

2. Paragraph (a) of § 910.432 Lemon Regulation 131 (43 FR 5796) is amended to read as follows:

§ 910.432 Lemon Regulation 131.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period February 12, 1978 through February 18, 1978, is established at 240,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: February 15, 1978.

CHARLES R. BRADER,  
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIALS

Export and Import of Nuclear Facilities and Materials

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations by adding a new part providing for standards, procedures and rules of practice for licensing the export and import of utilization facilities, source, byproduct and special nuclear materials. Conforming changes are also made to other parts of the Commission's regulations relating to export and import matters. The new part, designed to codify in one place export and import regulations, deals principally with the standards for grant or denial of license applications; the information required to be submitted in license applications; the general procedures followed for Commission review and for obtaining Executive Branch views on license applications; public notification of applications; the conduct and format of public procedures on export and import license applications; and enforcement actions and rulemaking relating to exports and imports.

EFFECTIVE DATE: May 3, 1978.

NOTE.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such reviews as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of this rule becomes effective, unless advised to the contrary, accordingly reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

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SUPPLEMENTARY INFORMATION: On June 30, 1977, in 42 FR 33317, the Commission published for comment a proposed new part 110 to CFR entitled "Export and Import of Nuclear Facilities and Materials", with conforming changes made to other parts of the Commission's rules.

Under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (Commission) is responsible for licensing the export and import of nuclear utilization facilities (nuclear Reactors), and source, byproduct and special nuclear materials.

During its first year as an independent regulatory agency, the Commission, in conjunction with the Executive Branch, developed procedures for obtaining the unified view of Executive Branch agencies on pending export and import license applications. These procedures were made formal for the Executive Branch in early 1976 by issuance of Executive Order 11902. Also, beginning in January of 1976 the Commission undertook a comprehensive examination of its export and import licensing provisions. This rule is a result of this study and the comments received on the proposed rule.

The Commission, Executive Branch, and Congress are examining the substantive standards and criteria for granting or denying export license applications to be added to Part 110. Any changes to the substantive standards and criteria set forth in these regulations will be the subject of a separate rulemaking and FEDERAL REGISTER notice.

SUMMARY OF REGULATIONS

The export and import regulations are set forth in a new Part 110 entitled "Export and Import of Nuclear Facilities and Materials". Conforming changes are made to other parts of the Commission's rules.

The basic purposes of the new Part 110 are twofold: first, to reflect in its procedures the basic differences between the Commission's export and import licensing functions and its domestic licensing functions; and second, to consolidate the Commission's export and import licensing provisions, presently scattered throughout the Commission's regulations, into one part for the convenience of the public.

- Briefly, the new Part 110 includes:
- (1) Required contents of export and import license applications;
  - (2) Procedures for Commission review of export and import license applications;
  - (3) Exemptions from licensing requirements and grants of general licenses for exports and imports;
  - (4) Substantive standards for grant or denial of export and import license applications;
  - (5) The Commission's relationship to Executive Branch agencies in nuclear export and import matters;
  - (6) Provisions for public notification of the receipt of export and import license applications;
  - (7) Procedures for public participation in the Commission's export and import licensing review process, including provisions for granting or denying requests for hearings and petitions for leave to intervene, and provisions for the hearings themselves.
  - (8) Provisions regarding access to, and introduction of, classified information in hearings;
  - (9) Procedures for rulemaking on nuclear export and import matters;
  - (10) Recordkeeping requirements for export and import licensees; and
  - (11) Enforcement actions concerning export and import licenses.

Most of the substantive provisions have been developed (with some revision and updating) from other parts of the Commission's regulations on nuclear exports and imports in 10 CFR Parts 30, 31, 32, 33, 36, 40, 50 and 70. However, the provisions in the new Part 110 regarding public participation in the Commission's nuclear export and import licensing review process differ from the procedures used in the Commission's domestic licensing review process and deserve further explanation.

PUBLIC PARTICIPATION IN EXPORT AND IMPORT LICENSING

On March 2, 1976, the Commission received, for the first time in its history or the history of its predecessor, the Atomic Energy Commission (AEC), a petition for leave to intervene and request for a hearing on an export license application. The Commission held that the petitioners lacked standing to intervene in the case, but decided as a matter of discretion that the conduct of a legislative-type hearing would be in the public interest. *Edlow International Company* (Tarapur), 3 NRC 563 at 568 and 580 (1976).

The Commission adopted procedures which afforded the petitioners in that proceeding an opportunity to make their views known in a manner and under a procedural format compatible with the orderly conduct of the licensing process and the nature of the issues involved in the matter, includ-

ing sensitive foreign relations and national security considerations. *Id.*, at 568, 580, 590-591. The procedural aspects of the Commission's decision in *Edlow* are presently under judicial review by the U.S. Court of Appeals for the D.C. Circuit.

In a subsequent opinion on another export license application, the Commission discussed its export licensing procedures, the sensitive and policy-oriented character of the issues involved, and the Commission's treatment of these matters. *Westinghouse Electric Corporation (ASCO II)*, 3 NRC 739 (1976).

The Commission is authorized by the Atomic Energy Act to issue a license for a particular export or import only after determining that issuance would not be inimical to the common defense and security of the United States, or the health and safety of the United States public, and (in the case of nuclear facilities and certain nuclear materials) after determining that the export would be within the scope of, and consistent with, an agreement for cooperation in the civil uses of atomic energy between the United States and another nation or group of nations.

Pursuant to section 123 of the Atomic Energy Act, agreements for cooperation become effective only after: (1) They are approved and authorized by the President of the United States, who is required to make a determination in writing that "the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security"; and (2) they have been submitted to Congress for review under a special statutory arrangement.

The statutory finding which the Commission makes before issuing an export or import license often requires consideration of highly sensitive foreign policy and national security matters, some of which may have an impact well beyond the specific nuclear export or import being considered. For example, the Commission examines, among other matters, the safeguards and assurances provided by the recipient government to ensure that U.S.-supplied facilities and materials are not diverted to unauthorized uses, and the relationship of the Commission's grant or denial of an export license application to overall U.S. policies on the proliferation of nuclear explosives. In contrast, domestic licensing usually involves factual matters, relating to the domestic public health and safety and the environment, associated with discrete applications for the construction and operation of nuclear power plants. Moreover, the Commission's export and import licensing review process constitutes only one part of this country's broader ac-

tivities in the nuclear import and export control area—activities which are part of United States foreign policy and nuclear nonproliferation efforts.

As the Commission has noted, the procedures applicable to domestic licensing are not in general well-suited to the Commission's conduct of its export and import licensing functions. See *Edlow International, supra*. In case of material covered by import licensing proceedings, if certain domestic health, safety, environmental and safeguards issues are raised, which are similar to issues commonly raised in domestic licensing proceedings, these issues may be properly addressed using domestic licensing procedures to the extent that they are separable from other issues associated with the license. Thus, persons or organizations establishing in an import licensing proceeding that they have an interest which may be affected, may be accorded additional procedural rights in the resolution of factual issues regarding protection of the U.S. public health, safety and environment.

The Commission has statutory discretion to formulate appropriate procedures for export and import licensing. Section 189a. of the Atomic Energy Act provides:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees, \* \* \* the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit such person as a party to such proceeding.

This language does not by its terms provide for an "on-the-record" hearing calling into play the formal adjudicatory requirements of sections 5, 7, and 8 of the Administrative Procedure Act, in each and every context in which a hearing is required. For example, such requirements do not apply where the Commission engages in rulemaking. *Siegel v. AEC*, 400 F. 2d 788 (D.C. Cir. 1968). What the language requires in each instance is to be settled by reference to congressional intent, established practice and sound policy.

It is clear from the legislative history of the provision, consistent agency practice, and indeed the general structure and conduct of government that formal adjudicatory procedures are required for controversies arising out of domestic licensing. *Id.* at 785. There is no similar indication concerning export or import licensing. During its 20-year administration of the Atomic Energy Act, the AEC did not once conduct a public or formal export or import licensing proceeding. The legislative history of the Energy Reorganization Act is equally devoid of any hint that Congress expected the Com-

mission to follow formal adjudicatory procedures in export or import licensing.

Indeed, Congress' first explicit consideration of export procedures came in 1975, after enactment of the Energy Reorganization Act. Thus, neither congressional expectation nor established practice requires on-the-record adjudication of export or import licensing matters.

The absence of congressional concern over the informal nature of AEC export or import reviews is particularly significant in light of the unique relationship the *Siegel* court recognized between the Commission and the Congress, one designed to keep Congress fully and currently informed about this agency's views and actions. 400 F.2d at 783. See also *Union of Concerned Scientists v. AEC*, 499 F.2d 1069, 1079 (D.C. Cir. 1974). Congress was fully aware of the Commission's export and import licensing procedures, under the Commission's legal obligation to keep the Joint Committee on Atomic Energy "fully and currently informed with respect to all \* \* \* (its) activities" including its export licensing practices. See section 202a. of the Atomic Energy Act.

The Commission's understanding of section 189 is also supported by more general considerations touching the nature of the issues, the practices of other federal agencies, and the appropriateness of adopting procedures other than adjudicatory hearings for nuclear export and import licensing.

As indicated before, the statutory finding which the Commission must make for an export or import, and the statutory context in which that finding is made, often require consideration of highly sensitive foreign policy and national security issues, including other countries' intentions and policies. An attempt to resolve these issues in the format of a formal adjudicatory hearing could seriously impair the conduct of United States foreign relations. It could appear to place on trial a foreign government's intentions on matters concerning its own vital national interests. These statutory findings are inherently policy decisions, committed to agency discretion, and singularly inappropriate for resolution in a formal adjudicatory context.

Finally, to the Commission's knowledge, no other agency holds adjudicatory hearings on such sensitive foreign policy issues.

Indeed, even if section 189 itself were to be construed to require formal adjudicatory procedures on all Commission licensing proceedings, Section 5 of the Administrative Procedure Act permits modification of those formal procedures where the conduct of foreign affairs functions is involved. Thus, regardless of the precise interpretation to be accorded the term

"hearing" in section 189, a similar result obtains under Section 5 of the Administrative Procedure Act—formal adjudicatory procedures are not required and are inappropriate for Commission export and import licensing.

"It is part of the genius of the administrative process that its flexibility permits adoption of approaches subject to expeditious adjustment in the light of experience." *American Airlines, Inc. v. Civil Aeronautics Board*, 359 F.2d 624, 633 (D.C. Cir. 1966). The Commission has endeavored in the new Part 110 to provide for procedures that will facilitate effective public participation in export and import licensing—procedures that are designed to be fair and consistent with the nature of the issues involved. Also, the Commission has endeavored to provide a structure for public participation that is sufficiently comprehensive so as to eliminate or substantially decrease the need for time consuming case-by-case development of procedures for export and import license applications.

#### ELEMENTS OF PUBLIC PARTICIPATION ON EXPORT AND IMPORT LICENSING MATTERS

In brief, the New Part 110 establishes the following procedures for public participation in export and import licensing matters. First, public notices is given for all major export and import license applications by periodically publishing a list of those applications received in the FEDERAL REGISTER—the Commission intends to do this twice a month; by placing copies of all export and import license applications in the Commission's Public Document Room; and by periodically mailing a list of export and import license applications received to persons or organizations requesting such information.

Second, the new part explicitly provides for public participation through written comments to the Commission. The Commission encourages and will consider carefully any written comments received on pending export and import license applications.

Third, provision is made for both hearings consisting of written comments and oral hearings where the Commission believes these would be in the public interest and of assistance in making its export and certain import licensing determinations. In keeping with the nature of the issues, oral hearings will be modeled on those used by legislative bodies. At such hearings, participants may be questioned by the presiding officer (ordinarily the presiding officer will be the Commission itself). Also, participants in the hearing may submit proposed questions to the presiding officer, to be addressed by others at the discretion of the presiding officer.

Finally, the Commission will give careful consideration to all relevant

written comments received, and the record of any hearings, in making its decision. However, in reaching its decision, the Commission may draw on material not included in the hearing record and may consult with its staff, Executive Branch agencies and other persons.

COMMENTS.—Twenty-four letters of comment were received from a total of 23 persons, companies or organizations: 14 from the domestic nuclear industry; 1 law firm representing nuclear industry clients; 2 foreign industry groups; 2 public interest groups; 3 State government agencies; the Department of Commerce; and the Department of State. Copies of these comments have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. The commentors had both general and detailed remarks on the procedures and most offered detailed drafting changes to the proposed regulations. The general comments and their resolutions are as follows:

(1) Industry commentors basically supported the promulgation of consolidated export regulations at this time. However, one public interest commentor (representing several organizations) suggested the adoption of the regulations was inappropriate prior to enactment of comprehensive nonproliferation legislation pending before the 95th Congress. One industry commentor supported this view.

Part 110 was drafted with the nonproliferation legislation in mind and, if legislation is enacted, appropriate provisions will be integrated into the new regulations (for example, more detailed export licensing criteria under § 110.42). The Commission has endeavored to draft Part 110 in a manner consistent with the latest versions of proposed legislation, as well as Commission statements of its intention to develop comprehensive export/import regulations at an early date. The new part is warranted on its own merits.

(2) Industry comments also reflected support for adopting legislative hearings as the typical format for public participation in export licensing. A few thought the public participation regulations were too broad and were an invitation to abuse by groups having only a remote interest in the subject matter. Several companies urged a rule requiring a stronger showing of interest before permitting interventions in NRC export licensing proceedings. On the other hand, comments by some environmental and public interest groups objected to adoption of a legislative hearing format and urged that the regulations be amended to provide for adjudicatory hearings (including full party status for intervenors, formal discovery by interrogatory, subpoenas for witnesses, cross-examination, on-the-

record decisions, and the right of public parties to initiate enforcement proceedings).

As previously detailed, the procedures applicable to domestic licensing are not in general well-suited to the Commission's conduct of its export and import licensing functions. On the other hand, the Commission does not feel that the public participation regulations adopted are too broad and sees no sound reason why a stronger showing of interest should be required for intervention.

(3) Several commentors suggested various ways for the Commission to expedite the licensing review process. It was suggested that the Commission (1) act on an export license within a specified time, ranging from 90 days to 6 months following receipt of an application, (2) limit the review process for routine applications such as reactor fuel reloads, and (3) provide a preliminary export license commitment, such as an advisory opinion, similar in principle to that granted by the Eximbank and the Commerce Department.

In response to these comments, it should be noted that the Commission has been actively working with the executive branch to expedite the licensing review process. Section 110.40 sets a guideline period for processing applications and stipulates that, if the guideline period is not met, the applicant will be informed in writing of the reason and given appropriate follow-up reports. Routine export license applications for low-enriched fuel shipments subsequent to an initial coreload, such as those for a facility in a country adhering to the Nuclear Nonproliferation Treaty (NPT), will not ordinarily be referred to the Commissioners for review. Applications involving non-parties to the NPT, intervention petitions or requests for a hearing, or changed circumstances are considered non-routine.

The more detailed comments and responses are noted below. The proposed rule has been revised, as appropriate, in response to general comments suggesting simplification and clarification. This has been accomplished throughout the proposed rule without altering the substance.

#### CONFORMING CHANGES

(1) In response to a comment concerning §§ 30.41, 40.51, and 70.42, new subparagraphs (b)(6) are added to these sections to clarify that persons authorized to possess nuclear material are authorized to transfer the material to a person abroad pursuant to an export license issued under Part 110 of this chapter.

(2) Material identification requirements, previously implemented by import license conditions, have been incorporated into § 70.54

## SUBPART A—GENERAL PROVISIONS

(3) § 110.1, "Purpose and scope", is simplified, clarified and expanded to note that certain Department of Defense and Department of Energy activities are excluded from coverage by statute.

(4) In response to several comments, definitions are added for "packaging" (§ 110.2(v)), "reexport" (§ 110.2(bb)), "transfer" (§ 110.2(ii)), and "transport" (§ 110.2(jj)). Also, definitions for "atomic energy" and "Restricted Data" are deleted as unnecessary, and other definitions are clarified.

The new definitions are designed, in part, to distinguish between "export", "import", and "transfer". A specific export or import license simply authorizes the licensee to arrange for a utilization facility or special, source or by-product material to be conveyed out of or into the U.S. An export or import license does not authorize the licensee to possess the material. A supplier or receiver, the only person with actual physical possession is responsible under existing regulations for providing appropriate packaging and transportation. However, a licensee with a specific license to export or import special nuclear material is responsible for compliance with the physical protection requirements of Part 73, unless a domestic licensee (supplier or receiver) has assumed that responsibility and the Commission has been so notified. See § 110.50(b).

(5) In response to a comment, the definition for "Agreement State" in former § 110.2(c), new § 110.2(b), is changed to clarify that it applies only to "States" in the United States and not to foreign "states."

(6) One commentator suggested that "person" in § 110.2(y) is defined too broadly, in effect granting "standing" to anyone to file written comments, request a hearing or petition for leave to intervene. The definition is unchanged, since there is no direct correlation between "person" and "standing" in Part 110.

(7) One commentator suggested that any reference to "participants", (§ 110.2(x)), be changed to "parties" to give every participant in a hearing equal status and the right to seek judicial review. The definition is unchanged. In effect, the status of participants in a hearing will be equal, depending (1) on the degree of involvement in the hearing (e.g. providing written comments only) or (2) on the framework the Commission sets for any hearing (e.g. providing for an oral hearing). In addition, because legislative-type rather than adjudicatory-type hearings are provided for, the term "participant" rather than "party" seems more appropriate.

This commentator also suggested that all participants are entitled to seek judicial review under section 189b of the

Atomic Energy Act. However, only a person who has established an interest that may be affected and is aggrieved (see Hobbs Act, 42 U.S.C. § 2341 et seq.) may seek judicial review.

(8) In response to several comments, § 110.5 is revised to clarify the requirements for a license. Former paragraph (c) is covered elsewhere in Part 110 and is deleted; and former paragraph (d) is deleted and incorporated into a new § 110.6, to clarify procedures for obtaining reexport approval.

## SUBPART B—EXEMPTIONS

(9) Many commentators requested various new exemptions or general licenses in connection with Subparts B and C. Many of the proposals are believed to have merit and have been under Commission and executive branch review. These proposals will be addressed in a separate rulemaking proposal to be published in the near future in the FEDERAL REGISTER. Any regulations emerging from this rulemaking would be incorporated into Part 110.

(10) In response to several comments, § 110.10 is clarified and also revised to make clear that exemptions granted by the Commission are subject to executive branch review and, where appropriate, public rulemaking proceedings. One commentator suggested an exemption from licensing requirements for Government-to-Government imports of special nuclear material. The staff is analyzing this suggestion and any proposed changes to this part resulting from the staff analysis will be subject to a separate rulemaking proposal.

(11) Former § 110.11, exempting the Department of Defense from export or import licensing to a certain extent, is deleted and incorporated into § 110.1, as noted in the first response.

(12) In response to a comment, former § 110.12, new § 110.11, is clarified to make it parallel to § 70.11 of this chapter.

(13) In response to a comment, former § 110.13 is deleted. The exemption dealing with carriers is subsumed under domestic transfer and licensing requirements.

(14) A new § 110.12 is added to incorporate a recent rulemaking on inter-governmental cooperative activities (see former § 70.15 of this chapter).

## SUBPART C—GENERAL LICENSES

(15) In keeping with the comments and revisions in § 110.10, a new § 110.20 is added to explain the authority and requirements for issuance of general licenses, including provision for executive branch review and rulemaking proceedings.

(16) One comment proposed shipment limitations for former §§ 110.20(f), 110.20(g), and 110.21(e) (new §§ 110.21(f), 110.21(g), and

110.22(e)). The suggested limitations have not been adopted in view of the inherently nonsensitive nature of the byproduct and source material under these general licenses. However, in response to another comment, former § 110.21(a), new § 110.22(a), is revised to limit the total amount of source material that a person can export annually to any country.

(17) In response to a comment on former § 110.23, this section is deleted, since information on generally licensed exports can be obtained from U.S. Customs and because there requirements have been difficult to administer.

(18) Several commentators requested that the general license for import, § 110.25, be modified to exclude imports of nuclear waste for disposal. This proposal would require a substantive change to existing regulations. The staff is analyzing this matter and any proposed change will be subject to a separate rulemaking proposal.

## SUBPART D—APPLICATIONS FOR SPECIFIC LICENSES

(19) In response to a comment, references to application forms are added to § 110.30.

(20) In response to several comments on § 110.31, former paragraph (a)(3), new paragraph (a)(2), is clarified and former paragraph (a)(9) is deleted since this is covered in § 110.33.

The other comments on this section and their resolution are as follows:

A. One commentator also requested that the requirement for an end-use statement be deleted. This information is essential to licensing review, and the requirement is unchanged.

B. Another commentator requested that the principal initiating a license application (often a foreign government or corporation) should be identified. This is unnecessary if the license applicant, supplier and the receiver are clearly identified.

C. Finally, one commentator suggested that reprocessing and spent-fuel storage plans of the recipient should be included in export license applications. Information on U.S. controls over the reprocessing of U.S. supplied material and on related spent fuel storage considerations is available from governmental sources and considered, as appropriate, in export license reviews. It is unnecessary and inappropriate to request the license applicant to provide such information.

(21) In response to several comments, § 110.32 is clarified so that "items" in paragraph (b) refers to individual shipments and so that paragraph (c) explains why a list is required.

One commentator suggested that jurisdictional lines between the Commission and the Department of Commerce be clarified. Licensing practice

indicates that this clarification is unnecessary. Changes resulting from enactment of pending nonproliferation legislation would be incorporated into future amendments to Part 110.

(22) In response to several comments, § 110.33 is clarified and revised by requiring contract numbers only, if known, in paragraph (a); by deleting former paragraph (c), since shipping and packaging requirements are covered by the Commission's domestic licensing regulations; by adding a new paragraph (e), to identify the country of origin for source and special nuclear material in order to meet international standards; and by deleting former paragraph (f), since the information it requested is often proprietary or classified and is more appropriately obtained government-to-government.

(22) In response to several comments, § 110.34 is clarified and revised by requiring the name of the supplier instead of the owner in new paragraph (c), former paragraph (a)(4); by deleting former paragraph (a)(10), since these requirements are covered by the Commission's domestic licensing regulations; and by clarifying former paragraph (a)(11), new paragraph (i).

(23) In response to a comment, § 110.35 is revised to apply to applicants only.

#### SUBPART E—REVIEW OF SPECIFIC LICENSE APPLICATIONS

(24) In response to a comment, former § 110.36 is combined with new § 110.53 to further clarify that any person applying for an export or import license must have a U.S. address through which the Commission can take enforcement action or inspect his records, premises and activities related to the export or import shipment.

(25) In response to several comments, § 110.41 is revised by deleting former paragraph (a)(3) as redundant; and by deleting former paragraph (b), since the requirement to forward to the Executive Branch those import license applications involving material for subsequent export is unnecessary in view of the fact that subsequent export will be subject to Executive Branch and Commission review.

The other comments and their resolution are as follows:

A. One commentator suggested that, in situations involving the import of material for subsequent export, the Commission should issue a combined import/export license. This suggestion is not adopted, since applicants may apply simultaneously for import and export licenses, if they wish such matters to be considered concurrently.

B. One commentator suggested that the Commission require the Executive Branch to prepare a nonproliferation assessment, including a timely warning analysis, on each export license ap-

plication. This is considered unnecessary, since proliferation aspects of each export are already considered in the Executive Branch and Commission review of proposed exports as part of the normal licensing review.

C. Finally, one commentator suggested that the Commission's regulations should set standards governing the quality of Executive Branch analysis. This is unnecessary. The Commission has established procedures for obtaining information from the Executive Branch, its staff and others, and does not make its export licensing determinations until it has received adequate information.

(26) § 110.42 adopts as final an interim rule proposed in 42 FR 43821 (August 31, 1977). See § 70.31(e) of this chapter. In response to a comment received on the interim rule, the final rule requires that the quantity of exempted diluted material may not exceed 100 grams. It should be noted that § 110.42, and the Atomic Energy Act itself, do not require that source material exports be pursuant to an agreement for cooperation. Nevertheless, the Commission will normally require that source material exports for nuclear end-uses be pursuant to an agreement for cooperation in order to satisfy the "noninimicality" determination requirement.

#### SUBPART F—LICENSE TERMS AND RELATED PROVISIONS

(27) There were numerous comments on § 110.50. This section is revised by:

A. Simplifying paragraphs (a)(1) and (a)(2); deleting former paragraph (a)(3), since it is redundant; clarifying paragraph (a)(4) and renumbering it (b)(9); and deleting former paragraphs (a)(5) and (a)(6), since shipping requirements are covered by the Commission's domestic regulations;

B. Clarifying former paragraph (b)(1) and renumbering it (b)(2); adding a new paragraph (b)(1) to provide for license expiration dates; deleting former paragraph (b)(2), because the Commission has other means to verify the information contained in Shipper's Export Declarations; and adding a new paragraph (b)(5) to indicate the licensee's responsibility with respect to the packaging requirements of Part 71;

C. Renumbering paragraphs (c)(1) and (c)(2) as (b)(8) and (b)(7), respectively;

D. Revising former paragraph (d)(1) to cover packaging and fuel element hardware and renumbering it (a)(5); deleting paragraphs (d)(2) and (d)(3), since reporting and shipping requirements are covered by the Commission's domestic regulations; incorporating former paragraph (d)(4) into new paragraph (a)(3); renumbering paragraph (d)(5) as (b)(6) and revising it to make clear that the export licens-

ee is responsible for compliance with the physical protection requirements in Part 73, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified; and deleting paragraph (d)(6), since this provision is covered by the Commission's domestic regulations.

E. Deleting paragraphs (e)(1) and (e)(3) through (e)(7), since these requirements are covered by the Commission's domestic regulations; and deleting paragraph (e)(2) and providing for appropriate coverage in a conforming change to Part 73.

(28) A commentator suggested that the Commission revise § 110.51 to require the Commission to provide the licensee notice that his license is about to expire. This suggestion is not adopted because it would impose an unwarranted administrative burden on the Commission. A licensee is fairly chargeable with a duty to review his legal authority to engage in a licensed activity and to take whatever action is required to maintain that authority.

(29) In response to a comment, § 110.54 is deleted, since reporting requirements are adequately covered by the Commission's domestic regulations. This deletion obviates the need to respond to other comments on § 110.54.

(30) In response to a comment, former § 110.55, now incorporated into § 110.53, is revised to clarify the Commission's statutory authority and the coverage of the Commission's inspections.

#### SUBPART G—VIOLATIONS AND ENFORCEMENT

(31) In response to several comments, §§ 110.60, 110.61, 110.62, 110.63, 110.64 and 110.65 are clarified and simplified. One commentator requested that paragraphs (e) and (f) of § 110.64 be deleted on grounds that section 234 of the Atomic Energy Act does not authorize hearings in connection with civil penalties. Such hearings are authorized by the Atomic Energy Act (see 10 CFR § 2.205) and the request is therefore not adopted. However, these paragraphs are clarified to indicate that any alleged violator does not need to seek an administrative hearing.

#### SUBPART H—PUBLIC NOTIFICATION AND AVAILABILITY OF DOCUMENTS AND RECORDS

(32) Section 110.70 is clarified and divided into 4 sections in response to several comments suggesting that it was unclear.

The other comments and their resolution are as follows:

A. The Commission is adopting a suggestion that it publish in the FEDERAL REGISTER notice of receipt of applications other than those for utilization facilities. The Commission will

also notice in the FEDERAL REGISTER receipt of applications for 1 effective kilogram or more of special nuclear material and 10,000 kilograms or more of source material. Thus, major applications will be noticed in the FEDERAL REGISTER. The Commission believes, however, that publication in the FEDERAL REGISTER has only marginal value as a means of providing actual notice of applications in minor cases and will continue to notice these by placement in the Commission's Public Document Room.

B. In response to a comment, former paragraph (a)(3) is deleted. It should be noted that, in §110.80 of Part 110, the Commission encourages written comments from the public. In order to afford the Commission an opportunity to focus on public views and concerns, it requests that, if possible, the comments should be submitted within 30 days after notice of receipt of an application.

C. Finally, in response to a comment, the Commission believes it unnecessary to provide notice to the applicant that his application was received, since this can be verified by telephone.

(33) In response to several comments, former §110.71, new §110.73, is clarified and a new paragraph (b) is added to specify that the provisions of §§2.790 (b), (c) and (d) of this chapter also may be applied to proprietary information.

#### SUBPART I—PUBLIC PARTICIPATION PROCEDURES CONCERNING LICENSE APPLICATIONS

(34) In response to several comments, §110.80 is clarified and provision made for the Commission to provide an applicant with a copy of any comments received and, as appropriate, a reasonable opportunity to respond. It should be noted that the written comment procedure in this section is separate from the procedure for a hearing consisting of written comments.

(35) In response to several comments, §110.81 is clarified, revised and incorporated into other sections as appropriate.

In response to a comment, the Commission does not consider it necessary to bolster the provisions on untimely intervention petitions or hearing requests and on the documentation and information required from a petitioner or requestor.

In keeping with Commission acceptance of the comment that it should act expeditiously on export license applications, former §110.81(b), new §110.81(c), is revised to allow 15 days after public notice of receipt of the application in the Public Document Room for the filing of hearing requests or intervention petitions on minor export or import license applications. As stated before, for major ap-

plications published in the FEDERAL REGISTER, hearing requests and intervention petitions will be considered timely only if filed not later than 30 days after notice of receipt in the FEDERAL REGISTER.

(36) In response to comments, §110.82 is revised by providing equal time limits for filing answers, adding a new provision covering replies, and making these consistent with §110.81.

(37) In response to several comments, §110.83 is revised by:

A. Changing paragraph (b)(1) to make clear that a key factor the Commission will consider in acting on an intervention petition or hearing request is the impact of a hearing on the common defense and security of the United States (the Commission has not adopted other suggested criteria, since it believes that the present criteria as revised are adequate);

B. Adding a new paragraph (f) specifying that, where a hearing request or intervention petition does not establish an interest which may be affected, the Commission will not conduct a new hearing on an issue adequately explored in another hearing, unless it determines that changed circumstances or new information warrant a new hearing. If the Commission determines that a hearing request or intervention petition does establish an interest which may be affected, it will grant a hearing and structure it to take account of information on the same issue received in any previous hearing; and

C. Specifying in new paragraph (g) that upon the affirmative vote of two Commissioners a hearing will be ordered.

(38) In response to a comment on §§110.84 and 110.85, the distinction between the procedures for oral hearings and hearings consisting of written comments is clarified.

(39) Several commentators stated that the order of the sections in Subpart I, "Public Participation Procedures Concerning License Applications" and Subpart J, "Hearings and Decisions" was unclear. For the most part, Subpart I concerns public participation procedures prior to hearings and Subpart J concerns procedures during hearings. To make the distinction clearer, the two subparts are retitled; former §110.86 is incorporated into §§110.84 and 110.85; former §110.87 is retitled and renumbered §110.86; former §§110.90, 110.92, 110.93 and 110.95 are deleted from Subpart I, placed in Subpart J and renumbered §§110.101, 110.102, 110.103 and 110.105(a)(7) respectively; and §§110.94, 110.96, 110.97 and 110.110(c) are renumbered §§110.89, 110.88, 110.87 and 110.90, respectively.

#### SUBPART J—HEARINGS

(40) In response to comments, former §110.93(d), new §110.103(d), is

revised by deleting the requirement for filing 20 conformed copies; and former §110.94 (b) and (c), new §110.89 (b) and (c), is revised by decreasing the time periods to correspond with standard requirements in domestic licensing proceedings.

(41) The comment that the Commission permit interrogatories is not accepted, since, as noted earlier, hearings have a legislative rather than an adjudicatory format. Instead, former §110.104, new §110.106, is revised to make clear that participants may address written or oral questions to the Commission or other presiding officer who may refer them to other participants for response.

Although several commentators suggested deletion of former §110.104(c), new §110.106(c), concerning import licensing hearings, the Commission is retaining it, as clarified, since it provides an option for according additional procedural rights in certain cases.

(42) In response to several comments, former §110.105, new §110.107, is revised by deleting the requirement in paragraph (a) for advance filing of rebuttal testimony; by relettering former paragraph (b) as new paragraph (f); and by inserting new paragraphs (c) and (d) permitting members of groups to testify in their individual capacities and participants to present their own witnesses.

The suggestion that the Commission grant subpoenas at the request of a participant is not adopted. Although the Commission is authorized to issue subpoenas on its own motion (see section 161c. of the Atomic Energy Act), the grant of subpoenas on request would be inconsistent with the legislative format established by these regulations for hearings.

(43) In response to several comments, former §110.107, new §110.109, is revised by changing paragraph (a) to require that, when the Commission is not the presiding officer, all motions must be filed initially with the presiding officer and all written motions served on the participants; and by changing the time limit in paragraph (b) to conform with standard practices in domestic licensing.

(44) In response to several comments, former §110.110, new §110.113, is revised by changing paragraph (a) to provide for a written Commission opinion after a hearing; by transferring former paragraph (c) to Subpart I and making it new §110.90; and by making clear in new paragraph (d) that the Commission may act at any time on a license application when the requirements in that paragraph are met.

#### SUBPART K—SPECIAL PROCEDURES FOR CLASSIFIED INFORMATION IN HEARINGS

(45) One commentator suggested that Subpart K limited the flow of classi-

fied information between the Executive Branch and the Commission. The Commission believes that neither the filing of a hearing request or intervention petition nor the granting of these should imply any limit on the flow of classified information, and this subpart has been revised accordingly. Section 110.120 is also clarified to indicate that, whether or not a hearing is conducted, classified information should be declassified to the maximum extent feasible, and, to the extent consistent with classification requirements, public statements by the Executive Branch will reflect consideration of any classified information. This is reaffirmed in § 110.125, incorporating former § 110.121.

(46) In response to a comment, former § 110.122, new § 110.121, is revised by clarifying procedures for obtaining access to classified information. The distinction between access to classified information introduced and not introduced into a hearing is retained.

(47) In response to a comment, former § 110.124, new § 110.123, is revised by clarifying that, when a participant does not intend to introduce classified information into a hearing, a notice of intent should not be filed.

(48) In response to a comment, former § 110.125, new § 110.123(a), is revised by clarifying that a hearing participant must file a notice of intent to introduce classified information at the earliest possible time after the hearing notice.

(49) One commentator questioned the need for paragraphs (b) and (c) of former § 110.126, new § 110.125 (b)(2) and (b)(3), and recommended deletion. These paragraphs are clarified but remain essentially unchanged. They simply note that all participants should attempt to ensure that any classified information introduced in a hearing is, to the extent consistent with classification requirements, declassified and reflected in the public hearing record.

(50) In response to a comment, § 110.127 is deleted as unnecessary. The Commission will, in any event, give appropriate weight to any classified information, whether or not it is introduced into a hearing.

**SUBPART L—RULEMAKING CONCERNING THE REGULATIONS IN THIS PART**

(51) Subpart L has been clarified to make it consistent with the changes to other subparts.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following new Part 110, together with conforming changes, to Title 10, Chapter I, Code of Federal Regulations, is published as a document subject to codification.

The conforming changes are as follows:

**PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS**

10 CFR Part 2 is amended as follows:  
1. The title of 10 CFR Part 2 is changed to read, "Rules of Practice for Domestic Licensing Proceedings";

**§ 2.1 [Amended]**

2. In § 2.1 of 10 CFR Part 2, the phrase "other than export and import licensing proceedings described in Part 110," is inserted after the words "all proceedings";

**PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

10 CFR Part 30 is amended as follows:

3. The title of 10 CFR Part 30 is changed to read, "Rules of General Applicability to Domestic Licensing of Byproduct Material";

**§ 30.1 [Amended]**

4. In § 30.1 of 10 CFR Part 30, the word "domestic" is inserted before the word "licensing" in both places where the latter word appears;

**§ 30.3 [Amended]**

5. In § 30.3, the word "or" is inserted before the word "use" and the phrase "import or export" is deleted;

**§ 30.4 [Amended]**

6. In the introductory sentence of § 30.4 and in § 30.4(b), the term "Parts 31-36" is changed to "Parts 31-35";

7. In § 30.4(i), the phrase "part and Parts 31-35 of this" is inserted before the word "chapter";

8. In § 30.4(q), the term "Parts 31-36" is changed to "Parts 31-35";

**§ 30.5 [Amended]**

9. In § 30.5, the term "Parts 31-36" is changed to "Parts 31-35";

**§ 30.6 [Amended]**

10. In § 30.6, the term "Parts 31-36" is changed to "Parts 31-35";

**§ 30.11 [Amended]**

11. In § 30.11(a), the term "Parts 31-36" is changed to "Parts 31-35" and the footnote is deleted from the title;

**§ 30.12 [Amended]**

12. In § 30.12, in the first and last sentences, the word "or" is inserted between the words "possesses," and "uses" and the phrase "imports, or exports" is deleted in these sentences;

**§ 30.13 [Amended]**

13. In § 30.13, the term "Parts 31-36" is changed to "Parts 31-35";

**§ 30.14 [Amended]**

14. In § 30.14(a), the term "Parts 31-36" is changed to "Parts 31-35";

15. In § 30.14(c), the word "and" is inserted before the number "34" and the term "and 36" is deleted;

**30.15 [Amended]**

16. In § 30.15(a), the word "import" is deleted and the words "initially transfer" are inserted in its place; the word "exports," is deleted; and the term "30-36" is changed to "30-35";

17. In § 30.15(b), the word "import" is deleted and the words "initially transfer" are inserted in its place;

**§ 30.16 [Amended]**

18. In § 30.16, the term "30-36" is changed to "30-35"; the word "exports," is deleted; the word "imported" is deleted and replaced with the words "initially transferred"; and the word "import" is deleted and replaced with the phrase "initial transfer for sale or distribution";

**§ 30.18 [Amended]**

19. In § 30.18(c), the phrase "for purposes of commercial distribution" is inserted after the word "authorize" and deleted after the phrase "import of byproduct material" and the word "import" is deleted and replaced with the word "transfer";

20. In § 30.18(d), the words "import or" are deleted;

**§ 30.19 [Amended]**

21. In § 30.19(a), the word "or" in the phrase "process, or produce" is deleted and the phrase "initially transfer for sale or distribution" is inserted after the former phrase; the phrase "or who import such products" and the words "exports" and "imported," are deleted; the term "30-36" is changed to "30-35"; the word "initially" is inserted before the phrase "transferred in accordance with"; and the word "initial" is inserted before the word "transfer";

22. In § 30.19(b), the phrase "or to import" is deleted;

**§ 30.20 [Amended]**

23. In § 30.20(a), the word "or" in the phrase "process, or produce" is deleted and the phrase "initially transfer for sale or distribution" is inserted after the former phrase; the phrase "or who import such products" and the words "exports," and "imported," are deleted; the term "30-36" is changed to "30-35"; the word "initially" is inserted before the phrase "transferred in accordance with"; and the word "initial" is inserted before the word "transfer";

24. In § 30.20(b), the phrase "to import or" is deleted and the word "initially" is inserted before the words "transfer" and "transferred";

## § 30.31 [Amended]

25. In § 30.31, the term "Parts 32-36" is changed to "Parts 32-35";

## § 30.32 [Amended]

26. In § 30.32(d), the term "Parts 32-36" is changed to "Parts 32-35";

## § 30.33 [Amended]

27. In § 30.33(a)(4), the term "Parts 32-36" is changed to "Parts 32-35";

## § 30.34 [Amended]

28. In § 30.34, the term "Parts 31-36" is changed everywhere it occurs to "Parts 31-35";

29. In § 30.34(c), the word "and" is inserted after the word "own," and the words ", and import" are deleted.

## § 30.39 [Amended]

30. In § 30.39, the term "Parts 32-36" is changed to "Parts 32-35";

## § 30.41 [Amended]

31. In § 30.41(b), paragraph (b)(6) is renumbered (b)(7) and a new paragraph (b)(6) is added to read: "(6) To a person abroad pursuant to an export license issued under Part 110 of this chapter";

## § 30.51 [Amended]

32. In § 30.51, the term "Parts 31-36" is changed everywhere it occurs to "Parts 31-35";

33. In § 30.51 (a) and (c), the word "export," is deleted;

34. In § 30.51(c), paragraph (c)(2) is deleted and reserved;

## § 30.53 [Amended]

35. In § 30.53, the term "parts 31-36" is changed to "Parts 31-35";

## § 30.54 [Amended]

36. In § 30.54(a), the words "or export" are deleted;

37. In § 30.54(b), the word "and" is inserted before paragraph (2), a period is inserted to replace the semicolon after the word "use" at the end of paragraph (2), and paragraphs (3) and (4) are deleted and reserved;

## § 30.55 [Amended]

38. In § 30.55(c), the phrase ", import, or export" is deleted;

39. In § 30.55(e), a period is inserted to replace the semicolon after the word "use" in paragraph (1) and paragraphs (2) and (3) are deleted and reserved;

## § 30.61 [Amended]

40. In § 30.61(a), the term "Parts 31-36" is changed to "Parts 31-35";

#### PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

10 CFR Part 31 is amended as follows:

40a. The title of 10 CFR Part 31 is changed to "General Domestic Licenses for Byproduct Material";

## § 31.2 [Amended]

41. In § 31.2 of 10 CFR Part 31, the term "31" and "36" is deleted and word "and" is inserted before the number "21";

## § 31.5 [Amended]

42. In § 31.5(b), the word "imported" is deleted and replaced with the words "initially transferred";

43. In § 31.5(c)(7) the phrase "without a specific license pursuant to Parts 30 and 36 of this chapter authorizing such export" is deleted and replaced with the phrase "except in accordance with Part 110 of this chapter";

## § 31.7 [Amended]

44. In § 31.7(a), the word "imported" is deleted and replaced with the words "initially transferred";

45. In § 31.7(d), the phrase "except in accordance with the provisions of Part 36 of this chapter" is deleted;

## § 31.8 [Amended]

46. In § 31.8(b), the phrase "or initially transferred" is inserted after the word "manufactured" and the phrase "to the manufacturer or importer of the sources" is deleted;

47. In § 31.8(c)(2), the word "importer" is deleted and replaced with the words "initial transferor";

## § 31.10 [Amended]

48. In § 31.10(a), the word "imported" is deleted and replaced with the words "initially transferred";

#### PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

10 CFR Part 32 is amended as follows:

49. The title of 10 CFR Part 32 is changed to read, "Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material";

50. In the index to Part 32, in § 32.14, the word "import" is deleted and replaced with the words "initially transfer";

51. In the index to Part 32, in § 32.16, the words "import or" are deleted;

52. In the index to Part 32, in § 32.17, the word "import" is deleted and replaced with the words "initially transfer";

53. In the index to Part 32, in § 32.22, the word "import" is deleted and the word "initially" is inserted before the word "transfer";

54. In the index to Part 32, in § 32.25, the words "import or" are deleted;

55. In the index to Part 32, in § 32.26, the word "import" is deleted and the

word "initially" is inserted before the word "transfer";

56. In the index to Part 32, in § 32.29, the words "import or" are deleted;

57. In the index to Part 32, in § 32.51, the title is changed to "Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture or initially transfer";

57a. In the index to Part 32, a new § 32.51a is inserted entitled "Same: conditions of licenses.";

58. In the index to Part 32, in § 32.53, the word "import" is deleted and replaced with the words "initially transfer";

59. In the index to Part 32, in § 32.57, the word "import" is deleted and replaced with the words "initially transfer";

60. In the index to Part 32, in § 32.61, the word "import" is deleted and replaced with the words "initially transfer";

## § 32.1 [Amended]

61. In § 32.1(a) of 10 CFR Part 32, the words "distribute or import" are deleted and replaced with the words "or initially transfer" and the words "sale or" are inserted before the word "distribution";

## § 32.14 [Amended]

62. In the title of § 32.14, the word "import" is deleted and replaced with the words "initially transfer";

63. In § 32.14, in the introductory clause, the word "import" is deleted and replaced with the phrase "initially transfer for sale or distribution";

63a. In § 32.14(b)(6), the word "importer" is deleted and replaced with the words "initial transferor";

## § 32.15 [Amended]

64. In § 32.15(d), the word "importer" is deleted and replaced with the words "initial transferor";

## § 32.16 [Amended]

65. In the title of § 32.16, the words "import or" are deleted;

66. In § 32.16, the phrase "imported for sale or distribution or" is deleted and the words "imported or transferred" and "imports or" are deleted everywhere they occur;

## § 32.17 [Amended]

67. In the title of § 32.17, the word "import" is deleted and replaced with the words "initially transfer";

68. In § 32.17, in the introductory clause, the word "import" is deleted and replaced with the words "initially transfer";

69. In § 32.17(c)(1), the word "imported" is deleted and replaced with the words "initially transferred";

## § 32.18 [Amended]

70. In § 32.18, the word "import," in the introductory sentence, is deleted;

§ 32.22 [Amended]

71. In § 32.22, in the title, the word "import," is deleted and the word "initially" is inserted before the word "transfer";

72. In § 32.22(a), the phrase "or to import" is deleted and the word "initially" is inserted before the word "transfer";

73. In § 32.22(a)(2)(x), the word "importer" is deleted and replaced with the words "initial transferor";

§ 32.25 [Amended]

74. In § 32.25, the words "imports or" in the title are deleted;

75. In § 32.25(b), the word "importer" is deleted and replaced with the words "initial transferor";

76. In § 32.25(c), the phrase "imported for sale or distribution or" is deleted; the words "imported or transferred" in the numbered subparagraphs are deleted; and the words "imports or" are deleted;

§ 32.26 [Amended]

77. In § 32.26, the word "import," in the title, is deleted and the word "initially" is inserted before the word "transfer";

78. In § 32.26, in the introductory sentence, the phrase "or to import" is deleted and the word "initially" is inserted before the word "transfer";

79. In § 32.26(b)(10), the word "importer" is deleted and replaced with the words "initial transferor";

§ 32.29 [Amended]

80. In § 32.29, in the title, the words "imports or" are deleted;

81. In § 32.29(b), the word "importer" is deleted and replaced with the words "initial transferor";

82. In § 32.29(c) the phrase "imported for sale or distribution or" is deleted; the words "imported or transferred" in the numbered subparagraphs are deleted; and the words "imports or" are deleted;

§ 32.40 [Amended]

83. In § 32.40, the word "import" is deleted in the introductory sentence and replaced with the words "initially transfer";

§ 32.51 [Amended]

84. In § 32.51, the words "import or distribute", in the title, are deleted and replaced with the words "or initially transfer";

85. In § 32.51(a), the words "import, or distribute" are deleted and replaced with the words "or initially transfer";

86. In § 32.51(a)(3)(iii), in the main text and in footnote 1, the words "importer, or distributor" are deleted and replaced with the words "or initial transferor";

§ 32.52 [Amended]

87. In § 32.52, in the introductory sentence, the word "distribute" is de-

leted and replaced with the words "initially transfer";

§ 32.53 [Amended]

88. In § 32.53, in the title and in the introductory sentence, the word "import" is deleted and replaced with the words "initially transfer";

§ 32.54 [Amended]

89. In § 32.54 (a) and (b), the word "import" is deleted and replaced with the words "initially transfer" and the word "importer" is deleted everywhere it occurs, including the footnote, and replaced with the words "initial transferor";

§ 32.57 [Amended]

90. In § 32.57, the word "import" is deleted in the title and the introductory sentence and replaced with the words "initially transfer";

§ 32.58 [Amended]

91. In § 32.58, the word "importer" is deleted and replaced with the words "initial transferor";

§ 32.61 [Amended]

92. In § 32.61, the word "import" is deleted in the title and the introductory sentence and replaced with the words "initially transfer";

§ 32.62 [Amended]

93. In § 32.62, the introductory sentence is deleted;

**PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL**

10 CFR Part 33 is amended as follows:

94. The title of 10 CFR Part 33 is changed to "Specific Domestic Licenses of Broad Scope for Byproduct Material";

§ 33.11 [Amended]

95. In §§ 33.11(a), (b) and (c) of 10 CFR Part 33, the word "and" is inserted between the words "use" and "transfer" and the words "and import" are deleted;

**PART 36—[RESERVED]**

96. 10 CFR Part 36 is deleted in its entirety and reserved;

**PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL**

10 CFR Part 40 is amended as follows:

97. The title of 10 CFR Part 40 is changed to "Domestic Licensing of Source Material";

98. In the index to Part 40, § 40.23 is deleted and reserved;

99. In the index to Part 40, § 40.24 is deleted and reserved;

100. In the index to Part 40, § 40.33 is deleted and reserved;

§ 40.1 [Amended]

101. In § 40.1(a) of CFR Part 40, the word "or" is inserted before the word "deliver" and the phrase "or import into or export from the United States" is deleted;

§ 40.3 [Amended]

102. In § 40.3, the word "or" is inserted before the word "deliver" and the phrase "or import into or export from the United States" is deleted;

§ 40.11 [Amended]

103. In § 40.11, the word "or" is inserted between the words "transfers" and "delivers" in both places where these words appear and the phrase "or imports into or exports from the United States" is deleted in both places where it appears;

§ 40.13 [Amended]

104. In § 40.13(a), the word "or" is inserted before the word "delivers" and the phrase "or imports into or exports from the United States" is deleted;

105. In § 40.13(b), the word "or" is inserted before the word "transfers"; the phrase "or imports into the United States" is deleted; and the last sentence is deleted;

106. In § 40.13(c), in the introductory sentence, the word "or" is inserted before the word "transfers" and the phrase "or imports into the United States" is deleted; and in subparagraph (7)(ii) the word "or" is inserted before the word "transfer" and the phrase "or import into the United States" is deleted;

107. In § 40.13(d), the word "or" is inserted before the word "transfers" and the phrase "or imports into the United States" is deleted;

§ 40.21 [Amended]

108. In § 40.21, the words "import, export" are deleted;

§ 40.22 [Amended]

109. In § 40.22(a), the last clause beginning with the words "and provided further" is deleted and a period is inserted to replace the semicolon after the word "year";

§ 40.23 [Deleted]

110. § 40.23 is deleted in its entirety and reserved;

§ 40.24 [Deleted]

111. § 40.24 is deleted in its entirety and reserved;

§ 40.25 [Amended]

112. In § 40.25(b), the words "imported either" are deleted and replaced with the words "initially trans-

ferred"; and the phrases "to the manufacturer or importer of the products or devices" and "to the manufacturer" appearing before the phrase "by an Agreement State" are deleted;

113. In § 40.25(d), paragraph (5) is deleted and reserved;

§ 40.31 [Amended]

114. In § 40.31(a), the phrase ", or on Form NRC-7, 'Application for License to Export Byproduct or Source Material,' as appropriate" is deleted;

§ 40.32 [Amended]

115. In § 40.32, in the introductory sentence, the phrase "for purposes other than export" is deleted;

§ 40.33 [Deleted]

116. § 40.33 is deleted in its entirety and reserved;

§ 40.34 [Amended]

117. In § 40.34, paragraph sign (a) and the introductory sentence are deleted; and subparagraph (1) is changed to paragraph (a) and the following paragraphs and subparagraphs are relettered and renumbered accordingly;

118. In § 40.34(a)(1), the phrase "or to import" is deleted and the word "initially" is inserted before the word "transfer";

§ 40.35 [Amended]

119. In § 40.35, paragraph sign (a) is deleted and the following paragraphs and subparagraphs are relettered and renumbered accordingly; in paragraph (a), the letter (a) in "§ 40.34(a)" is deleted; and in § 40.35(a)(2)(i), the word "importer" is deleted and replaced with the words "initial transferor", and the word "imported" is deleted and replaced with the words "initially transferred";

§ 40.41 [Amended]

120. In § 40.41(c), the word "and" is inserted after the word "possess" and the words "and import" are deleted;

121. In § 40.41(e), the word "and" is inserted after the word "use" and the phrase ", import and export" is deleted;

§ 40.45 [Amended]

122. In § 40.45, a "\$" sign before the number "40.32" is deleted and the term "and 40.33" is deleted;

§ 40.51 [Amended]

123. In § 40.51(b), paragraph (b)(6) is renumbered (b)(7) and a new paragraph (b)(6) is added to read: "(6) To any person abroad pursuant to an export license issued under Part 110 of this chapter";

§ 40.61 [Amended]

124. In § 40.61(a), the word "export," is deleted;

125. In § 40.61(c), the word "export," is deleted from paragraph (1) and paragraph (2) is deleted and reserved;

§ 40.64 [Amended]

126. In § 40.64(a), the phrase "and except for exports of unimportant quantities of source material specified in § 40.13 (b), (c), and (d)," is deleted;

§ 40.90 [Deleted]

127. § 40.90 is deleted in its entirety and reserved and the word "Schedule" above it is deleted;

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

10 CFR Part 50 is amended as follows:

128. The title of 10 CFR Part 50 is changed to "Domestic Licensing of Production and Utilization Facilities";

129. In the index to Part 50, § 50.65 is deleted and reserved and the words "Export Licenses" above it are deleted;

§ 50.2 [Amended]

130. In § 50.2 of 10 CFR Part 50, paragraph (d) is deleted and reserved.

§ 50.10 [Amended]

131. In § 50.10(a), the word "or" is inserted before the word "use" and the phrase ", import, or export" is deleted;

§ 50.21 [Amended]

132. In § 50.21, in the introductory sentence the word "or" is inserted before the word "use" and the phrase ", import, or export under the terms of an agreement for cooperation" is deleted;

§ 50.22 [Amended]

133. In § 50.22, paragraph sign (a) is deleted; the word "or" is inserted after the word "possess"; and the phrase ", import, or export under the terms of an agreement for cooperation," is deleted;

§ 50.38 [Amended]

134. In § 50.38, the phrase "except a license authorizing export only pursuant to an agreement for cooperation" is deleted;

§ 50.53 [Amended]

135. In § 50.53, the phrase "except insofar as the export of production of utilization facilities is authorized" is deleted;

§ 50.65 [Deleted]

136. § 50.65 is deleted in its entirety and reserved and the words "Export Licenses" above it are deleted;

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

10 CFR Part 51 is amended as follows:

§ 51.5 [Amended]

137. In § 51.5(d)(3) of 10 CFR Part 51, the word ", or" before the number "100" is deleted and the words ", or 110" after the number "100" are added.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

10 CFR Part 70 is amended as follows:

138. The title of 10 CFR Part 70 is changed to "Domestic Licensing of Special Nuclear Material";

139. In the index to Part 70, in § 70.39, the word "import" is deleted and replaced with the words "initial transfer";

§ 70.1 [Amended]

140. In § 70.1(a) of 10 CFR Part 70, the words "and initially" are inserted after the word "use" and the phrase ", import, and export" is deleted;

§ 70.3 [Amended]

141. In § 70.3, the word "or" is inserted before the word "transfer" and the phrase ", import or export" is deleted;

§ 70.11 [Amended]

142. In § 70.11, the word "or" is inserted before the word "transfers" in the introductory sentence and in subsection (c), and the phrase ", imports or exports" is deleted in the introductory sentence and in subsection (c);

§ 70.15 [Reserved]

143. § 70.15 is deleted in its entirety and reserved;

§ 70.19 [Amended]

144. In § 70.19(b), the words "or initially transferred" are inserted after the word "manufactured," and the phrases "by the Commission or the Atomic Energy Commission to the manufacturer or importer of the sources" and "to the manufacturer" are deleted;

145. In § 70.19(c)(2), the word "Importer" is deleted and replaced with the words "initial transferor";

§ 70.22 [Amended]

146. In § 70.22, in subsection (a), the phrase ", other than an application for a license authorizing export only" is deleted, and subsection (c) is deleted and reserved;

§ 70.23 [Amended]

147. In § 70.23(a), the phrase ", other than a license for export," is deleted;

§ 70.31 [Amended]

148. In § 70.31, subsection (e) is deleted and reserved;

149. In § 70.32(b), in the introductory sentence the word "and" is inserted before the word "transfer" and the phrase ", import and export" is deleted;

§ 70.39 [Amended]

150. In § 70.39, in the title and in subsection (a), the word "import" is deleted and replaced with the words "initial transfer" and "initially transfer" respectively;

151. In § 70.39(b), the word "Importer" is deleted and replaced with the words "initial transferor";

§ 70.41 [Amended]

152. § 70.41(c) is deleted in its entirety and reserved;

§ 70.42 [Amended]

153. In § 70.42(b), paragraph (b)(6) is renumbered (b)(7) and a new paragraph (b)(6) is added to read: "(6) To any person abroad pursuant to an export license issued under Part 110 of this chapter;";

§ 70.51 [Amended]

154. In § 70.51(b), in paragraph (1), the words "import, export," are deleted; in paragraph (3) the word "or" is inserted before the word "physical" and the words ", or import" and "or export" are deleted; and paragraph (4) is deleted and reserved;

§ 70.54 [Amended]

155. In § 70.54, the following sentence is inserted after the first sentence: "Each licensee who receives such material from a foreign source shall complete both the suppliers and receivers portion of Form NRC-741; perform independent tests to assure the accurate identification and measurement of the material received, including its weight and enrichment; and indicate the results of these tests on the receivers portion of the form.";

**PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS**

§ 73.1 [Amended]

156. In § 73.1(b)(2), the words "and Part 110" are inserted after the words "Part 70";

§ 73.36 [Amended]

157. In § 73.36(b), a new paragraph (3) is added as follows: "The Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A, shall be notified immediately if entry of any shipment authorized by an import license is refused by the U.S. Customs Service;

158. New Part 110 is added as follows:

**PART 110—EXPORT AND IMPORT OF NUCLEAR FACILITIES AND MATERIALS**

**Subpart A—General Provisions**

Sec.

- 110.1 Purpose and scope.
- 110.2 Definitions.
- 110.3 Interpretations.
- 110.4 Communications.
- 110.5 License requirements.
- 110.6 Reexports.

**Subpart B—Exemptions**

- 110.10 General.
- 110.11 Prime contractors of the Department of Energy.
- 110.12 Intergovernmental cooperative activities.
- 110.13 Export of byproduct material.
- 110.14 Export of unimportant quantities of source material.

**Subpart C—General Licenses**

- 110.20 General.
- 110.21 Export of byproduct material.
- 110.22 Export of source material.
- 110.23 Export of special nuclear material. [Reserved].
- 110.24 Schedule A.
- 110.25 General license for import.

**Subpart D—Applications for Specific Licenses**

- 110.30 Filing a license application.
- 110.31 General requirements for contents of an export license application.
- 110.32 Additional requirements for contents of an export license application for a utilization facility.
- 110.33 Additional requirements for contents of an export license application for special nuclear material, source material and byproduct material.
- 110.34 Requirements for contents of an import license application.
- 110.35 Further information from an applicant.
- 110.36 Fees.
- 110.37 Withdrawal of an application.

**Subpart E—Review of Specific License Applications**

- 110.40 Commission review.
- 110.41 Executive Branch review.
- 110.42 Standards and procedures for issuing a license.

**Subpart F—License Terms and Related Provisions**

- 110.50 Terms.
- 110.51 Amendments.
- 110.52 Revocation, suspension and modification.
- 110.53 United States address for an applicant; records and inspections.

**Subpart G—Violations and Enforcement**

- 110.60 Violations.
- 110.61 Notice of violation.
- 110.62 Order to show cause.
- 110.63 Order for revocation, suspension or modification.
- 110.64 Civil penalty.
- 110.65 Settlement and compromise.
- 110.66 Enforcement hearing.

**Subpart H—Public Notification and Availability of Documents and Records**

- 110.70 Notice of receipt of an application.
- 110.71 Notice of withdrawal of an application.

- 110.72 Availability of documents in the Public Document Room.
- 110.73 Availability of NRC records.

**Subpart I—Public Participation Procedures Concerning License Applications**

- 110.80 Written comments.
- 110.81 Hearing request or intervention petition.
- 110.82 Answers and replies.
- 110.83 Commission action on a hearing request or intervention petition.
- 110.84 Notice of hearing consisting of written comments.
- 110.85 Notice of oral hearing.
- 110.86 Conditions in a notice or order.
- 110.87 Authority of the Secretary.
- 110.88 Filing and service.
- 110.89 Computation of time.
- 110.90 Commission consultations.

**Subpart J—Hearings**

- 110.100 Public hearings.
- 110.101 Filing and service.
- 110.102 Hearing docket.
- 110.103 Acceptance of hearing documents.
- 110.104 Presiding officer.
- 110.105 Responsibility and power of the presiding officer in an oral hearing.
- 110.106 Participation in a hearing.
- 110.107 Presentation of testimony in an oral hearing.
- 110.108 Appearance in an oral hearing.
- 110.109 Motions and requests.
- 110.110 Default.
- 110.111 Waiver of a rule or regulation.
- 110.112 Reporter and transcript for an oral hearing.
- 110.113 Commission action.

**Subpart K—Special Procedures for Classified Information in Hearings**

- 110.120 Purpose and scope.
- 110.121 Security clearances and access to classified information.
- 110.122 Classification assistance.
- 110.123 Notice of intent to introduce classified information.
- 110.124 Rearrangement or suspension of a hearing.
- 110.125 Unclassified statements required.
- 110.126 Protection of classified information.

**Subpart L—Rulemaking**

- 110.130 Initiation of rulemaking.
- 110.131 Petition for rulemaking.
- 110.132 Commission action on a petition.
- 110.133 Notice of proposed rulemaking.
- 110.134 Public participation.
- 110.135 Notice of adoption.

AUTHORITY: Secs. 51, 53, 62, 63, 64, 65, 81, 82, 103, 104, 161, 181, 182, 183, 189, Pub. L. 83-703, 68 Stat. 929, 930, 932, 933, 936, 937, 948, 953, 954, 956, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2201, 2231, 2232, 2233, 2239); secs. 201, as amended, 202, 206, Pub. L. 93-438, 88 Stat. 1242, 1244, 1246, Pub. L. 94-79, 89 Stat. 413-414 (42 U.S.C. 5841, 5842, 5846).

Sec. 110.50 also issued under sec. 184, Pub. L. 83-703, 68 Stat. 954, as amended (42 U.S.C. 2234); sec. 110.52 also issued under sec. 186, Pub. L. 83-703, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, Pub. L. 83-703, 68 Stat. 958, as amended (42 U.S.C. 2273), secs. 110.50 and 110.120-110.126 also issued under sec. 1611, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201(i)), and sec. 110.53 also issued under sec. 1610, Pub. L. 83-703, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Secs. 110.80-110.113 also issued under 5 U.S.C. 552, 554; secs. 110.130-110.135 also issued under 5 U.S.C. 553.

#### Subpart A—General Provisions

##### § 110.1 Purpose and scope.

(a) The regulations in this part apply to all persons in the United States including persons in Agreement States, and prescribe procedures and standards, pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974, as amended, for the export and import of utilization facilities, special nuclear material, source material and byproduct material.

(b) These regulations do not apply to the export or import of nuclear facilities, material or technology by the Departments of Energy and Defense under the authority of sections 54, 57b., 64, 82, 91 and 144b. and 144c. of the Atomic Energy Act.

(c) These regulations contain no authority for the export or import of production facilities.

##### § 110.2 Definitions.

(a) "Agreement for cooperation" means any agreement with another nation or group of nations concluded under section 123 of the Atomic Energy Act.

(b) "Agreement State" means any State of the United States with which the Nuclear Regulatory Commission, or its predecessor, the Atomic Energy Commission, has entered into an agreement under section 274b. of the Atomic Energy Act.

(c) "Atomic Energy Act" means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011).

(d) "Byproduct material" means radioactive material (except special nuclear material) produced by exposure to the radiation incident to the process of producing or using special nuclear material.

(e) "Classified information" means National Security Information classified pursuant to Executive Order No. 11652 or any superseding order.

(f) "Commission" means the United States Nuclear Regulatory Commission or its duly authorized representatives.

(g) "Common defense and security" means the common defense and security of the United States.

(h) "Department of Energy" means that Government agency succeeding to the Energy Research and Development Administration's nuclear export and import responsibilities.

(i) "Depleted uranium" means uranium in which the isotope uranium-235 is less than 0.711 percent by weight of the total uranium present.

(j) "Effective kilograms of special nuclear material" means:

(1) For plutonium and uranium-233, their weight in kilograms;

(2) For uranium enriched 1 percent or greater in the isotope U-235, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and

(3) For uranium enriched below 1 percent in the isotope U-235, its element weight in kilograms multiplied by 0.0001.

(k) "Energy Reorganization Act" means the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801).

(l) "Executive Branch" means those United States government agencies, other than the Commission, which are not part of the Legislative or Judicial Branches.

(m) "Export" means export from the United States.

(n) "General license" means an export or import license effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person.

(o) "Government agency" means any Executive Branch department, commission, independent establishment or corporation, wholly or partly owned by the United States and which is an instrumentality of the United States.

(p) "Import" means import into the United States.

(q) The phrase "introduced into a hearing" means the introduction or incorporation of testimony or documentary matter into the record of a hearing.

(r) "License" means a general or specific export or import license issued pursuant to this part.

(s) "Licensee" means a person authorized by a specific or a general license to export or import pursuant to this part.

(t) "Non-nuclear-weapon State" means any State not a nuclear-weapon State as defined in the Treaty on the Non-Proliferation of Nuclear Weapons. "Nuclear-weapon State" means any State which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.

(u) "NRC records" means any documentary material made by, in the possession of, or under the control of the Commission under Federal law or in connection with the transaction of public business as evidence of any of the Commission's activities.

(v) "Nuclear reactor" means an apparatus, other than an atomic weapon or nuclear explosive device, designed or used to sustain nuclear fission in a self-supporting chain reaction.

(w) "Packaging" means one or more receptacles and wrappers and their contents, excluding any special nuclear material, source material or byproduct material, spacing structures, thermal insulation, radiation shielding, devices

for cooling and for absorbing mechanical shock, external fittings, neutron moderators, nonfissile neutron absorbers and other supplementary equipment.

(x) "Participant" means a person, identified in the hearing notice or other Commission order, taking part in a hearing conducted by the Commission under this part, including any person to whom the Commission grants a hearing or leave to intervene in an export or import licensing hearing, either as a matter of right or as a matter of discretion.

(y) "Person" means any individual, corporation, partnership, firm association, trust, estate, institution, group, Government agency other than the Commission or the Department of Energy; any State or political entity within a State; any foreign government or political entity of such government; and any authorized representative of the preceding.

(z) "Public Document Room" means the place at 1717 H Street NW., Washington, D.C. where public records of the Commission are ordinarily available for inspection.

(aa) "Public health and safety" means the public health and safety of the United States.

(bb) "Reactor coolant pressure boundary" means all those pressure-containing components of boiling and pressurized water-cooled nuclear power reactors such as pressure vessels, piping, pumps and valves, which are:

(1) Part of the reactor coolant system; or

(2) Connected to the reactor coolant system, up to and including (i) the outermost containment isolation valve in system piping which penetrates primary reactor containment; (ii) the second of two valves normally closed during normal reactor operation in system piping which does not penetrate primary reactor containment; and (iii) the reactor coolant system safety and relief valves. For nuclear power reactors of the direct cycle boiling water type, the reactor coolant system extends to and includes the outermost containment isolation valve in the main steam and feedwater piping.

(cc) "Reexport" means the transport from one foreign country to another of a utilization facility, special nuclear material, source material or byproduct material previously exported from the United States.

(dd) "Sealed source" means any special nuclear material or byproduct material encased in a capsule designed to prevent leakage or escape of that nuclear material.

(ee) "Secretary" means the Secretary of the Commission.

(ff) "Source material" means:

(1) Uranium or thorium, other than special nuclear material; or

(2) Ores which contain by weight 0.05 percent or more of uranium or thorium, or any combination of these.

(gg) "Special nuclear material" means plutonium, uranium-233 or uranium enriched above 0.711 percent by weight in the isotope uranium-235.

(hh) "Specific license" means an export or import license issued to a named person or entity upon an application filed pursuant to this part.

(ii) "Transfer" means the transfer of possession from one person to another person.

(jj) "Transport" means the physical movement of material from one location to another.

(kk) "United States," when used in a geographical sense, includes all territories and possessions of the United States, the Canal Zone, and Puerto Rico.

(ll) "Utilization facility" means any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233.

#### § 110.3 Interpretations.

Except as authorized by the Commission in writing, only the written interpretations of the meaning of the regulations in this part by the Commission's General Counsel are binding upon the Commission.

#### § 110.4 Communications.

Unless otherwise specified in this part, all communications concerning this part should be addressed to the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or delivered in person to the Commission's offices at 1717 H Street NW., Washington, D.C. or 7735 Old Georgetown Road, Bethesda, Md.

#### § 110.5 License requirements.

Except as exempted under this part, no person may export or import a utilization facility, special nuclear material, source material or byproduct material, other than as authorized by a specific or general license issued pursuant to this part.

#### § 110.6 Reexport.

(a) No person may reexport a utilization facility, special nuclear material, source material or byproduct material unless:

(1) At the time of the original export, the material could have been exported to the new country of ultimate destination under the authority of an exemption from licensing requirements or of a general license; or

(2) The reexport has been specifically authorized by the Department of Energy in response to a request submitted by the original license applicant or by the foreign consignee or government.

(b) Reexport requests shall be sent to the Department of Energy, Office of Nuclear Affairs, International Programs, Washington, D.C. 20545.

#### Subpart B—Exemptions

##### § 110.10 General.

(a) In response to a petition or upon its own initiative, the Commission may grant an exemption from the regulations in this part, provided it determines that the exemption is authorized by law, is not inimical to the common defense and security and does not constitute an unreasonable risk to the public health and safety.

(b) Exemptions under the provisions of the Atomic Energy Act will be granted only after coordination with the Executive Branch pursuant to Executive Order 11902 and after completion of rulemaking proceedings pursuant to Subpart L of this part.

(c) Exemptions do not relieve any person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

##### \*§ 110.10 Prime contractors of the Department of Energy.

Any prime contractor of the Department of Energy is exempt from the requirements of sections 53, 62 and 81 of the Atomic Energy Act and from the regulations in this part to the extent that the contractor, under his prime contract, exports or imports special nuclear material, source material or byproduct material for:

(a) The performance of work for a Department of Energy activity not licensed by the Commission at a Government-owned or controlled site, including the transportation of such material to or from the site and the performance of contract services during temporary interruptions of the transportation;

(b) Research in, or development, manufacture, storage, testing or transportation of atomic weapons or their components; or

(c) The use or operation of nuclear reactors or other nuclear devices in a Government-owned vehicle or vessel.

##### § 110.12 Intergovernmental cooperative activities.

Government agencies are exempt from the requirements of section 53 of the Atomic Energy Act and from the regulations in this part to the extent that they export, at any one time, up to 3 grams of any type of special nuclear material for use in activities authorized by an intergovernmental cooperative agreement between the United States and a foreign nation, group of nations or international organization, provided the Commission is notified of the destination and purpose of the export.

##### § 110.13 Export of byproduct material.

Any person is exempt from the re-

quirements of section 81 of the Atomic Energy Act and from the regulations in this part to the extent that such person exports the following:

(a) Timepieces or hands or dials containing not more than the following specified quantities of byproduct material and not exceeding the following specified levels of radiation:

(1) 25 millicuries of tritium per timepiece;

(2) 5 millicuries of tritium per hand;

(3) 15 millicuries of tritium per dial (bezels will be considered as part of dial);

(4) 100 microcuries of promethium-147 per watch hand or 200 microcuries of promethium-147 per any other timepiece;

(5) 20 microcuries of promethium-147 per watch hand or 40 microcuries of promethium-147 per other timepiece hand;

(6) 60 microcuries of promethium-147 per watch dial or 120 microcuries of promethium-147 per other timepiece dial (bezels will be considered as part of the dial);

(7) The levels of radiation from hands and dials containing promethium-147, when measured through 50 milligrams per square centimeter of absorber, will not exceed 0.1 millirad per hour at 10 centimeters from any surface for wrist watches; 0.1 millirad per hour at 1 centimeter from any surface for pocket watches; and 0.2 millirad per hour at 10 centimeters from any surface for any other timepiece;

(b) Lock illuminators containing not more than 15 millicuries of tritium or not more than 2 millicuries of promethium-147 installed in automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed 1 millirad per hour at 1 centimeter from any surface when measured through 50 milligrams per square centimeter of absorber;

(c) Precision balances containing not more than 1 millicurie of tritium per balance or nor more than 0.5 millicurie of tritium per balance part;

(d) Automobile shift quadrants containing not more than 25 millicuries of tritium;

(e) Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas;

(f) Thermostat dials and pointers containing not more than 25 millicuries of tritium per thermostat;

(g) Electron tubes,<sup>1</sup> provided that no

<sup>1</sup>For purposes of this subparagraph "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents.

tube has a level of radiation exceeding 1 millirad per hour at 1 centimeter from any surface, when measured through 7 milligrams per square centimeter of absorber, and that no tube contains more than one of the following specified quantities of byproduct material:

(1) 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;

(2) 1 microcurie of cobalt-60;

(3) 5 microcuries of nickel-63;

(4) 30 microcuries of krypton-85;

(5) 5 microcuries of cesium-137; or

(6) 30 microcuries of promethium-147; and

(h) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, byproduct material not exceeding the applicable quantity set forth in § 30.71, Schedule B, of this chapter;

(i) Synthetic plastic resins containing scandium-46 which are designed for sand-consolidation in oil wells and which have been manufactured or otherwise obtained in accordance with a specific license issued pursuant to § 32.17 of this chapter or equivalent regulations of an Agreement State;

(j) Tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced or transferred in accordance with a specific license issued pursuant to § 32.22 of this chapter, provided that the tritium, krypton-85 or promethium-147 is not used in products primarily for frivolous purposes or in toys or adornments; or

(k) Byproduct material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards and manufactured, processed, produced or transferred in accordance with a specific license issued pursuant to § 32.26 of this chapter;

(l) Spark gap irradiators containing not more than 1 microcurie of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least 3 gallons per hour (11.4 liters per hour).

#### § 110.14 Export of unimportant quantities of source material.

Any person is exempt from the requirements of section 62 of the Atomic Energy Act and from the regulations in this part to the extent that such person exports source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 0.05 percent.

#### Subpart C—General Licenses

##### § 110.20 General.

(a) In response to a petition or upon its own initiative, the Commission may

issue a general license for the export or import of special nuclear material, source material and byproduct material, provided it determines that any exports or imports made pursuant to the general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety.

(b) General licenses will be issued only after coordination with the Executive Branch pursuant to Executive Order 11902 and after completion of rulemaking proceedings pursuant to Subpart L of this part.

(c) General licenses do not relieve any person from complying with the regulations of other Government agencies applicable to exports or imports under their authority.

##### § 110.21 Export of byproduct material.

The following general licenses are hereby issued authorizing any person to export:

(a) The following to any country, except Southern Rhodesia or countries listed in § 110.24:

(1) Byproduct material having an atomic number from 3 to 83, inclusive; or

(2) Tritium contained in luminous safety devices installed in aircraft as generally licensed items pursuant to § 31.7 of this chapter.

(b) Byproduct material having an atomic number from 3 to 83, inclusive, to Southern Rhodesia, to the extent that the byproduct material is contained in medicinals or pharmaceutical preparations or in devices, applicators or appliances designed for use in medical diagnosis or therapy.

(c) 5,000 curies of tritium and 5,000 curies of polonium-210 in a calendar quarter to any country, except Southern Rhodesia, Poland or Rumania or countries listed in § 110.24, provided that no more than 1,000 curies of tritium may be exported by any person to any one country in a calendar quarter; that no more than 100 curies of tritium may be exported by any person in a single shipment under this general license; and that the material is in one or more of the following forms or products:

(1) Tritium activated luminous paint;

(2) Tritium labeled organic compounds;

(3) Tritiated accelerator targets;

(4) Polonium-210 static eliminators;

(5) Polonium-210 neutron sources;

(6) Tritium or polonium-210 calibration standards;

(7) Luminescent light sources;

(8) Tritium sources for chromatography instruments;

(9) Electron tubes; or

(10) Tritium as a contaminant of helium-3 in a concentration not to exceed 2.5 millicuries of tritium per liter of helium-3.

(d) Byproduct material as specified in paragraph (c) to Southern Rhodesia, to the extent that the byproduct material is contained in medicinals or pharmaceutical preparations or in devices, applicators or appliances designed for use in medical diagnosis or therapy.

(e) Americium-241 to any country, except Southern Rhodesia, Poland, Rumania or countries listed in § 110.24.

(f) Byproduct material having an atomic number from 3 to 83, inclusive, in labeled organic or inorganic compounds, in quantities up to 1 curie per shipment, to any country listed in § 110.24, except North Korea, Vietnam, Cambodia, Cuba, and Southern Rhodesia.

(g) Tritium in labeled organic compounds in quantities up to 100 curies per shipment, to Rumania, Poland, and any country listed in § 110.24, except North Korea, Vietnam, Cambodia, Cuba, and Southern Rhodesia.

##### § 110.22 Export of source material.

The following general licenses are hereby issued authorizing any person to export:

(a) At any one time up to 1 kilogram of source material to any country, except Southern Rhodesia or countries listed in § 110.24, provided that no more than 100 kilograms per year may be exported by any one person to any one country.

(b) Thorium in incandescent gas mantles to any country, except Southern Rhodesia or countries listed in § 110.24.

(c) Depleted uranium in the form of counterweights installed in aircraft, rockets, projectiles or missiles, to any country, except Southern Rhodesia or countries listed in § 110.24, provided that such counterweights have been manufactured under a specific license issued by the Commission or the Atomic Energy Commission and have been impressed with the following statement, clearly legible after plating: "Depleted Uranium".

(d) Thorium contained in finished aircraft engine parts containing nickel-thoria alloy to any country, except Southern Rhodesia or countries listed in § 110.24, provided that:

(1) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(2) The thorium content in the nickel-thoria alloy does not exceed 4 percent by weight.

(e) Depleted uranium when fabricated as shielding and contained in radiographic exposure or teletherapy devices, X-ray units, radioactive thermoelectric generators or packaging for the transportation of radioactive materials, in quantities up to 1,000 kilograms per shipment to any country,

except Southern Rhodesia or countries listed in § 110.24.

(f) Depleted uranium when fabricated as shielding and contained in radiographic exposure or teletherapy devices, in quantities not to exceed 500 pounds per device, to Southern Rhodesia, to the extent that such devices are for use in medical diagnosis or therapy.

§ 110.24 Schedule A.

(a) Albania, (b) Bulgaria, (c) Cambodia, (d) Cuba, (e) Czechoslovakia, (f) Estonia, (g) German Democratic Republic (including East Berlin), (h) Hungary, (i) Laos, (j) Latvia, (k) Lithuania, (l) North Korea, (m) Outer Mongolia, (n) Peoples Republic of China, (o) Union of Soviet Socialist Republics, (p) Vietnam.

§ 110.25 General license for import.

A general license is hereby issued authorizing any person to import by-product material and source material which he is authorized to possess or transfer for sale or distribution in the United States under a specific or general license issued by the Commission or an Agreement State.

Subpart D—Applications for Specific Licenses

§ 110.30 Filing a license application.

(a) A license application shall be filed with the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or delivered in person to the Commission's offices at 1717 H Street, N.W., Washington, D.C., or 7735 Old Georgetown Road, Bethesda, Md.

(b) An application for the export of special nuclear material, source material and byproduct material should be filed on Form NRC-7.

(c) An application for the export of utilization facilities and for all imports should be submitted by letter.

(d) If an import license application involves material which is intended for subsequent export, applicants may simultaneously apply for the appropriate export license. The issuance of an import license does not imply approval for a subsequent export.

§ 110.31 General requirements for contents of an export license application.

(a) Each application for an export license shall state:

- (1) Name and U.S. address of applicant;
- (2) Name and address of supplier of material, if different from applicant;
- (3) Name and address of ultimate consignee;
- (4) Name and address of intermediate consignees;
- (5) Date of proposed first shipment;
- (6) Date of proposed completion of final shipment;

(7) Contractual delivery dates, if established;

(8) Proposed expiration date of export license; and

(9) End-use of material or equipment by all consignees, intermediate and ultimate, with sufficient detail to permit accurate evaluation of the justification for the proposed export.

(b) Information contained in previous applications may be incorporated by reference.

§ 110.32 Additional requirements for contents of an export license application for a utilization facility.

Each application for a license to export a utilization facility shall contain the following information in addition to the general requirements in § 110.31:

- (a) General information:
  - (1) Type of facility;
  - (2) Design power level in thermal and (where appropriate) electrical watts;
  - (3) Name of the facility, if known;
  - (4) Location where the facility is to be installed or built;
  - (5) Proposed criticality date or date of start of operation; and
  - (6) Total dollar value of all items under the proposed export.

(b) A list of structures, systems or components to be exported which are associated with the construction, maintenance and operation of the utilization facility proposed for export and which are in the categories described in paragraphs (b)(1) through (b)(6) of this section. Except for those individually shipped items with a value exceeding \$100,000, such list need only identify the items by appropriate category titles.

(1) Reactor coolant pressure boundary: Those structures, systems and components of a nuclear reactor located within or forming a part of the reactor coolant pressure boundary.

(2) Instrumentation: Instrumentation systems for indication, control and protection of a nuclear reactor, including their associated equipment, which are directly associated with structures, systems and components located within or forming part of the reactor coolant pressure boundary and which are normally required for routine startup, power operation, or shutdown of the reactor, or for periodic testing. Portions of other instrumentation systems of the facility mounted in a common panel with the covered systems are included in this category.

(3) Fuel handling equipment: Fuel handling equipment used to load new or recycled fuel into a reactor core, to unload fuel from a reactor core, or to transfer fuel within a reactor facility and place it into a facility provided for onsite storage or into fuel shipping equipment.

(4) Experimental facilities: Experimental facilities whose primary pur-

pose is the irradiation or activation of material by radiation from a nuclear reactor, or which are used with a reactor to provide a source of nuclear radiation for tests or experiments.

(5) Spare or replacement components: Spare or replacement components or parts for items in paragraphs (b)(1) through (b)(4) of this section which are furnished during the duration of the export license as part of the initial purchase or under a warranty from the vendor.

(6) Equipment or tools: Special equipment or tools needed to service, maintain, or replace items in paragraphs (b)(1) through (b)(5) of this section. If equipment or tools in this category are not intended by the applicant to remain with the facility being exported but are intended to be reexported, resold, retransferred, disposed of or returned to the United States, such actions shall be described.

(c) An itemized list of other structures, systems or components to be exported which are associated with the construction, maintenance and operation of the utilization facility proposed for export but which do not fall within the categories listed in paragraph (b) of this section. The itemized list should identify the specific items to be exported and should reflect the commodity control list numbers in the regulations of the Office of Export Administration, U.S. Department of Commerce (see 15 CFR Part 399). (The Commission will determine for each listed item whether it should license the export.)

(d) Identification of any application filed with the Department of Commerce for components of the same facility.

§ 110.33 Additional requirements for contents of an export license application for special nuclear material, source material and byproduct material.

Each application for a license to export special nuclear material, source material or byproduct material shall contain the following, in addition to the general requirements specified in § 110.31:

(a) Any applicable contract number, if known, of material supplied under a Department of Energy enrichment, lease or sale contract;

(b) Where materials are intended for use in a utilization facility, estimated date of first use by ultimate or intermediate consignee;

(c) Chemical and physical form, including, for enriched uranium, the weight percentage of isotopic enrichment, and, for plutonium, the sum of the percentages of P-239 content and Pu-241 content;

(d) Quantity in grams or kilograms (curies for byproduct material) including the total weight of (1) the material in the form exported, (2) the con-

tained uranium or plutonium, and (3) the contained U-235 in enriched uranium; and

(e) For source and special nuclear material, the country of origin, including the country where the special nuclear material was produced.

**§ 110.34 Requirements for contents of an import license application.**

Each application for an import license shall state:

(a) Name and U.S. address of applicant;

(b) Country and facility from which material is being imported;

(c) Name and address of supplier of material;

(d) Destination and ultimate disposition of material (e.g., will material be subsequently exported);

(e) Date of proposed first shipment;

(f) Date of proposed completion of final shipment;

(g) Chemical and physical form, including, for enriched uranium, the weight percentage of enrichment and, for plutonium, the sum of the percentages of Pu-239 content and Pu-241 content; and

(h) Quantity in grams or kilograms including the total weight of (i) the material in the form imported, (ii) the contained uranium or plutonium, and (iii) the contained U-235 in enriched uranium.

(i) Mode of transport and package identification (including IAEA Certificate of Component Authority number).

**§ 110.35 Further information from an applicant.**

(a) The Commission may require further information from the applicant if necessary to complete the review of the application.

(b) Each applicant shall file an amendment to his application whenever there is any substantive change in the information described in his application.

**§ 110.36 Fees.**

No fees are required for export or import licenses.

**§ 110.37 Withdrawal of an application.**

(a) An applicant may withdraw an application at any time.

(b) An applicant shall withdraw an application when it is superseded by a new application or when he no longer intends to use his license if issued.

(c) The withdrawal of an application does not authorize the removal of any NRC record from Commission files.

**Subpart E—Review of Specific License Applications**

**§ 110.40 Commission review.**

(a) Except as the Commission may provide otherwise, applications for the

following will be reviewed by the Commissioners after the Commission receives, whenever appropriate, the views of the Executive Branch:

(1) A utilization facility;

(2) 1 effective kilogram or more of special nuclear material, except for routine export license applications for reloads of low-enriched uranium fuel for use in power reactors with respect to which a previous export license to receive fuel has been issued;

(3) 10,000 kilograms or more of source material; and

(4) Any other license application determined by the staff or any Commissioner to warrant review by the Commission.

(b) If the Commission is unable to complete its review within 60 days after receipt of Executive Branch views, or after receipt of the license application when Executive Branch views are not required, it will inform the applicant in writing of the reason for delay and, as appropriate, provide follow-up reports.

**§ 110.41 Executive Branch review.**

(a) Except as provided in paragraph (c), the Commission will forward export license applications to the Department of State (Designated by Executive Order as lead agency for Executive Branch review) requesting Executive Branch views on:

(1) Whether the proposed export would be inimical to the common defense and security, along with relevant supporting information or documentation; and

(2) Where applicable, whether the proposed export would be under the terms of an agreement for cooperation.

(b) The Commission may request the Executive Branch to provide additional information and briefings, both classified and unclassified, as necessary.

(c) The Executive Branch and the Commission have agreed that export license applications in the following categories will not require case-by-case Executive Branch review:

(1) Byproduct material: All types and quantities except tritium in quantities exceeding 100 curies;

(2) Source material: All exports for non-nuclear end-uses, and exports for nuclear end-uses under 250 kilograms;

(3) Low-enriched uranium: 1 Kilogram or less of U-235 in uranium enriched to less than 20 percent in U-235;

(4) High-enriched uranium: 40 effective grams or less of U-235 in uranium enriched to 20 percent or more in U-235 (calculated in accordance with § 70.4 of this chapter); and

(5) Plutonium: 10 grams or less. This paragraph does not apply to exports with end-uses related to uranium enrichment, chemical reprocessing,

heavy water production, plutonium handling and breeder reactors, and is subject to other limitations which the Executive Branch or the Commission may, from time-to-time, deem necessary.

**§ 110.42 Standards and procedures for issuing a license.**

(a) After receipt, whenever appropriate, of Executive Branch views, the Commission will issue a license if it determines:

(1) That the proposed export or import would not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety; and

(2) That the proposed export of a utilization facility or of special nuclear material would be under the terms of an agreement for cooperation, except for a proposed export of up to 100 grams per shipment of special nuclear material which is (i) diluted so that it is no longer usable for any nuclear activity relevant from the point of view of safeguards, or (ii) is practicably irrecoverable.

(b) After receipt, whenever appropriate, of Executive Branch views, the Commission may deny a license application if it determines that the proposed export or import does not meet the standards of paragraph (a). The applicant will be notified in writing of the reason for denial or proposed denial.

**Subpart F—License Terms and Related Provisions**

**§ 110.50 Terms.**

(a) General and specific licenses.

(1) Each license is subject to all applicable provisions of the Atomic Energy Act and to all applicable rules, regulations, decisions and orders of the Commission.

(2) Each license is subject to amendment, suspension, revocation or incorporation of separate conditions when required by amendments of the Atomic Energy Act or other applicable law, or by other rules, regulations, decisions or orders issued in accordance with the terms of the Atomic Energy Act or other applicable law.

(3) Each license authorizes export or import only and does not authorize any person to receive title to, acquire, receive, possess, deliver, use or transfer a utilization facility, special nuclear material, source material or byproduct material.

(4) Except for packaging and fuel element hardware, each special nuclear material, source material or byproduct material license authorizes the export or import of the material only.

(b) Specific licenses.

(1) Each specific license will have an expiration date.

(2) Each licensee with a specific license may export or import only for the purpose stated in his license application.

(3) Each licensee with a specific license shall surrender his export license to the U.S. Collector of Customs or U.S. Postmaster, as appropriate, upon completion of shipment of the quantity licensed.

(4) Each licensee with a specific license shall promptly return any license which has expired or is revoked, unused or partially used and not intended to be used further, to the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5) Each licensee with a specific license authorized to export or import special nuclear material shall not proceed to export or import and shall notify the Commission promptly if he knows or has reason to believe that the packaging requirements of Part 71 of this chapter have not been met.

(6) Each licensee with a specific license authorized to export or import special nuclear material is responsible for compliance with the physical protection requirements of Part 73 of this chapter, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified.

(7) Each licensee with a specific license authorized to export a utilization facility may export under his license only items specifically required for that utilization facility.

(8) A specific license to export or import a utilization facility confers no authority to export or import any special nuclear material, source material or byproduct material.

(9) A specific license may be transferred, assigned or disposed of to another person only with the approval of the Commission by license amendment.

§ 110.51 Amendments.

(a) A licensee may request an amendment to change any part of his license.

(b) A licensee shall request an amendment whenever it is necessary to maintain compliance with the terms, conditions and other provisions of his license.

(c) If a licensee requests an amendment to renew his license within 30 days prior to the scheduled expiration date, the license will remain valid until the Commission has acted on his request.

(d) The Commission will review requests for amendments using, as appropriate, the same procedures and standards as for original license applications.

§ 110.52 Revocation, suspension and modification.

(a) A license may be revoked, suspended or modified for a condition which would warrant denial of the original license application.

(b) The Commission may require further information from a licensee for the purpose of determining whether a license should be revoked, suspended or modified.

(c) Except when the common defense and security or public health and safety requires otherwise, no license will be revoked, suspended or modified before the licensee is informed in writing of the condition which warrants such action and afforded the opportunity to reply and be heard under procedures patterned on those in Subpart J.

§ 110.53 United States address for an applicant; records and inspections.

(a) Each license applicant shall state on his application an address in the United States where papers may be served and where records required by the Commission will be maintained.

(b) Each licensee shall maintain records concerning his exports or imports for 5 years after each export or import, except that byproduct material records shall be maintained for 2 years.

(c) Each licensee shall permit the Commission to inspect his records, premises and activities pertaining to his export and import shipments when necessary to fulfill the requirements of the Atomic Energy Act and the Energy Reorganization Act.

Subpart G—Violations and Enforcement

§ 110.60 Violations.

(a) Any licensee who violates any provision of the Atomic Energy Act or Energy Reorganization Act or of any rule, regulation, license, decision or order promulgated under these Acts, may be guilty of a crime, and, upon conviction, may be punished by fine or imprisonment, or both, as provided by law.

(b) An injunction or other court order may be sought to prohibit any violation.

(c) A court order may be sought for payment of a civil penalty imposed pursuant to section 234 of the Atomic Energy Act or section 206 of the Energy Reorganization Act.

(d) A violation (which may be a material false statement, including a material omission) may result in the revocation, suspension or modification of a license.

§ 110.61 Notice of violation.

(a) Before instituting any enforcement action for an alleged violation, including an action to impose a civil

penalty, the Commission will serve on the licensee written notice of violation, except as provided in paragraph (d) of this section.

(b) The notice will state the alleged violation and require the licensee to respond in writing, within 20 days or other specified time, either by denying the allegations or stating the corrective steps taken or to be taken and the date when full compliance will be achieved.

(c) If an adequate reply is not received within the time specified, the notice may provide that an order to show cause may be issued pursuant to § 110.62 or a proceeding instituted to impose a civil penalty pursuant to § 110.64.

(d) The notice of violation may be omitted and an order to show cause issued in cases where the Commission determines that the violation is willful or that the public interest so requires.

§ 110.62 Order to show cause.

(a) In response to a violation, the Commission may institute a proceeding to revoke, suspend or modify a license by issuing an order to show cause:

(1) Stating the alleged violation and proposed enforcement action; and

(2) Informing the licensee of his right, within 20 days or other specified time, to file a written answer and demand a hearing.

(b) A licensee's answer consenting to the issuance of an order in substantially the same form proposed in the order to show cause shall constitute a waiver by the licensee of a hearing and of all rights to seek further Commission or judicial review of the order.

(c) The order to show cause may be omitted and an order issued to revoke, suspend or modify the license in cases where the Commission determines that the violation is willful or that the public interest so requires.

§ 110.63 Order for revocation, suspension or modification.

(a) In response to a violation, the Commission may revoke, suspend or modify a license by issuing an order:

(1) Stating the alleged violation and the effective date of the proposed enforcement action;

(2) Informing the licensee of his right, within 20 days or other specified time, to file a written answer and demand a hearing.

(b) If an answer is not filed within the time specified, the enforcement action will become effective and permanent as proposed.

(c) If a timely answer is filed, the Commission, after considering the answer, will issue an order dismissing the proceeding, staying the effectiveness of the order or taking other appropriate action.

(d) The order may be made effective immediately, with reasons stated,

pending further hearing and order, when the Commission determines that the violation is willful or that the public interest so requires.

#### § 110.64 Civil penalty.

(a) In response to a violation the Commission may institute a proceeding to impose a civil penalty under section 234 of the Atomic Energy Act by issuing a notice to the licensee:

(1) Stating the alleged violation and the amount of the proposed penalty;

(2) Informing the licensee of his right, within 20 days or other specified time, to file a written answer and demand a hearing; and

(3) Advising that a delinquent payment for a subsequently imposed penalty may be referred to the Attorney General for collection pursuant to section 234c of the Atomic Energy Act.

(b) If an answer is not filed within the time specified, the Commission will issue an order imposing the proposed penalty.

(c) If a timely answer is filed, the Commission, after considering the answer, will issue an order dismissing the proceeding or imposing a penalty subject to any required hearing.

(d) Except when the matter has been referred to the Attorney General for collection, payment of penalties shall be made by check, draft or money order payable to the Treasurer of the United States, and mailed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(e) An enforcement action to impose a civil penalty will not itself revoke, modify or suspend any license under this part.

#### § 110.65 Settlement and compromise.

At any time after issuance of an order for any enforcement action under this subpart, an agreement may be entered into for settlement of the proceeding or compromise of a penalty. Upon approval by the Commission, the terms of the settlement or compromise will be embodied in the order disposing of the enforcement action.

#### § 110.66 Enforcement hearing.

(a) If the licensee demands a hearing, the Commission will issue an order specifying the time and place.

(b) A hearing pursuant to this subpart will be conducted under the procedures in Subpart G of Part 2.

#### Subpart H—Public Notification and Availability of Documents and Records

#### § 110.70 Public notice of receipt of an application.

(a) The Commission will notice the receipt of each export or import license application by placing a copy in the Public Document Room.

(b) The Commission will also notice in the FEDERAL REGISTER receipt of applications for:

- (1) A utilization facility;
- (2) 1 effective kilogram or more of special nuclear material; and
- (3) 10,000 kilograms or more of source material.

(c) Periodic lists of applications received may be obtained upon request addressed to the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

#### § 110.71 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by placing a copy of the withdrawal request in the Public Document Room.

#### § 110.72 Availability of documents in the Public Document Room.

Unless exempt from disclosure under Part 9 of this chapter, the following documents pertaining to each license application and license will be made available in the Public Document Room:

- (a) License application and any requests for amendments;
- (b) Commission correspondence with the applicant or licensee;
- (c) FEDERAL REGISTER notices;
- (d) Commission letter requesting Executive Branch views;
- (e) Correspondence from the State Department with Executive Branch views;
- (f) Correspondence from foreign governments and international organizations;
- (g) Filings pursuant to Subpart I and Commission and Executive Branch responses, if any;
- (h) If a hearing is held, the hearing record and decision;
- (i) A statement of staff conclusions; and
- (j) License, requests for license amendments and amendments.

#### § 110.73 Availability of NRC records.

(a) Commission records under this part will be made available to the public only in accordance with Part 9 of this chapter.

(b) Proprietary information provided under this part may be protected under Part 9 and § 2.790 (b), (c) and (d) of this chapter.

#### Subpart I—Public Participation Procedures Concerning License Applications

#### § 110.80 Written comments.

(a) The Commission encourages written comments from the public regarding export and import license applications. The Commission will consider and, if appropriate, respond to these comments.

(b) If possible, these comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, At-

tention: Chief, Docketing and Service Branch.

(c) The Commission will provide the applicant with a copy of the comments and, if appropriate, a reasonable opportunity for response.

#### § 110.81 Hearing request or intervention petition.

(a) A person may request a hearing or petition for leave to intervene on a license application.

(b) Hearing requests and intervention petitions shall:

(1) State the name, address and telephone number of the requestor or petitioner;

(2) Set forth the issues sought to be raised;

(3) Explain how a hearing or an intervention would contribute to a sound licensing decision; and

(4) Specify, when a person asserts that his interest may be affected, both the facts pertaining to his interest and how it may be affected, with particular reference to the factors in § 110.83.

(c) Hearing requests and intervention petitions will be considered timely only if filed not later than:

(1) 30 days after notice of receipt in the FEDERAL REGISTER, for those applications published in the FEDERAL REGISTER;

(2) 15 days after notice of receipt in the Public Document Room, for all other applications; or

(3) Such other time as may be provided by the Commission.

#### § 110.82 Answers and replies.

(a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 30 days after the request or petition has been filed, for those applications noticed in the FEDERAL REGISTER, or within 10 days for all other applications.

(b) Unless otherwise specified by the Commission, a reply to an answer may be filed within 10 days after all timely answers have been filed.

(c) Answers and replies should address the factors in § 110.83.

#### § 110.83 Commission action on a hearing request or intervention petition.

(a) If a hearing request or intervention petition asserts an interest which may be affected, the Commission will consider:

(1) The nature of the alleged interest;

(2) How that interest relates to issuance or denial; and

(3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting relief would redress the alleged injury.

(b) If a hearing request or intervention petition does not assert or estab-

lish an interest which may be affected, the Commission will consider:

(1) The likely effect of the hearing on the public interest, particularly the common defense and security; and

(2) The extent to which a hearing is likely to provide information useful to the Commission in carrying out its licensing responsibilities.

(c) Untimely hearing requests or intervention petitions may be denied unless good cause for failure to file on time is established. In reviewing untimely requests or petitions, the Commission will also consider:

(1) The availability of other means by which the requestor's or petitioner's interest, if any, will be protected or represented by other participants in a hearing; and

(2) The extent to which the issues will be broadened or action on the application delayed.

(d) Prior to granting or denying a hearing request or intervention petition, the Commission may request further information from the petitioner, requestor, the Commission staff, the Executive Branch or others, and will not grant a hearing request prior to receipt and evaluation of Executive Branch views on the license application.

(e) The Commission will deny a request or petition that pertains solely to matters outside its jurisdiction.

(f) If an issue has been adequately explored in a previous licensing hearing conducted pursuant to this part, a request for a new hearing in connection with that issue will be denied:

(1) Unless a hearing request or intervention petition establishes that an interest may be affected; or

(2) Unless the Commission determines that changed circumstances or new information warrants a new hearing.

(g) After consideration of the factors covered by paragraphs (a) through (f), the Commission will issue a notice or order approving or denying a hearing request or intervention petition. Upon the affirmative vote of two Commissioners a hearing will be ordered. A notice granting a hearing will be published in the FEDERAL REGISTER and will specify whether the hearing will be oral or consist of written comments. A denial notice will set forth the reasons for denial.

§ 110.84 Notice of hearing consisting of written comments.

(a) A notice of hearing consisting of written comments will:

(1) State the issues to be considered;

(2) Provide the names and addresses of participants;

(3) Specify the time limits for participants and others to submit written views and respond to any written comments; and

(4) State any other instructions the Commission deems appropriate.

(b) The Secretary will give notice of any hearing under this section and § 110.85 to any person who so requests.

§ 110.85 Notice of oral hearing.

(a) A notice of oral hearing will:

(1) State the time, place and issues to be considered;

(2) Provide the names and addresses of participants;

(3) Designate the presiding officer;

(4) Specify the time limit for participants and others to indicate whether they wish to present views; and

(5) State any other instructions the Commission deems appropriate.

(b) If the Commission is not the presiding officer, the notice of oral hearing will also state:

(1) When the jurisdiction of the presiding officer commences and terminates;

(2) The powers of the presiding officer; and

(3) Instructions to the presiding officer to certify promptly the completed hearing record to the Commission without preliminary decision or findings, unless the Commission directs otherwise.

§ 110.86 Conditions in a notice or order.

(a) A notice or order granting a hearing or permitting intervention may restrict irrelevant or duplicative testimony, or require common interests to be represented by a single spokesman.

(b) If a participant's interests do not extend to all the issues in the hearing, the notice or order may limit his participation accordingly.

(c) Unless authorized by the Commission, the granting of participation will not broaden the hearing issues.

§ 110.87 Authority of the Secretary.

The Secretary is authorized to prescribe time schedules and other procedural arrangements, when not covered by this part, and rule on related procedural requests.

§ 110.88 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies, and accompanying documents shall be filed with the Commission by delivery or by mail or telegram to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Branch.

(b) All filings and Commission notices and orders shall be served, as appropriate, upon the applicant; the Executive Legal Director, Nuclear Regulatory Commission, Washington, D.C. 20555; the Executive Secretary, Department of State, Washington, D.C. 20520; and participants, if any.

(c) Service is complete by:

(1) Delivering the paper to the person; or leaving it in his office with someone in charge; or, if there is no

one in charge, leaving it in a conspicuous place in the office; or, if he has no office or it is closed, leaving it at his usual place of residence with some occupant of suitable age and discretion;

(2) Depositing it with a telegraph company, properly addressed and with charges prepaid;

(3) Depositing it in the United States mail, properly stamped and addressed; or

(4) Any other manner authorized by law, when service cannot be made as provided in paragraphs (1) through (3).

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by:

(1) Written acknowledgement of the person served or his authorized representative; or

(2) The certificate or affidavit of the person making the service.

(e) The Commission may make special provisions for service when circumstances warrant.

§ 110.89 Computation of time.

(a) In computing time, the first day of a designated time period is not included and the last day is included. If the last day is a Saturday, Sunday, or legal holiday at the place where the required action is to be accomplished, the time period will end on the next day which is not a Saturday, Sunday, or legal holiday.

(b) In time periods of 7 days or less, Saturdays, Sundays, and holidays are not counted.

(c) Whenever an action is required within a prescribed period by a paper served pursuant to § 110.88, 3 days shall be added to the prescribed period if service is by mail.

(d) An interpretation of this section is contained in § 8.3 of this chapter.

§ 110.90 Commission consultations.

(a) The Commission may consult at any time on a license application with the staff, Executive Branch or other persons.

(b) Where the Commission seeks public comment on procedural questions involving grant or denial of intervention petitions, the views of the Commission staff and the Executive Branch on standing and a hearing as a matter of right will be expressed through their public responses, except to the extent that classified information is involved.

(c) The views of the Commission staff and the Executive Branch on whether a hearing should be held as a matter of discretion will be placed in the Public Document Room upon receipt by the Commissioners, except to the extent that:

(1) These views are classified; or

(2) Contain information submitted by the NRC staff which it has deter-

mined would adversely affect the common defense and security or the conduct of U.S. foreign policy if released at that time. The Commissioners will review any Commission staff decision to withhold its views.

The petitioners and the applicant will be notified at the time views on discretionary hearings are placed in the Public Document Room and provided a copy upon request.

#### Subpart J—Hearings

##### § 110.100 Public hearings.

Hearings under this part will be public unless the Commission directs otherwise.

##### § 110.101 Filing and service.

Filing and service of hearing documents shall be pursuant to § 110.88.

##### § 110.102 Hearing docket.

For each hearing, the Secretary will maintain a docket which will include the hearing transcript, exhibits and all papers filed or issued pursuant to the hearing.

##### § 110.103 Acceptance of hearing documents.

(a) Each document filed or issued shall be bound on the left side, clearly legible, and shall bear the docket number, license application number and hearing title.

(b) Each document shall be filed in one original and signed by the participant or his authorized representative, with his address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the signator knows its contents and that, to the best of his knowledge, the statements made in it are true.

(c) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

##### § 110.104 Presiding officer.

(a) The full Commission will ordinarily be the presiding officer at a hearing under this part. However, the Commission may provide in a hearing notice that one or more Commissioners, or any other person as provided by law, will preside.

(b) A participant may submit a written motion for the disqualification of any person presiding. The motion shall be supported by affidavit setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the person does not disqualify himself, the Commission will decide the matter.

(c) If any presiding officer designated by the Commission deems himself disqualified, he shall withdraw by notice on the record after notifying the Commission.

(d) If a presiding officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement presiding officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a presiding officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the completed hearing record to the Commission, or when the presiding officer is disqualified.

##### § 110.105 Responsibility and power of the presiding officer in an oral hearing.

(a) The presiding officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

- (1) Take action to avoid unnecessary delay and maintain order;
- (2) Dispose of procedural requests;
- (3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses;
- (4) Order consolidation of participants;
- (5) Establish the order of presentation;
- (6) Hold conferences before or during the hearing;
- (7) Establish reasonable time limits;
- (8) Limit the number of witnesses; and
- (9) Strike or reject duplicative or irrelevant presentations.

(b) Where the Commission itself does not preside:

- (1) The presiding officer may certify questions or refer rulings to the Commission for decision;
- (2) Any hearing order may be modified by the Commission; and
- (3) The presiding officer will certify the completed hearing record to the Commission, which may then issue its opinion on the hearing or provide that additional testimony be presented.

##### § 110.106 Participation in a hearing.

(a) Unless otherwise limited by this part or by the Commission, participants in a hearing may submit:

- (1) Initial and concluding written statements of position on the issues;
- (2) Written questions to the presiding officer; and
- (3) Written responses and rebuttal testimony to the statements of other participants.

(b) Participants in an oral hearing may also submit oral statements, questions, responses and rebuttal testimony.

(c) A participant in an import licensing hearing establishing that his inter-

est may be affected, may be accorded additional procedural rights under Subpart G of Part 2 with respect to resolution of domestic factual issues regarding the public health, safety and environment, and the protection of the U.S. public against domestic theft, diversion or sabotage, to the extent that such issues are separable from the non-domestic issues associated with the license application.

##### § 110.107 Presentation of testimony in an oral hearing.

(a) All direct testimony in an oral hearing shall be filed no later than 7 days before the hearing or as otherwise ordered or allowed.

(b) Written testimony will be received into evidence in exhibit form.

(c) Unless proscribed under § 110.86, members of groups which are designated as participants may testify in their individual capacities.

(d) Participants may present their own witnesses.

(e) Testimony by the Commission and the Executive Branch will be presented only by persons officially designated for that purpose.

(f) Participants and witnesses will be questioned orally or in writing and only by the presiding officer. Questions may be addressed to individuals or to panels of participants or witnesses.

(g) The presiding officer may accept written testimony from a person unable to appear at the hearing, and may request him to respond to questions.

(h) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

##### § 110.108 Appearance in an oral hearing.

(a) A participant may appear in a hearing on his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating his name, address and telephone number, and if an authorized representative, the basis of his eligibility and the name and address of the participant on whose behalf he appears.

(c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he is informed of the grounds and given an opportunity to respond.

##### § 110.109 Motions and requests.

(a) Motions and requests shall be addressed to the presiding officer, and, if written, also filed with the Secretary and served on other participants.

(b) Other participants may respond to the motion or request. Responses to written motions or requests shall be filed within 5 days after service.

(c) When the Commission does not preside, in response to a motion or request, the presiding officer may refer a ruling or certify a question to the Commission for decision and notify the participants.

(d) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

#### § 110.110 Default.

When a participant fails to act within a specified time limit, the presiding officer may consider him in default, issue an appropriate ruling and proceed without further notice to the defaulting participant.

#### § 110.111 Waiver of a rule or regulation.

(a) A participant may petition that a Commission rule or regulation be waived with respect to the license application under consideration.

(b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.

(c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted.

(d) Other participants may, within 10 days, file a response to a waiver petition.

(e) When the Commission does not preside, the presiding officer will certify the waiver petition to the Commission, which, in response, will grant or deny the waiver or direct any further proceedings.

(f) Regardless of whether a waiver is granted or denied, a separate petition for rulemaking may be filed pursuant to Subpart L of this part.

#### § 110.112 Reporter and transcript for an oral hearing.

(a) A reporter designated by the Commission will record an oral hearing and prepare the official hearing transcript.

(b) Except for any classified portions, transcripts will be placed in the Public Document Room, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(c) Corrections of the official transcript may be made only as specified by the Secretary.

#### § 110.113 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license application, the reasons for the decision and any dissenting views.

(b) While the Commission will consider fully the hearing record, the licensing decision will be based on all

relevant information, including information which might go beyond that in the hearing record.

(c) If the Commission relies upon information not in the hearing record in reaching its licensing decision, the hearing participants will be informed and, if not classified or otherwise privileged, the information will be placed in the Public Document Room and furnished to the participants.

(d) The Commission may issue a license before completion of a hearing if it finds that:

(1) The standards in § 110.42 are met;

(2) Prompt issuance is required in the public interest, particularly the common defense and security; and

(3) A participant establishing that his interest may be affected has been provided a fair opportunity to present his views.

(e) The Commission may:

(1) Defer any hearings;

(2) Consolidate applications for hearing;

(3) Narrow or broaden the hearing issues; and

(4) Take other action, as appropriate.

#### Subpart K—Special Procedures for Classified Information in Hearings

#### § 110.120 Purpose and scope.

(a) This subpart contains special procedures concerning access to, and introduction of, classified information into hearings under this part.

(b) These procedures do not in any way apply to classified information exchanged between the Executive Branch and the Commission not introduced into a hearing. Such information will be declassified to the maximum extent feasible. The public statements of the Commission staff and Executive Branch will, to the extent consistent with classification requirements, reflect consideration of any such classified information.

#### § 110.121 Security clearances and access to classified information.

(a) No person without a security clearance will have access to classified information.

(b) Only the Commission will act upon an application for access to classified information.

(c) To the extent practicable, applications for access to classified information shall describe the information to which access is desired and its level of classification (confidential, secret or other); the reasons for requesting access; the names of individuals for whom access is requested; and the reasons why access is requested for those individuals.

(d) The Commission will consider requests for appropriate security clearances in reasonable numbers; conduct

its review and grant or deny these in accordance with Part 10 of this chapter; and make a reasonable charge to cover costs.

(e) The Commission will not grant security clearances for access to classified information, unless it determines that the available unclassified information is inadequate on the subject matter involved.

(f) When an application demonstrates that access to classified information not introduced into a hearing may be needed to prepare a participant's position on the hearing issues, the Commission may issue an order granting access to this information to the participant, his authorized representative or other persons. Access will be subject to the conditions in paragraphs (e) and (j) and will not be granted unless required security clearances have been obtained.

(g) Once classified information has been introduced into a hearing, the Commission will grant access to a participant, his authorized representative or such other persons as the Commission determines may be needed by the participant to prepare his position on the hearing issues. Access will be subject to the conditions in paragraphs (e) and (j) and will not be granted unless required security clearances have been obtained.

(h) For good cause, the Commission may postpone action upon an application for access to classified information.

(i) The Commission will grant access to classified information only up to the level for which the persons described in paragraphs (f) and (g) of this section are cleared and only upon an adequate commitment by them not to disclose such information subject to penalties as provided by law.

(j) The Commission will not in any circumstances grant access to classified information:

(1) Unless it determines that the grant is not inimical to the common defense and security; and

(2) Which it has received from another Government agency, without the prior consent of the originating agency.

(k) Upon completion of a hearing, the Commission will terminate all security clearances granted pursuant to the hearing and may require the disposal of classified information to which access has been granted or the observance of other procedures to safeguard this information.

#### § 110.122 Classification assistance.

On the request of any hearing participant or the presiding officer (if other than the Commission), the Commission will designate a representative to advise and assist the presiding officer or the participants with respect to security classification of information

and the protective requirements to be observed.

**§ 110.123 Notice of intent to introduce classified information.**

(a) A participant shall seek the required security clearances, where necessary, and file with the Secretary a notice of intent to introduce classified information into a hearing at the earliest possible time after the notice of hearing.

(b) If a participant has not filed a notice of intent in accordance with this section, he may introduce classified information only if he gives to the other participants and the Commission prompt written notice of intent and only as permitted by the Commission when it determines that the public interest will not be prejudiced.

(c) The notice of intent shall be unclassified and, to the extent consistent with classification requirements, state:

(1) The subject matter of the classified information, which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret or other);

(3) When it is anticipated that the information would be introduced; and

(4) The relevance and materiality of the information to the hearing issues.

**§ 110.124 Rearrangement or suspension of a hearing.**

When a participant gives notice of intent to introduce classified information and other participants do not have the required security clearances, subject to § 110.121, the Commission may:

(a) Suspend or rearrange the normal order of the hearing to give other participants an opportunity to obtain the required security clearances with minimum delay in the conduct of the hearing; or

(b) Take such other action as it determines to be in the public interest.

**§ 110.125 Unclassified statements required.**

(a) It is the obligation of hearing participants to introduce information in unclassified form wherever possible, and to declassify, to the maximum extent feasible, any classified information introduced into the hearing. This obligation rests on each participant whether or not any other participant has the required security clearances.

(b) When classified information is offered for introduction into a hearing:

(1) The participant offering it shall, to the extent consistent with classification requirements, submit to the presiding officer and other participants an unclassified statement describing the substance of the classified information as accurately and completely as possible;

(2) In accordance with procedures agreed upon by the participants or

prescribed by the presiding officer, and after notice to all participants an opportunity to be heard on the notice, the presiding officer will determine whether an unclassified statement may be substituted for the classified information in the hearing record without prejudice to the interest of any participant or the public;

(3) If the Commission determines that the unclassified statement (together with such unclassified modifications as it finds are necessary or appropriate to protect the interest of other participants and the public) adequately sets forth information in the classified matter which is relevant and material to the issues in the hearing, it will direct that the classified matter be excluded from the record of the hearing; and

(4) The Commission may postpone any of the procedures in this section until all other evidence has been received. However, a participant shall not postpone service of the unclassified statement required in this section.

**§ 110.126 Protection of classified information.**

Nothing in this subpart shall relieve any person from safeguarding classified information as required by law and the rules, regulations or orders of any Government agency.

**Subpart L—Rulemaking**

**§ 110.130 Initiation of rulemaking.**

The Commission may initiate action to amend the regulations in this part on its own initiative or in response to a petition.

**§ 110.131 Petition for rulemaking.**

(a) A petition for rulemaking shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Docketing and Service Branch.

(b) The petition shall state the basis for the rulemaking.

(c) The petition may request the Commission to suspend all or part of any licensing proceeding under this part pending disposition of the petition.

(d) The Secretary will assign a docket number to the petition, place a copy in the Public Document Room and notice its receipt in the FEDERAL REGISTER.

(e) Publication may be limited by order of the Commission to the extent required by Section 181 of the Atomic Energy Act.

**§ 110.132 Commission action on a petition.**

(a) The Commission may accept or deny the petition.

(b) If the petition is accepted, a notice of proposed rulemaking or a notice of adoption will be published in the FEDERAL REGISTER.

(c) If the petition is denied, the petitioner will be informed of the grounds.

(d) Commission action on each petition will normally follow, whenever appropriate, receipt and evaluation of Executive Branch views.

(e) The Commission, in exercising the discretion authorized by Section 4(a)(1) of the Administrative Procedure Act for rulemaking on this part, will decide what, if any, public rulemaking procedures will be followed.

**§ 110.133 Notice of proposed rulemaking.**

(a) When the Commission proposes to amend the regulations in this part, it will normally publish a notice of proposed rulemaking in the FEDERAL REGISTER.

(b) A notice of proposed rulemaking will include:

(1) The authority for the proposed rule;

(2) The substance and purpose of the proposed rule;

(3) Directions for public participation;

(4) The time and place of any public hearing; and

(5) If a hearing is to be held by other than the Commission, designation of a presiding officer and instructions for the conduct of the hearing.

(c) A notice of proposed rulemaking will not be published less than 15 days before any hearing unless the Commission for good cause provides otherwise in the notice.

**§ 110.134 Public participation.**

(a) The Commission may hold an oral hearing on a proposed rulemaking or permit any person to participate in a rulemaking proceeding through the submission of written comments.

(b) When it is in the public interest, public rulemaking procedures may be omitted and a notice of adoption published pursuant to § 110.135.

**§ 110.135 Notice of adoption of a final rule.**

(a) Upon approval of an amendment, the Commission will publish in the FEDERAL REGISTER a notice of adoption which includes a statement of purpose, reasons for adoption, effective date and, where appropriate, any significant variations from the amendment as initially proposed in any notice of proposed rulemaking.

(b) The effective date of adoption will normally be no earlier than 30 days after publication of the notice of adoption, unless the Commission for good cause provides otherwise in the notice.

(Sec. 161, as amended, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841).)

Dated at Washington, D.C. this 7th day of February 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,  
Secretary of the Commission.

[FR Doc. 78-4348 Filed 2-16-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE,  
DEPARTMENT OF THE TREASURY

[T.D. 78-61]

PART 153—ANTIDUMPING

Railway Track Maintenance Equipment, Consisting of Ballast Regulators and Tampers Only, From Austria

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that railway track maintenance equipment, consisting of ballast regulators and tampers only, from Austria is being, or is likely to be, sold at less than fair value and that those sales are injuring, or are likely to injure, an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties. As "railway track maintenance equipment" for purposes of this notice consists only of tamping machines and ballast regulators, any other types of machinery used in maintenance of railway track are excluded from this finding.

EFFECTIVE DATE: February 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Barbara J. Victor, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to this authority the Secretary of the Treasury has determined that railway track maintenance equipment from Austria is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), published in the FEDERAL REGISTER of August 16, 1977 (42 FR 41339-40)).

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the United States International Trade Commission responsibility for determination of injury or likelihood of injury. The United States International Trade Commission has determined, and on November 11, 1977, it notified the Secretary of the Treasury, that less than fair value imports of railway track maintenance equipment, consisting of ballast regulators and tampers only, from Austria are injuring an industry in the United States. (Published in the FEDERAL REGISTER of November 17, 1977 (42 FR 59430-32)).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to railway track maintenance equipment, consisting of ballast regulators and tampers only, from Austria.

Section 153.46 of the Customs Regulations (19 CFR 153.46) is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	T.D.
Railway track maintenance equipment consisting of ballast regulators and tampers only	Austria.....	78-61

(Secs. 201, 407, 42 Stat. 11, as amended, 18 (19 U.S.C. 160, 173).)

ROBERT H. MUNDHEIM,  
General Counsel of the Treasury.

FEBRUARY 13, 1978.

[FR Doc. 78-4366 Filed 2-16-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Panel on Review of Skin Test Antigens; Termination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Pursuant to §14.55 (21 CFR 14.55) of the public advisory committee procedures, the Food and Drug Administration announces the termination of the Panel on Review of Skin Test Antigens and amends the regulations to delete it from the list of standing advisory committees. The panel was terminated on August 24, 1977, because it was no longer needed.

EFFECTIVE DATE: February 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Clay Sisk, Bureau of Biologics (HFB-5), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

SUPPLEMENTARY INFORMATION:

The panel's functions were to review the data and information submitted and to prepare a report on the safety, and efficacy of biological products containing skin test antigens. The conclusions and recommendations in the panel's report was published in the FEDERAL REGISTER of September 30, 1977 (42 FR 52674).

Accordingly, the usefulness of the panel had been served and the panel was no longer needed. On August 24, 1977, the charter of this panel expired and renewal will not be requested of the Secretary of Health, Education, and Welfare.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 14 is amended in §14.100 List of standing advisory committees by deleting paragraph (b)(1)(iv) and marking it reserved.

Effective date: Since this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately February 17, 1978.

Dated: February 13, 1978.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner  
for Compliance.

[FR Doc. 78-4368 Filed 2-16-78; 8:45 am]

[4110-03]

[Docket No. 77C-0208]

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

Ferric Ammonium Ferrocyanide; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of August 30, 1977, of a regulation on the use of ferric am-

monium ferrocyanide in externally applied drugs and cosmetics, including those drugs and cosmetics intended for use in the area of the eye. The specifications for the color additive are being revised in response to objections containing data on levels of nickel and cobalt.

DATE: Effective date confirmed: August 30, 1977. Revision effective date: February 17, 1978.

**FOR FURTHER INFORMATION CONTACT:**

Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:**

A regulation published in the FEDERAL REGISTER of July 29, 1977 (42 FR 38562) added §§ 73.1298 and 73.2298 (21 CFR 73.1298 and 73.2298) to Subparts B and C, respectively, of Part 73 (21 CFR Part 73) to provide for the safe use of ferric ammonium ferrocyanide in externally applied drugs and cosmetics, including those drugs and cosmetics intended for use in the area of the eye. The regulation also amended § 81.1(g) (21 CFR 81.1(g)), by deleting "ferric ferrocyanide (iron blue)" from the provisionally listed colors.

Three objections to the regulation were received. None of the objections requested a hearing.

One objection was filed by a manufacturer. This objection was to the following aspects of the published regulation:

1. The identity given for this color additive, presented in § 73.1298(a)(1).
2. The change in the name from ferric ferrocyanide to ferric ammonium ferrocyanide wherever given in this order, including the cosmetic labeling presented in the second column of page 38562 of the order.
3. The last specification given in the order, presented in § 73.1298(b), giving the total iron (Fe) in the range of 33 to 37 percent.

These objections arise because the manufacturer's color additive, ferric ferrocyanide (iron blue), does not correspond to the ferric ammonium ferrocyanide described in the regulation. The manufacturer stated that in 1972 it began production and marketing of ferric ferrocyanide (iron blue) for use as a color additive in cosmetics. The manufacturer stated that it was guided by the continued appearance of the name ferric ferrocyanide (iron blue) on the provisional list of colors for use in externally applied cosmetics (§ 81.1(g)). The manufacturer documents its claim of identity of the color additive with references to the listings for ferric ferrocyanide in the "Kirk-Othmer Encyclopedia of Chemical Technology" (2d ed., vol. 12, Inter-

science 1967, A. Standen, ed., pp. 33-35 and in the "Merck Index," 8th ed., 1968, p. 452). Because this color additive does not correspond to the color additive described in the regulation, the objector asked that the published identity, name, and specifications be changed, or alternatively that ferric ferrocyanide be listed as a separate color additive, either permanently or provisionally.

The Commissioner of Food and Drugs has evaluated the information submitted by the manufacturer and has determined that the color additive described by the manufacturer is distinct from ferric ammonium ferrocyanide, which is described in the July 29 regulation. The petition that resulted in the listing of ferric ammonium ferrocyanide (CAP 8C0082) contained data that supported the identity of the color additive as described in the regulation of July 29, 1977. Manufacturers of ferric ammonium ferrocyanide were requested by the petitioner, i.e., the Cosmetic, Toilet and Fragrance Association, Washington, D.C., to submit information relating to the identity and manufacture of this color additive in 1970. Although the Kirk-Othmer Encyclopedia of Chemical Technology does indicate that the chemistry and identity of the iron blues are ambiguous and that current techniques indicate that all the various iron blues have essentially the same structure, it also states that: "In the manufacture of blues the reaction is carried out in the presence of a large amount of ammonium sulfate, and the commercial products contain ammonium ion partially or entirely replacing the alkali metal." It describes the present commercial method of manufacturing the color. The product manufactured by this process, which includes the use of ammonium sulfate, will be mainly ferric ammonium ferrocyanide along with lesser amounts of ferric sodium ferrocyanide and ferric potassium ferrocyanide. This is the compound described in the petition and which was the subject of the listing regulations for ferric ammonium ferrocyanide, §§ 73.1298 and 73.2298, that published in the FEDERAL REGISTER of July 29, 1977.

Because establishing safe conditions of use is the primary consideration in regulating color additives, it is imperative that the color additive be adequately identified so that it can be uniformly manufactured, and be identical with samples used to establish the safety profile. It is the manufacturer's burden to establish that the color additive it produces is in compliance with the material listed in the regulation. Reliance solely on the name of the color additive to identify it is insufficient. The entries for ferric ferrocyanide in the "Merck Index" and the "Colour Index" do not men-

tion the presence of ammonium sulfate in the manufacturing process, nor do they list the use of ferric ferrocyanide as a color additive in cosmetics.

The manufacturer did not submit data on its color as part of the color additive petition for approval of ferric ammonium ferrocyanide for use in cosmetics. Instead, the data were submitted after publication of the regulation that "permanently" listed ferric ammonium ferrocyanide for use in externally applied drugs and cosmetics, including those intended for use in the area of the eye. The regulation simultaneously removed ferric ferrocyanide (iron blue) from the provisional list. Accordingly, the Commissioner concludes that the manufacturer has no basis for any of its objections, and the regulation of July 29, 1977 became effective August 30, 1977.

In lieu of amending the regulation, the manufacturer requested that ferric ferrocyanide be continued on the provisional list until safe conditions of use could be established for it. One condition of the provisional listing of a color for any use is that it have a history of commercial use as a color additive prior to the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act. The manufacturer, however, has not submitted data to establish this prior history of use. The Commissioner concludes that it will be necessary for the manufacturer to submit a new color additive petition proposing amendment of the color additive regulations to provide for its particular additive. Before the Commissioner can consider provisional listing of ferric ferrocyanide as described by the objector, the objector will have to submit data showing it was marketed prior to July 12, 1960.

A letter was received after expiration of the objection period. This letter from another manufacturer is similar to that discussed above as the first objection. This manufacturer's color additive also appears to be different from ferric ammonium ferrocyanide as described in CAP 8C0082. As with the first objection, the manufacturer should have presented data to FDA on its color additive during the petition review process either as part of the above-named petition or as a separate petition, not after publication of the regulation.

On this basis, the Commissioner judges that this manufacturer should submit a new color additive petition proposing amendment of the color additive regulations to provide for its particular additive, and the necessary data as described above to support continued provisional listing of ferric ferrocyanide.

A third objection was received from the petitioner, i.e., the Cosmetic, Toilet and Fragrance Association. This

objection concerns the restrictions for nickel and cobalt listed under § 73.1298(b). The petitioner states that the specifications are unnecessarily stringent, since their main purpose is to ensure that other grades of ferric ammonium ferrocyanide, such as the alkali-resistant grade, are not inadvertently used. The manufacturers cannot meet the 30 ppm levels established in the specifications in § 73.1298, but could meet a 60 ppm specification, which would still be sufficient to differentiate between the regulated color additive and the alkali-resistant grade of ferric ammonium ferrocyanide.

The Commissioner has evaluated this objection, along with new information that shows that the small amounts of nickel and cobalt present in the color are most likely strongly complexed in the color additive. Because the complexed nickel and cobalt would not be biologically available in externally applied drugs or cosmetics, the Commissioner concludes that the tolerances for nickel and cobalt may be safely increased to 60 ppm each. The regulations set forth below amend the tolerances for nickel and for cobalt to 60 ppm.

The Cosmetic, Toiletry, and Fragrance Association also pointed out an error in the listing of ferric ammonium ferrocyanide under § 73.2298(b) "Uses and restrictions" as it appeared in the FEDERAL REGISTER of July 29, 1977 (42 FR 38562). Although the uses of ferric ammonium ferrocyanide as given in the summary and preamble of the final order were "externally applied drugs and cosmetics, including those drugs and cosmetics intended for use in the area of the eye," § 73.2298(b) inadvertently lists "ferric ammonium ferrocyanide as safe for use in coloring cosmetics generally \* \* \*." Section 73.2298(b) is amended as set forth below to correct this error.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and under authority delegated to the Commissioner (21 CFR 5.1): *It is ordered*, That the regulation adding §§ 73.1298 and 73.2298, and amending § 81.1(g) as published in the FEDERAL REGISTER of July 29, 1977, became effective August 30, 1977: *It is further ordered*, That Part 73 is amended:

1. In the listing in § 73.1298(b) by changing the tolerances for nickel and cobalt to read as follows:

§ 73.1298 Ferric ammonium ferrocyanide.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

Nickel (as Ni), not more than 60 parts per million.

Cobalt (as Co), not more than 60 parts per million.

\* \* \* \* \*

2. In § 73.2298, by revising paragraph (b) to read as follows:

§ 73.2298 Ferric ammonium ferrocyanide.

\* \* \* \* \*

(b) *Uses and restrictions.* Ferric ammonium ferrocyanide is safe for use in coloring externally applied cosmetics, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

\* \* \* \* \*

*Effective dates.* (1) Effective date confirmed: August 30, 1977; (2) the amendments set forth above are effective February 17, 1978.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), (d)).)

Dated: February 6, 1978.

WILLIAM F. RANDOLPH,  
Acting Associate Commissioner  
for Compliance.

[FR Doc. 78-4137 Filed 2-16-78; 8:45 am]

[4110-03]

SUBCHAPTER C—DRUGS: GENERAL

[Docket No. 77N-0411]

PART 291—DRUGS USED FOR TREATMENT OF NARCOTIC ADDICTS

Relationship Between Federally Operated Methadone Treatment Programs and State Methadone Authorities

AGENCIES: Food and Drug Administration and the National Institute on Drug Abuse.

ACTION: Final rule.

SUMMARY: This rule amends the methadone regulations to clarify the role of State methadone authorities in federally operated methadone treatment programs. Questions have arisen whether, under the methadone regulations, State officials have authority to inspect or approve methadone treatment programs operated by the Federal Government or to require that Federal authorities submit program reports to State authorities. This action exempts methadone treatment programs operated by the Federal Government from regulation by a State authority and announces that Federal agencies will voluntarily cooperate with State authorities by permitting inspection and by sending a copy of pertinent reports to such State authorities.

EFFECTIVE DATE: March 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Buddy F. Stonecipher, Bureau of Drugs (HFD-340), Food and Drug Administration, Department of Health, and Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3414.

SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of November 29, 1973 (38 FR 32944), the Commissioner of Food and Drugs proposed to amend § 291.505 Conditions for use of methadone (21CFR 291.505, formerly § 310.505 prior to recodification published in the FEDERAL REGISTER of September 16, 1977 (42 FR 46698)) to state that Federal agencies have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal facilities and by furnishing the State authority a copy of Federal reports, including the reports required under § 291.505. Interested persons were invited to comment on the proposed rule within 60 days.

The Commissioner advises that the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA) have agreed that after April 29, 1976 all future regulations pertaining to narcotic treatment standards will be issued jointly. This agreement resulted from the Secretary of Health, Education, and Welfare's delegating his authority under section 4 of Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (section 4, Pub. L. 91-513). This section directs the Secretary to determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts. The Secretary's authority under this section to determine the safety and effectiveness of drugs or to approve new drugs to be used in the treatment of narcotic addicts has been delegated to the Commissioner of Food and Drugs (21 CFR 5.1). The Secretary's authority under this section relating to the determination of the appropriate methods of professional practice in the treatment of narcotic addicts has been delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, who has re-delegated his authority to the Director of NIDA. Because of the agreement between FDA and NIDA, this final regulation is being issued jointly by the Commissioner of FDA and the Director of NIDA.

Two comments on the proposed rule are on file with the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857. A summary of these comments and the conclusions of the Commissioner and the Director are as follows:

1. The director of a privately operated methadone program neither op-