



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 26, 2009

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0013

TITLE: REVIEW OF PROPOSED RULE PACKAGE, "EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-A116)

The Commission (with Commissioners Lyons, Klein, and Svinicki agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of May 26, 2009. Chairman Jaczko approved in part and disapproved in part.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Lyons
Commissioner Klein
Commissioner Svinicki
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0013

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X	X			X	5/11/09
COMR. LYONS	X				X	3/3/09
COMR. KLEIN	X				X	3/7/09
COMR. SVINICKI	X				X	5/1/09

COMMENT RESOLUTION

In their vote sheets, Commissioners Lyons, Klein, and Svinicki approved the subject paper and Chairman Jaczko approved in part and disapproved in part. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on May 26, 2009.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

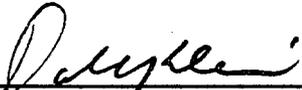
FROM: CHAIRMAN KLEIN

SUBJECT: SECY-09-0013 – REVIEW OF PROPOSED RULE PACKAGE, “EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-AI16)

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached xx None _____



SIGNATURE

3/7/09

DATE

Entered on “STARS” Yes No _____

Chairman Klein's Comments on SECY-09-0013

I approve for publication, in the *Federal Register*, the proposed amendments to Part 110, subject to the attached edits. I commend the staff for its efforts to update, clarify and correct several provisions in 10 CFR Part 110 to improve NRC's regulatory framework for the export and import of nuclear equipment, material and radioactive waste. The proposed amendments maintain appropriate import and export controls of radioactive material to ensure safety and security as well as improve the efficiency and consistency of licensing actions.

I believe that the implementation of the National Source Tracking System and the routine recording of transactions of Category 1 and 2 sources will enhance the accountability of these materials. Accordingly, the use of general licenses for importing and exporting Category 1 and 2 sources will have no detriment to safety and security. Moreover, these changes will align the NRC's regulations with the practices of other countries and will allow domestic licensees to be on a "level playing field" with foreign competitors.

The staff proposes to amend § 110.50 to require importers of Category 1 and 2 materials to require advance notifications of imports to be received by the NRC at least seven days in advance of shipments. Staff should make clear in the statement of consideration the current pre-shipment notification requirement is at least 7 days in advance of each shipment, to the extent practical, but in no case less than 24 hours in advance of each shipment.



Dale E. Klein

3/7/09

x 10⁻³ TBq (100 mCi). Prior to the changes in 2000, there were no activity restrictions on exports to countries not listed in §§ 110.29 (restricted destinations) and 110.28 (embargoed destinations). Americium-241 exports under a general license could not exceed 3.7 x 10⁻² TBq (one curie) ^{shipment} per year or 3.7 TBq (100 curies) per year to any one country listed in § 110.29. For exports to § 110.29 countries that exceeded the limit above, the americium-241 must be contained in petroleum exploration or industrial process control equipment in quantities not exceeding 0.74 TBq (20 curies) per device or 7.4 TBq (200 curies) per year to any one restricted country.

In 2005, the Commission published a final rule that conformed NRC's export and import regulations to the provisions of the IAEA Code of Conduct and supplemental Guidance (July 5, 2005; 70 FR 37985). The specific radioactive material and quantities added by this rule are listed in Table 1 of Appendix P to 10 CFR Part 110. Americium-241 is one of the materials listed in this table. As a result of the 2005 rule, an NRC specific license was required to export (and import) these radioactive materials at Category 2 and above quantities. For americium-241, the Category 2 threshold limit was set at 0.6 TBq (16 Ci). As part of the 2005 rulemaking, changes were made to the general license for americium-241 in an effort to conform it to the threshold for americium-241 in Table 1 of Appendix P. The staff is now proposing to remove americium-241 from § 110.23 (a)(2) which currently controls it at 3.7 x 10⁻³ TBq (100 mCi) and rewrite the general license for americium-241 in proposed § 110.23(a)(5) to address the inconsistencies inadvertently resulting from prior changes to the section and to take into account the Appendix P thresholds for americium-241.

Likewise, the general license for the export of neptunium-237 would be revised to address inconsistencies resulting from prior rule changes. Under this proposed rule the general license for the export of neptunium-237 would cover shipments that do not exceed one gram for individual shipment and do not exceed a cumulative total of 10

§ 110.28 or § 110.29 deuterium in individual shipments of 10 kilograms or less (50 kilograms of heavy water). No person may export more than 200 kilograms (1000 kilograms of heavy water) per year to any one country.

(b) A general license is issued to any person to export to any country listed in § 110.29 deuterium in individual shipments of 1 kilogram or less (5 kilograms of heavy water). No person may export more than 5 kilograms (25 kilograms of heavy water) per year to any one country listed in § 110.29.

§ 110.25 [Reserved]

16. Section 110.25 is added and reserved.

17. Section 110.26 is revised to read as follows:

§ 110.26 General license for the export of nuclear reactor components.

(a) A general license is issued to any person to export to a destination listed in paragraph (b) of this section any nuclear reactor component of U.S. origin described in paragraphs (5) through (9) of Appendix A to this part if--

(1) The component can be used in a light or heavy water-moderated power or research reactor; or

(2) The component is in semifabricated form and will be undergoing final fabrication or repair in those countries for either subsequent return to the United States for use in a nuclear power or research reactor in the United States or in one of the destinations listed in paragraph (b) of this section.

(b) The export of nuclear reactor components under the general license established in paragraph (a) of this section are approved to the following destinations:

Austria

Belgium

Bulgaria

Lithuania

Luxembourg

Malta

(3) A list of recipient countries and end users keyed to the items shipped.

18. In §110.27, paragraphs (a), (b), and (f) are revised to read as follows:

§ 110.27 General license for import.

(a) Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under a general or specific NRC or Agreement State license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

(b) 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 material exceeds 100 kilograms per shipment.

* * * * *

(f) Importers of radioactive material listed in Appendix P to this part must provide the notifications required by § 110.50.

§ 110.30 [Amended]

SWITCH → 19. Section 110.30 is amended by adding "China", "Croatia", "Estonia", "Kazakhstan", "Lithuania", and "Malta" in alphabetical order.

20. Section 110.31 is revised to read as follows:

§ 110.31 Application for a specific license.

(a) A person shall file an application for a specific license to export or import with the Deputy Director of the NRC's Office of International Programs, using an appropriate method listed in § 110.4.

(b) Applications for an export, import, combined export/import, amendment or renewal licenses or a request for an exemption from a licensing requirement under 10 CFR Part 110 shall be filed on NRC Form 7.

(c) An application for a specific license to export or import or a request for an exemption from a licensing requirement must be accompanied by the appropriate fee in accordance with the fee schedule in § 170.21 and § 170.31 of this chapter. A license application will not be processed unless the specified fee is received.

(d) Each application on NRC Form 7 shall be signed by the applicant or licensee or a person duly authorized to act for and on behalf of the applicant or licensee.

(e) Each person shall provide in the license application, as appropriate, the information specified in § 110.32. The Commission also may require the submission of additional information if necessary to complete its review.

(f) An application may cover multiple shipments and destinations. (g) The applicant shall withdraw an application when it is no longer needed. The Commission's official files retain all documents related to a withdrawn application.

21. Section 110.32 is revised to read as follows:

§ 110.32 Information required in an application for a specific license/NRC Form 7.

(a) Name and address of applicant.

(b) Name and address of any other party, including the supplier of equipment or material, if different from the applicant.

(c) Country of origin of equipment or material, and any other countries that have processed the material prior to its import into the U.S.

(Note: This is meant to include all obligations attached to the material, according to the definition of obligations in § 110.2. Licensees must keep records of obligations attached to material which they own or is in their possession.)

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-09-0013 – REVIEW OF PROPOSED RULE PACKAGE, “EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-AI16)

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None _____



SIGNATURE

5/11/09

DATE

Entered on “STARS” Yes X No _____

Commissioner Jaczko's Comments on SECY-09-0013
Review of Proposed Rule Package "Export & Import of Nuclear Equipment and Material;
Updates and Clarifications"

I approve and disapprove the staff's proposed draft rule for revising 10 CFR 110, "Export and Import of Nuclear Equipment and Material." Although several of the proposed changes appear to be improvements that will improve the efficiency and implementation of Part 110, I strongly disagree with the proposal to eliminate the requirement for specific licenses for Category 1 and 2 quantities of materials.

Part 110 was revised in 2005 to take into account provisions of the International Atomic Energy Agency Code of Conduct on the Safety and Security of Radioactive Sources. The revision provided for enhanced security for the export and import of Category 1 and 2 quantities of material. The staff's main reason for now eliminating the requirement for specific licenses is that the National Source Tracking System (NSTS) can be used to track transactions involving Category 1 and 2 radioactive sources. Staff indicates that "For every nationally tracked source that is imported, the facility obtaining the source will be required to report the information to the NSTS by the close of the next business day after receipt of the imported source."

I do not believe that there has been a significant change in the threat environment so as to allow the agency to relax its requirements for these risk-significant sources. In other cases, the agency is moving towards decreased use of general licenses (e.g., the staff's proposal in SECY-08-0137 to limit the quantity of byproduct material allowed in a generally-licensed device) in order to increase the accountability and control of these materials. The import of risk-significant material in the country should not be conducted under the general license regulatory approach.



Gregory B. Jaczko

5/11/09

Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER LYONS
SUBJECT: SECY-09-0013 – REVIEW OF PROPOSED RULE PACKAGE, “EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-AI16)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



Peter B. Lyons

SIGNATURE

3/ 3 /09

DATE

Entered on “STARS” Yes X No _____

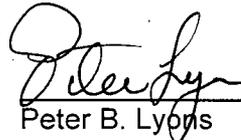
Commissioner Lyons' Comments on SECY-09-0013

I approve the staff's recommendation to publish the proposed amendments to Part 110. The proposed amendments are designed to update, clarify and correct some provisions of Part 110 to improve the regulatory framework for the export and import of nuclear equipment and material including radioactive waste. I appreciate staff's efforts in the development of this Commission Paper and the proposed rule.

The proposed amendments in Part 110 will build upon staff's efforts to improve the security of Category 1 and 2 quantities of radioactive materials by incorporating the National Source Tracking System (NSTS) into the import process. Import licenses, either specific or general, do not authorize the possession or other use of the material. With only a few exceptions, a specific license issued by either the NRC or an Agreement State will continue to be required to receive and possess such material. The improved information and accountability available through the use of NSTS as well as maintaining notification requirements will allow the import of Category 1 and 2 quantity sources under a general import license instead of a specific import license; reducing the burden on staff and licensees without sacrificing the secure transfer of radioactive sources.

There are currently a few devices with sources that would include Category 2 quantities that are generally licensed and could therefore be subsequently imported. An additional proposed rule, "Limiting the Quantity of Byproduct Materials in a Generally Licensed Device," (SECY-08-0137) will also enhance the safety and security of radioactive sources once adopted by requiring a specific license issued by either the NRC or Agreement State for those higher activity sources.

Both of these proposed rules will maintain a focus on safety and security and continue a strong Agreement State role in the national materials program.


Peter B. Lyons 3/3/9
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-09-0013 – REVIEW OF PROPOSED RULE PACKAGE, “EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-AI16)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

05/ 1 /09

DATE

Entered on “STARS” Yes No ___

Commissioner Svinicki's Comments on SECY-09-0013
Review of Proposed Rule Package, "Export and Import of Nuclear Equipment and
Material; Updates and Clarifications" (10 CFR Part 110, RIN 3150-A116)

I approve for publication, in the Federal Register, the proposed amendments to 10 CFR Part 110 (Enclosure 1 to SECY-09-0013) with the following exceptions. I am uncomfortable in general with the changes proposed to the categories of items which would require Commission review under section 110.40 for which no justification was provided in the paper. Specifically, I do not approve the proposed change which would remove the existing requirement for Commission review of any export subject to special limitations as determined by the staff or a majority of the Commissioners and would replace it with a requirement that the Commission review only those license applications "raising significant policy issues" as determined by persons undefined in the rule.

If the one is supposed to take the place of the other, we have gone from a very straightforward metric for Commission review to something very vague. I would need much more discussion of the merits of this proposal to be convinced of its virtue. There was also no justification for raising the threshold for Commission review from the current one effective kilogram of high-enriched uranium to the proposed "more than five" effective kilograms. In the absence of any justification, I do not support this change. These changes are proposed against a backdrop of the Commission generally reviewing no more than a handful of export or import items in any given year. Assessed as a proposed reduction in the Commission's workload, therefore, I still find little to no justification for the change.

I would note that under the proposed rule, in section 110.41, the NRC will continue to seek Executive Branch review of all exports "subject to special limitations" and, moreover, that the proposed rule actually expands the requirement to seek Executive Branch review to those exports "raising significant policy issues or subject to special limitations." In my view, the proposed rule should use parallel construction in section 110.40 in defining which export applications will receive Commission review.



Kristine L. Svinicki 05/1/09