



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

*ADm  
concerns  
w/changes  
8/25/93  
007*

AUG 23 1993

MEMORANDUM FOR: Elaine Hemby  
Office of International Programs

FROM: Michael T. Lesar, Chief  
Rules Review Section  
Rules Review and Directives Branch  
Division of Freedom of Information  
and Publications Services  
Office of Administration

SUBJECT: REVIEW OF PROPOSED RULE PACKAGE REGARDING  
THE EXPORT OF HIGH-ENRICHED URANIUM AMENDING 10  
CFR PART 110

The Rules Review Section has reviewed the proposed rule package regarding the export of high-enriched uranium. We have attached a marked copy of the proposed rule package that presents our comments.

When these documents are forwarded for signature and publication, please have a member of your staff include a 3.5-inch diskette that contains a copy of each document in WordPerfect 5.0 or 5.1 as part of the transmittal package. The diskette will be forwarded to the Office of the Federal Register and the Government Printing Office for their use in typesetting the documents.

We have forwarded a copy of the proposed rule to the Information and Records Management Branch, IRM, for their comment and concurrence concerning the paperwork management aspects of these rulemaking actions. We have requested that they respond directly to you.

In order to assist you in preparing the list of documents centrally relevant to each proposed rule that is required by NRC's regulatory history procedures, you should place the designator "AE82-1", in the upper right-hand corner of each document concerning the rules that you forward to the Nuclear Document System.

AUG 23 1993

Elaine Hemby

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If you have any questions concerning this matter, please have a member of your staff contact Betty K. Golden, 492-4268, or myself, 492-7758, Rules Review Section.



Michael T. Lesar, Chief  
Rules Review Section  
Rules Review and Directives Branch  
Division of Freedom of Information  
and Publications Services  
Office of Administration

Attachment: As stated

Remove  
substantive

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110  
RIN 3150-AE82

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. *The final rule contains NRC Regulations to the criteria for*

SUPPLEMENTARY INFORMATION: ~~On October 24, 1992, Public Law 102-496,~~ *(Pub. L. 102-496)* ~~The Energy Policy Act of 1992,~~ *the exp. of high-enriched uranium specific in the Energy Policy Act.* was enacted. Section 903 of that Act added a new Section 134 to the Atomic Energy Act of 1954, as amended. *The* New Section 134 provides that the NRC may issue a license for the export of highly enriched uranium to be used as a fuel or 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.

Insert 7

EFFECTIVE DATE: (Date of publication in the Federal Register)

FOR FURTHER INFORMATION CONTACT: Elaine Hemby, Office of  
International Programs, U.S. Nuclear Regulatory Commission,  
Washington, DC 20555, Telephone (301) 504-2341.

of the Energy Policy Act of 1992,

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 10 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."

P 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) <sup>(ca)</sup> that <sup>as used</sup> ~~adds~~ the criteria for export of high-enriched uranium specified in the Energy Policy Act.

the Atomic Energy Act of 1950, as amended

Because  
 Since this rulemaking involves a foreign affairs function of the United States and <sup>because</sup> ~~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 <sup>comment provisions</sup> ~~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 (CTR)

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. <sup>for this final rule</sup>

Paperwork Reduction Act Statement (CTR)

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.



RD  
TO BE RESEALLED

Regulatory Analysis **CTR**

The Commission has prepared a regulatory analysis of this final regulation. The analysis examines the costs and benefits of the regulation. The analysis is available for inspection in the NRC Public Document Room, <sup>01204</sup> 1717 H Street, NW, <sup>(Lower Level)</sup> Washington, DC. Single copies of the analysis may be obtained from Elaine Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)504-2341.

Backfit Analysis **CTR**

This final rule and therefore that a backfit analysis is not required for this rule.

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 **CTR**

- Administrative practice and procedure, Classified information, Criminal penalty, <sup>125</sup> Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

Part 110 regarding set out in the preamble and under the authority of the

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, <sup>the NRC is adopting</sup> 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 110.52 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) (i) With respect to a license to export high-enriched uranium to be used as fuel or target in a nuclear research or test reactor, the Commission determines that

- A (i) 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;
- B (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
- C (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, <sup>P(ii)</sup> 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, Maryland, ✓  
 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.

*find*  
# 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, <sup>that</sup> 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.

Export and Import of Nuclear  
Equipment and Material

DRAFT

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations  
FROM: Carlton R. Stoiber, Director  
Office of International Programs  
SUBJECT: MINOR AMENDMENT TO PART 110 TO IMPLEMENT ENERGY POLICY ACT

Attached for your signature <sup>is</sup> a final rule entitled "Export and Import of Nuclear Equipment and Material; Export of High-Enriched Uranium", and an "Approved for Publication" notice. The rule 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 highly 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 a new subparagraph (9) that sets forth the licensing criteria for export of high-enriched uranium specified in the Energy Policy Act.

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.

Notice: 11/10/92

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).

Notice:

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, and Administration concur in the rule. The Office of the General Counsel has no legal objection.

- Attachments:
1. Federal Register Notice of Rulemaking
  2. ~~"Approved for Publication" Notice~~
  3. Daily Staff Note
  4. Draft Congressional Letter

include signature block

Contact: E. Hemby, IP (504-2341)

OIG Review?

Insert 2

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).