



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 10, 1993

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Carlton R. Stoiber, Director
Office of International Programs *[Signature]*

SUBJECT: MINOR AMENDMENT TO PART 110 TO IMPLEMENT ENERGY POLICY ACT

Attached for your signature is a final rule entitled "Export and Import of Nuclear Equipment and Material; Export of High-Enriched Uranium." The final rule implements Section 903 of the Energy Policy Act of 1992. Section 903 of that Act adds a new Section 134 to the Atomic Energy Act of 1954, as amended, regarding the Commission's licensing requirements for the export of high enriched uranium.

Section 110.2 of 10 CFR Part 110 is amended to add a definition of the term "target" used in the statute. Section 110.42(a) is amended to add §110.42(a)(9), that sets forth the licensing criteria for export of high enriched uranium specified in the Energy Policy Act.

Because the rule involves a foreign affairs function of the United States, the provisions of the Administrative Procedure Act (5 U.S.C. 553(a)(1)), requiring notice of proposed rulemaking, do not apply. Therefore, we recommend that the rule become effective upon publication in the Federal Register pursuant to 5 U.S.C. 553(d)(3).

Background: In accordance with the staff requirements memorandum of October 11, 1985 regarding SECY-85-298, the Commission delegated to the Executive Director for Operations the authority to issue minor rules and minor amendments of a non-policy or corrective nature to Part 110 regulations without Commission review. I believe that the rule falls within this delegation. Upon the EDO's approval of the rule, the Office of International Programs will forward the documents to the Office of the Federal Register for publication.

Backfit Analysis: The staff has determined that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

Notices: A notice to the Commission that the EDO has signed the rule is attached for inclusion in the next Daily Staff Notes. Also attached is a draft letter notifying the appropriate Congressional Committees of this rule.

Coordination: The Offices of Nuclear Material Safety and Safeguards, Information Resources Management, Administration, and the Inspector General concur in the rule. The Office of the General Counsel has no legal objection.

Attachments:

1. Federal Register Notice of Final Rulemaking
2. Daily Staff Note
3. Draft Congressional Letter

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

Export and Import of Nuclear Equipment and Material;
Export of High-Enriched Uranium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the export and import of nuclear equipment and material to implement Section 903 of the Energy Policy Act of 1992, Public Law 102-496. Section 903 added a new Section 134 to the Atomic Energy Act of 1954, as amended, setting forth additional export licensing criteria for highly enriched uranium.

EFFECTIVE DATE: October 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald D. Hauber, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/504-2344.

SUPPLEMENTARY INFORMATION: On October 24, 1992, Public Law 102-496, the Energy Policy Act of 1992, was enacted. Section 903 of that Act added a new Section 134 to the Atomic Energy Act of 1954, as amended. Section 134 provides that the NRC may issue a license for the export of highly enriched uranium to be

used as fuel or as a target in a nuclear research or test reactor only if, in addition to any other requirement of that Act, the Commission determines that--

(1) there is no alternative nuclear reactor fuel or target enriched in the isotope 235 to a lesser percent than the proposed export, that can be used in that reactor;

(2) the proposed recipient of that uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(3) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

Section 134 b. defines the operative terms as follows:

" b. As used in this section --

(1) the term 'alternative nuclear reactor fuel or target' means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;

(2) the term 'highly enriched uranium' means uranium enriched to 20 percent or more in the isotope U-235; and

(3) a fuel or target 'can be used' in a nuclear research or test reactor if--

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor. "

The Commission has adopted amendments to §§110.2 and 110.42(a) of 10 CFR Part 110 to implement Section 903 of the Energy Policy Act. The amendment to §110.2 adds a definition of the term "target" used in the statute. The amendment to §110.42(a) adds a new subparagraph (9) to add the criteria for export of high-enriched uranium specified in the Energy Policy Act.

Since this rulemaking involves a foreign affairs function of the United States and since Public Law 102-496 directs the Commission to impose the limitations on the issuance of licenses to export high-enriched uranium described above, notice of proposed rulemaking and public procedures thereon are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(1)). The Commission has also found that, for the reasons stated above, good cause exists for making the amendment effective upon publication in the Federal Register without the customary thirty-day notice.

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule in Part 110 is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150-0036.

Regulatory Analysis

The Commission has considered alternatives to as well as the costs and benefits of the final rule. There is no alternative to amending NRC's regulations in 10 CFR 110 because Public Law 102-496 directs the Commission to impose limitations on the issuance of licenses to export high-enriched uranium (HEU). NRC's regulations already provide strong regulatory control over the export of HEU by strictly limiting its supply; therefore, the rule will have minimal impact on affected exporters. The final rule will not result in any increase or cost to the public. The foregoing constitutes the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that the backfit analysis provisions in 10 CFR 50.109 do not apply to amendments to 10 CFR Part 110 because Part 110 applies only to the export and import of nuclear facilities, material and components, and does not deal with domestic facilities. Therefore, a backfit analysis has not been prepared for those amendments.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

Pursuant to section 903 of Public Law 102-496, the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Part 110 are published as a document subject to codification.

PART 110 - EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub.L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475, (42 U.S.C., 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 11.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub.L. 102-496 (42 U.S.C. 2151 et seq.).

2. In § 110.2, a definition of "target" is added to read as follows:

§ 110.2 Definitions,

* * * * *

Target means material subjected to irradiation in an accelerator or nuclear reactor to induce a reaction or produce nuclear material.

3. A new paragraph (9) is added to § 110.42(a) to read as follows:

§ 110.42 Export licensing criteria

(a) * * * * *

(9) With respect to exports of high-enriched uranium to be used as a fuel or target in a nuclear research or test reactor, the Commission determines that -

(i) there is no alternative nuclear reactor fuel or target enriched in the isotope U-235 to a lesser percent than the proposed export, that can be used in that reactor;

(ii) the proposed recipient of the uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative fuel or target in lieu of highly enriched uranium; and

(iii) the United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

As used in this paragraph, a fuel or target "can be used" in a nuclear research or test reactor if -

(A) the fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy, and

(B) use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.

Dated at Rockville, MD this day of 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,
Executive Director for Operations.

Approved for Publication

The Commission has delegated to the Executive Director for Operations (10 CFR 1.31(c)) the authority to develop and promulgate rules as defined in the Administrative Procedure Act (5 U.S.C. 551(4)) subject to the limitations in NRC Management Directive 9.17, Organization and Functions, Office of the Executive Director for Operations, paragraphs 0213, 038, 039, and 0310.

The attached final rule entitled "Export and Import of Nuclear Equipment and Material; Export of High-Enriched Uranium," implements Section 903 of the Energy Policy Act of 1992, Public Law 102-496. Section 903 of that Act adds a new Section 134 to the Atomic Energy Act of 1954, as amended, regarding the Commission's licensing requirements for the export of high-enriched uranium. The rule does not raise a significant question of policy, nor does it amend regulations contained in 10 CFR Parts 7, 8, or 9 of Subpart C concerning matters of policy. I therefore find that the final rule is within the scope of my rulemaking authority and am proceeding to issue it.

Date

James M. Taylor,
Executive Director for Operations

DAILY STAFF NOTES

OFFICE OF INTERNATIONAL PROGRAMS

Final Rule Signed by the EDO

On _____ 1993, the Executive Director for Operations (EDO) approved a final rule which amends NRC's regulations in 10 CFR Part 110 pertaining to the export and import of nuclear equipment and material. The amendments implement Section 903 of the Energy Policy Act of 1992, Public Law 102-496. Section 903 adds a new Section 134 to the Atomic Energy Act of 1954, as amended, regarding the Commission's licensing requirements for the export of high-enriched uranium.

This constitutes notice to the Commission that, in accordance with the rulemaking authority delegated to the EDO, the EDO has signed this final rule and proposes to forward it on _____ to the Office of the Federal Register for publication, unless otherwise directed by the Commission.

DRAFT

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication the enclosed final rule which amends the Commission's regulations in 10 CFR Part 110 pertaining to the export and import of nuclear equipment and material. The amendments implement Section 903 of the Energy Policy Act of 1992, Public Law 102-496. Section 903 adds a new Section 134 to the Atomic Energy Act of 1954, as amended, regarding the Commission's licensing requirements for the export of highly enriched uranium.

The amendments are not inimical to the common defense and security of the United States, do not constitute an unreasonable risk to the public health and safety, and are consistent with the provisions of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and the Energy Policy Act of 1992. Further, the amendments are not inconsistent with the obligations of the United States under any treaty or international arrangement.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As stated

cc: Representative Michael Bilirakis

Record Note: Identical letters will also be sent to the six addressees on attached page.

1. The Honorable Joseph I. Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

cc: Senator Alan K. Simpson

2. The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

cc: Representative Barbara Vucanovich

3. The Honorable Lee H. Hamilton, Chairman
Committee on Foreign Affairs
United States House of Representatives
Washington, DC 20515

cc: Representative Benjamin A. Gilman

4. The Honorable Claiborne Pell, Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

cc: Senator Jesse Helms

5. The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

cc: Senator William V. Roth, Jr.

6. The Honorable Mike Synar, Chairman
Subcommittee on Environment, Energy and Natural Resources
Committee on Government Operations
United States House of Representatives
Washington, DC 20515

cc: Representative J. Dennis Hastert

ROUTING AND TRANSMITTAL SLIP

Date

September 10, 1993

TO:

(Name, office symbol, room number,
building, Agency/Post)

JBecker, OGC *gms*
 WCParler, Concurrence *gms for WCP*
 CRStoiber, Concurrence/Signature

REMARKS

ATTACHED IS A MEMO TO EDO TRANSMITTING A FINAL RULE FOR MR. TAYLOR'S APPROVAL PERTAINING TO 10 CFR PART 110 ENTITLED "EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; EXPORT OF HIGH-ENRICHED URANIUM". THE RULE IMPLEMENTS SECTION 903 OF THE ENERGY POLICY ACT OF 1992.

THE RULE HAS BEEN COORDINATED WITH NMSS, ADM, IRM, IG, AND JBECKER.

DO NOT use this form as a RECORD of approvals, concurrences, disposals,

clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Elaine O. Hemby, OIP E-Mail [EOH]

Room No. -
3-H-5 OWFN
Phone No.
504-2341

From: Ellen C. Brouns (ECB)
To: EOH, RDH
Date: Tuesday, September 7, 1993 4:01 pm
Subject: Phone message from Sandy Keith of IG
Phone: 9/492-9093

- | | |
|--|---|
| <input checked="" type="checkbox"/> Telephoned | <input type="checkbox"/> Please call |
| <input type="checkbox"/> Will call again | <input type="checkbox"/> Returned your call |
| <input type="checkbox"/> Wants to see you | <input type="checkbox"/> Came to see you |
| <input type="checkbox"/> Urgent | |

have no problems with 10 CFR Part 110

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