



NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

[NRC-2018-0294]

RIN 3150-AK26

Updates and Clarifications on the Export of Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its export and import regulations to maintain the regulatory status quo for nuclear exports to the United Kingdom (U.K.), upon the entry into force of a new civil nuclear cooperation agreement between the United States (U.S.) and the U.K. (the U.S.-U.K. 123 Agreement). The amendment will add the U.K. to the list of countries eligible to receive certain small quantities of special nuclear material under a general license, and to the list of countries whose export license applications do not require Executive Branch or Commission level reviews for certain exports of source material or low-enriched uranium. This amendment is necessary to bring the NRC's regulations into conformity with U.S. Government foreign policy and preserve existing provisions for nuclear exports to the U.K.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID **NRC-2018-0294** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2018-0294**. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; e-mail: Dawn.Forder@nrc.gov.

- **NRC’s Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents Collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at pdr.resource@nrc.gov or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lauren Mayros, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9088; e-mail: Lauren.Mayros@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

The purpose of this final rule is to revise the NRC’s export and import regulations in part 110 of title 10 of the *Code of Federal Regulations* (10 CFR), “Export and Import of Nuclear Equipment and Material,” to include the United Kingdom (U.K.) as a country eligible to receive certain small quantities of special nuclear material under a general license, and to add the U.K. to the list of countries whose export license applications do not require Executive Branch or Commission level reviews for certain exports of source material or low-enriched uranium. In light of the impending U.K. departure from the European Union and European Atomic Energy Agency (EURATOM), this final rule is necessary to conform the NRC’s regulations with U.S. Government foreign policy and preserve existing provisions for nuclear exports to the U.K., upon the entry into force of the new civil nuclear cooperation agreement between the U.S. and the U.K.

The U.S. Department of State has requested that the NRC update its regulations in 10 CFR part 110 to meet the commitment made by the U.S. Government to the U.K.

Government to prepare for entry into force of the new U.S.-U.K. 123 Agreement. The two Governments plan to bring the U.S.-U.K. 123 Agreement into force when the U.K. is no longer covered by the U.S. civil nuclear cooperation agreement with the European Atomic Energy Community (EURATOM). During the negotiations of the U.S.-U.K. 123 Agreement, the U.S. Government committed to take the necessary steps to ensure a seamless continuation of close nuclear cooperation with the U.K. Fulfilling this commitment will require current nuclear export regulatory and policy understandings to remain in place for U.S. companies exporting nuclear material to the U.K. after entry into force of the U.S.-U.K. 123 Agreement. As a result, the U.S. Department of State requested that the NRC amend §§ 110.21(b)(3), 110.40(b)(3), and 110.41(a)(6) to meet a U.S. Government foreign policy objective and to provide confidence that the regulatory status quo between the U.K. and the U.S. will be maintained.

The NRC has determined that revising §§ 110.21(b)(3), 110.40(b)(3), and 110.41(a)(6) to include the U.K. after EURATOM in the requirements for these sections, is consistent with current U.S. law and policy, and will pose no unreasonable risk to the public health and safety or to the common defense and security of the U.S. Further, the revisions are essential to preserve the current provisions for export to the U.K. once the U.S.-U.K. 123 Agreement enters into force.

II. Summary of Changes

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This final rule revises §§ 110.21(b)(3), 110.40(b)(3), and 110.41(a)(6) to include the U.K. after EURATOM in the requirements for these sections.

III. Rulemaking Procedure

Because this rule involves a foreign affairs function of the U.S., the notice and comment provisions of the Administrative Procedures Act do not apply (5 U.S.C. 553(a)(1)), and good cause exists to make this rule immediately effective upon publication. The effective date for those entities who receive actual notice of this rule is the date of receipt of this rule.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), which categorically excludes from environmental review any amendments to 10 CFR part 110. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act

This final rule does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB) under approval number 3150-0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Regulatory Analysis

This final rule revises §§ 110.21(b)(3), 110.40(b)(3), and 110.41(a)(6) to include the U.K. after EURATOM, and is necessary to maintain the existing regulatory status quo for nuclear exports to the U.K. upon the entry into force of a new U.S.-U.K. 123 Agreement. The addition of the U.K. in § 110.21(b)(3) will continue to allow for the return of uranium-235, in the form of uranium hexafluoride heels in cylinders, to suppliers in the U.K. under an NRC general license. Adding the U.K. in § 110.40(b)(3) preserves the current regulation that excludes Commission review for exports of source material or low-enriched uranium to EURATOM or Japan for enrichment up to 5 percent in the isotope uranium-235. Lastly, adding the U.K. in § 110.41(a)(6) preserves the current regulation that excludes Executive Branch review for exports of source material or low-enriched uranium to EURATOM or Japan for enrichment up to 5 percent in the isotope uranium-235. There is no alternative to amending the regulations for the export and

import of nuclear equipment and material. This final rule is expected to have no changes in the information collection burden or cost to the public.

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

VIII. Backfitting and Issue Finality

The NRC has determined that a backfit analysis is not required for this rule, because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter I.

IX. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a "major rule" as defined by that act.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of 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 NRC is adopting the following amendments to 10 CFR part 110:

PART 110 – EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170h, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2071, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160c, 2160d, 2201, 2210h, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 et seq.

2. In § 110.21, revise paragraph (b)(3) to read as follows:

§ 110.21 General license for the export of special nuclear material.

* * * * *

(b) * * *

(3) Uranium, enriched to less than 20 percent in uranium-235, in the form of uranium hexafluoride (UF₆) heels in cylinders being returned to suppliers in EURATOM or the United Kingdom.

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3. In § 110.40, revise paragraph (b)(3) to read as follows:

§ 110.40 Commission review.

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(b) * * *

(3) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM, the United Kingdom, or Japan for enrichment up to 5 percent in

the isotope uranium-235, and those categories of exports which the Commission has approved in advance as constituting permitted incidental assistance.

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4. In § 110.41, revise paragraph (a)(6) to read as follows:

§ 110.41 Executive Branch review.

(a) * * *

(6) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM, the United Kingdom, or Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

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Dated: December 14, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,
Executive Director for Operations.

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