, September 08, 2009 2:32 PM
To: Smith, Brooke
Subject: DOE comments on 10 CFR Part 110

Brooke-

Please see attached for DOE's comments on the proposed changes to 10 CFR Part 110. Please let me know if you have any questions.

Thank you.

Heather Thacker
Office of the Assistant General Counsel for Civilian Nuclear Programs U.S. Department of Energy 1000
Independence Avenue SW Washington, DC 20585
(202) 586-6924

DOE comments on proposed changes to 10 CFR Part 110

Comments on the Supplementary Information:

In paragraph 3 of subsection A of the Background and Discussion section, the statement regarding the estimated date for launch of the NSTS needs to be updated.

In the Section-by-Section Analysis, the second and third sentences under Section 110.27, General license for imports, needs to be revised to state as follows, "NRC's import regulations do not apply to Department of Energy (DOE) imports of source, special nuclear or byproduct material, including imports conducted on DOE's behalf by DOE contractors." The statement currently reads: "NRC's import regulations do not apply to the Department of Energy for activities authorized by sections 54, 64, 82, and 91 of the Atomic Energy Act. This includes activities conducted under a contract with the Department of Energy." Sections 54, 64, 82 and 91 of the AEA govern DOE exports, not imports, and are not applicable here.

Comments on the Proposed Amendments:

§ 110.2 – Definitions – In the amended definition of "radioactive waste," suggest clarifying that the definition does not include spent fuel. Spent fuel is not radioactive waste and there should be no confusion on that matter. The amended definition includes (1) material that by its possession would require a specific radioactive material license and is imported or exported for disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, *or an equivalent facility*, and (2) material that is imported for recycling, waste treatment or other waste management processes that generate material for disposal in such facilities. It is not clear from the definition what the term "equivalent facility" includes, and could be construed as including a facility for the disposal of spent fuel or material that results from recycling, treatment or processing of spent fuel. Likewise, the term "material imported for recycling ..." might be read to include spent fuel.

§ 110.2 – Definitions – In the amended definition of "radioactive waste," please clarify the intent of the new exclusion for material that is "(5) being returned by or for the U.S. Government or military to a facility that is authorized to possess the material." The purpose and intent of this new exclusion is not clear. The circumstances, or combination of circumstances, under which the U.S government or military would seek to return material to an authorized U.S. facility could be interpreted very broadly.

§ 110.6 – Retransfers – Why are retransfers of byproduct material excluded from the requirements of this section? What about retransfers of special nuclear material produced through the use of U.S.-obligated material?

§ 110.27 – General license for imports – In subsection (b), insert the words “source or special nuclear” before “material” so that the sentence reads as follows: “The general license in paragraph (a) of this section does not authorize the import of source or special nuclear material in the form of irradiated fuel if the total weight of the [source or special nuclear] material exceeds 100 kilograms per shipment.” The Supplementary Information section II. Section-by-Section Analysis, Subpart B-Exemptions, Section 110.27, explains that as revised, the general license does not authorize the import of source or special nuclear material in the form of irradiated nuclear fuel if the total weight of the material exceeds 100 kilograms per shipment. The rule should clarify to what type of “material” the weight limit applies, and should clearly distinguish the total weight of the fuel element vs. the weight of the nuclear and source material contained therein.

§ 110.44 – Physical Security Standards – Please clarify the intent and purpose of incorporation of the current INFCIRC 225/Rev.4 in subsection (a). Subsection (a) provides that “Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev.4 (corrected), June 1999..., and is incorporated by reference in this part.” It is our understanding that INFCIRC 225/Rev.4 (corrected), June 1999, is currently undergoing review and revision by the IAEA and international community. Incorporation by reference of the current INFCIRC document may not address the applicability of substantial INFCIRC changes underway that could be potentially incorporated in the future. Changes to INFCIRC/225/Rev.4 (corrected), June 1999, may have a significant impact on physical security standards, policy, and guidance, both domestic and international.

Received: from HQCLSTR02.nrc.gov ([148.184.44.77]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Wed, 9 Sep 2009 07:55:19 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Smith, Brooke" <Brooke.Smith@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Wed, 9 Sep 2009 07:55:16 -0400
Subject: FW: DOE comments on 10 CFR Part 110
Thread-Topic: DOE comments on 10 CFR Part 110
Thread-Index: AcowspihMqvn32CiRICDjojypts1zAAkb14g
Message-ID:
<AC3D8151B0831F4EAFFB2501B87BF90510E1D238DB@HQCLSTR02.nrc.gov>
Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-Exchange-Organization-SCL: -1
X-MS-TNEF-Correlator:
<AC3D8151B0831F4EAFFB2501B87BF90510E1D238DB@HQCLSTR02.nrc.gov>
MIME-Version: 1.0