

Presidential Documents

Title 3—

Executive Order 12289 of February 14, 1981

The President

Foreign Service Retirement and Disability System

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

Section 1. (a) Section 826(c) of the Foreign Service Act of 1980 (22 U.S.C. 4066(c)) is deemed to be amended by striking out the first sentence of paragraph (1) thereof, and inserting in lieu thereof the following sentence:

"(1) The first increase (if any) made under this section to an annuity which is payable from the Fund to a participant or to the surviving spouse of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

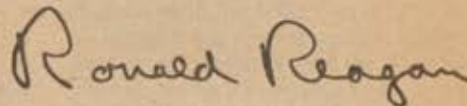
"(a) $\frac{1}{2}$ of the applicable percent change determined under Subsection (b) of this Section, multiplied by

"(b) the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month)."

Sec. 2. Section 808(a) of the Foreign Service Act of 1980 (22 U.S.C. 4048(a)) is deemed to be amended by adding at the end thereof the following:

"However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in Section 8332(c) (1) or (2) of title 5 of the United States Code) or Veterans' Administration pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this chapter excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in Section 5532 of title 5 of the United States Code, or the Veterans' Administration pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this chapter in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this chapter."

Sec. 3. The amendments to be deemed made by this Order shall take effect as of February 15, 1981.



THE WHITE HOUSE,
February 14, 1981.

[FR Doc. 81-5715

Filed 2-17-81; 10:50 am]

Billing code 3195-01-M

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Rules and Regulations

Federal Register

Vol. 46, No. 32

Wednesday, February 18, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Domestic Licensing of Special Nuclear Material; General License Requirements for any Person Who Possesses Irradiated Special Nuclear Material (SNM) in Transit

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations to issue a general license to any person who possesses irradiated reactor fuel in transit. Under the general license, a person who possesses irradiated reactor fuel in transit would be subject to certain requirements. This action would provide the NRC a level of direct control and direct inspection authority over irradiated reactor fuel shipments comparable to that now provided over formula quantities of strategic special nuclear material (SSNM) in transit. Notice is hereby given that this action meets the intent of the petition for rulemaking (PRM 73-5) filed by Mr. Samuel Edlow by letter dated June 29, 1979, with the Nuclear Regulatory Commission and therefore further action is not required.

EFFECTIVE DATE: April 20, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Prell, Safeguards Standards Branch, Division of Siting, Health and Safeguards Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 301-443-5904.

SUPPLEMENTARY INFORMATION: On May 8, 1979, effective amendments to 10 CFR Part 70 were published, 44 FR 26850, that removed the licensing exemption and issues a general license to carriers and other persons who have actual or

constructive possession (constructive possession is a form of legal possession of material in a shipment that does not require actual physical custody; it may be evidence through control over the shipment or by other means) of formula quantities of SSNM for the purpose of transport or storage incident to transport. This provided the NRC with a legal basis (in the absence of a specific license or other formal means) for inspecting shipments of formula quantities of SSNM in transit. Prior to issuance of the effective amendments, inspections were submitted to on a voluntary basis on the part of the carriers.

On June 15, 1979, effective amendments to 10 CFR Part 73 (Section 73.37) were published (44 FR 34466) that prescribed requirements for the physical protection of irradiated reactor fuel in transit. In their present form, these regulations do not subject to direct regulation carriers and other persons who possess (actually or constructively) irradiated reactor fuel for the purpose of transport or storage incident to transport. This creates the same situation for the shipment of irradiated fuel as existed for the shipment of strategic special nuclear material prior to the removal of the licensing exemption for carriers of that material (44 FR 26850). That is, the NRC has no legal basis for inspecting the irradiated reactor fuel shipments in transit to verify compliance with Section 73.37.

On June 29, 1979, Mr. Samuel Edlow, President of Edlow International Company, filed with the Nuclear Regulatory Commission a petition for rulemaking to amend 10 CFR Parts 70 and 73. The intent of this petition, which was assigned Docket Number PRM 73-5, was to make carriers of irradiated reactor fuel subject to a level of NRC control similar to that required of carriers of formula quantities of strategic special nuclear material.

In order to provide the NRC a level of control over irradiated fuel shipments comparable to that provided over formula quantities of SSNM in transit, the Commission is, therefore, amending its regulations to issue a general license to any person who possesses (actually or constructively) irradiated reactor fuel during transport. The general license would pertain only to the carriage or storage in transit of irradiated fuel subject to 10 CFR 73.37.

For this purpose, on March 12, 1980, the Nuclear Regulatory Commission published in the Federal Register [45 FR 15936] proposed amendments to 10 CFR Part 70 of its regulations. Interested persons were invited to submit written comments and suggestions on the proposed amendments within sixty days after publication in the Federal Register. The principal comments and the Commission's responses follow:

(1) Physical protection responsibilities of carriers—one commenter sought clarification as to whether or not the carrier was responsible for meeting the physical protection requirements of 10 CFR § 73.37.

This rule does not relieve the shipper of full responsibility for meeting the physical protection requirements of § 73.37. However, the carrier shall either assure himself or receive certification from the shipper that the requirements are being met. Paragraph 73.20a(e)(1) has been modified from the proposed amendment to clarify this meaning.

(2) Reporting requirements—two commenters suggested that all reporting requirements associated with lost or missing material be channeled through the Department of Transportation. The Department of Transportation, however, prefers that all reports be made directly to the Nuclear Regulatory Commission.

(3) Exemption from 10 CFR § 70.42—One commenter felt that general licensees should not be subject to the requirements of 10 CFR § 70.42 "Transfer of special nuclear material." He felt that since the licensee shipper was already subject to these requirements, making the general licensee subject to them would be redundant, accomplish little and add to the "bureaucratic nightmare." Paragraph 70.42(c) requires: (1) that the general licensee initially register with the NRC, and (2) that prior to transferring special nuclear material, the transferor verify that the transferee's license authorizes receipt of the type, form and quantity of material to be transferred. The Commission believes that this requirement is needed in order to help assure proper control of the material at all points of transfer. The Commission also believes that this will not present the general licensee with a "bureaucratic nightmare" because:

(1) the general licensee is required to register with the Commission only initially, and

(2) the general licensee can verify and obtain from the official records of the Commission or an Agreement State the identity of all the licensees it intends to deliver to and the scope and expiration dates of their licenses and registrations. Once obtained, this list only has to be updated occasionally as licenses expire or license conditions change or new receivers are added.

In light of the above, appropriate paragraphs of § 70.20a have been revised to issue a general license to any person who possesses (actually or constructively) irradiated reactor fuel in transit. The scope of the general license granted under the amendment is limited to possession only and is effective during the course of a shipment. The amendment does not affect the exemption for carriers and other persons under § 70.12 who transport other forms of special nuclear material subject to NRC regulations. Also, the amendment does not apply to transient shipments, that is, shipments that originate in a foreign country with destinations in a foreign country that transit the United States. Such shipments are the subject of a separate rulemaking procedure (see 45 FR 1625). The amendment codifies practices and procedures presently submitted to on a voluntary basis by most carriers and other persons. The amendment does not require the filing of applications with the Commission or the issuing of licenses to particular persons by the Commission.

The promulgation of this amendment does not result in any activity that affects the environment. Accordingly, the Commission has determined under the National Environmental Policy Act, the Council of Environmental Quality guidelines, and the criteria of 10 CFR Part 51, that neither an environmental impact statement nor an environmental impact appraisal to support a negative declaration for the proposed amendment to 10 CFR Part 70 are required.

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 amendments to Title 10, Chapter I, Code of Federal Regulations, Part 70 are published as a document subject to codification.

PART 70—SPECIAL NUCLEAR MATERIAL

1. Section 70.12 of 10 CFR Part 70 is revised to read as follows:

§ 70.12 Carriers.

Common and contract carriers, freight forwarders, warehousemen, and the U.S.

Postal Service are exempt from the regulations in this part to the extent that they transport special nuclear material in the regular course of carriage for another or storage incident thereto. This exemption does not apply to the storage in transit or transport of material by persons covered by the general license issued under § 70.20a and § 70.20b.

2. Paragraph 70.20a (a) and (c) are revised and a new paragraph (e) is added to read as follows:

§ 70.20a General license to possess special nuclear material for transport.

(a) A general license is hereby issued to any person to possess formula quantities of strategic special nuclear material of the types and quantities subject to the requirements of §§ 73.20, 73.25, 73.26, and 73.27 of Part 73 of this chapter, and irradiated reactor fuel containing material of the types and quantities subject to the requirements of § 73.37 of Part 73 of this chapter, in the regular course of carriage for another or storage incident thereto. Carriers generally licensed under § 70.20b are exempt from the requirements of this section. Carriers of irradiated reactor fuel for the United States Department of Energy are also exempt from the requirements of this section. The general license is subject to the applicable provisions of §§ 70.32 (a) and (b), 70.42, 70.52, 70.55, 70.61, 70.62, and 70.71.

(c) Notwithstanding any other provision of this chapter, the duties of a general licensee under this section while in possession of formula quantities of strategic special nuclear material or irradiated reactor fuel in the regular course of carriage for another or storage incident thereto shall be limited to providing for the physical protection of such material against theft or sabotage. Unless otherwise provided by this section, a general license under this section is not subject to the requirements of Parts 19, 20, 70 and 73.

(e) Any person who possesses irradiated reactor fuel under this general license shall:

(1) assure or receive certification from the shipper that the transportation is in accordance with the applicable physical protection requirements of § 73.37 of this chapter; and

(2) comply with the reporting requirements of § 73.71 of Part 73 of this chapter.

(Secs. 53, 161b, 161i, 161o, Pub. L. 83-703, 68 Stat. 930, 948, 949, 950 as amended [42 U.S.C. 2073, 2201], Sec. 201(F) Pub. L. 93-438, 68 Stat. 1243 [42 U.S.C. 5841])

Dated at Washington, D.C. this 10th day of February 1981.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 81-3505 Filed 2-17-81; 8:45 am]
BILLING CODE 7590-01-M

10 CFR Part 73

Physical Protection of Plants and Materials; Physical Protection of In-Transit Special Nuclear Material of Moderate Strategic Significance

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow the NRC to delay the shipment of certain quantities of special nuclear material of moderate strategic significance. The intent of the NRC is to prevent the concurrent shipment of two or more quantities of SNM of moderate strategic significance that, in total, would exceed a formula quantity. This amendment will help the NRC prevent the loss or theft of a formula quantity of strategic special nuclear material.

EFFECTIVE DATE: March 20, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. C. K. Nulsen, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427-4181.

SUPPLEMENTARY INFORMATION: The Commission has been concerned that possible theft of concurrent shipments of special nuclear material (SNM) of moderate strategic significance could result in the accumulation by an adversary of a formula quantity of strategic special nuclear material (SSNM). On January 14, 1980, the Nuclear Regulatory Commission (NRC) published in the Federal Register [45 FR 2657] proposed amendments to 10 CFR Part 73 to allow the NRC to delay the shipment of certain quantities of SNM of moderate strategic significance. The purpose of these amendments was to (1) help assure that a formula quantity of SSNM could not be lost or stolen while in transit, and (2) provide the NRC with the capability of preventing the loss of additional material to an adversary before an accounting of a lost shipment has been made. On February 21, 1980, these amendments were republished [45 FR 11503] with additional details provided explaining how the scheduling control for preventing concurrent shipments of two or more quantities of SNM of moderate strategic significance totalling more than a formula quantity

will be implemented. The comment period was also extended until March 24, 1980.

The proposed amendments have been adopted in effective form without significant changes, and will become effective 30 days after publication of this notice. The changes which were made in response to public comments were primarily for the purpose of clarification and are consistent with the intent of the Commission at the time of publication of the proposed amendments. A summary of public comments resulting in changes in the regulation, and a description of the resulting changes follows.

(1) One comment suggested that shipments which are physically protected should not be subject to NRC-imposed delays. This suggestion has been adopted by the addition of a new subparagraph, § 73.67(e)(6)(iv), which provides that shipments of SSNM of moderate strategic significance protected in accordance with the provisions of §§ 73.20, 73.25 and 73.26 will neither be subject to NRC orders to delay shipment nor considered to constitute a portion of an aggregate formula quantity of SSNM for the purpose of determining whether any shipments must be delayed. This additional provision is to achieve consistency with the related provisions of § 73.24(b) which are currently effective.

(2) Some comments indicated a concern that NRC ordered shipment delays would increase shipping costs and cause interference in the shipper/carrier relationship to the detriment of shippers. The two-day notice the NRC might provide to shippers was thought to be too late to cancel a vehicle ordered for pickup of material without incurring extra charges. Also, it was thought that failures on the part of nonlicensees (e.g., overseas recipients, the Department of Energy) to provide timely confirmation of receipt of shipments could cause unfair impacts on licensees who had planned subsequent shipments. Commenters also expressed more general concerns about the possible impact of the proposed amendments on the private nuclear sector.

The Commission is sensitive to possible disruptions that could be caused to licensees as a result of the proposed regulations. Most of the potential delays which might occur could be avoided if notification is given the NRC sufficiently in advance of each planned shipment. The staff intends to request shipment delays as soon as the need for delays becomes apparent based upon the receipt of planned shipment notifications in accordance with § 73.72. These decisions will

usually be made after consultation with the prospective shippers so that NRC-ordered shipment delays can be minimized and the needs of the shippers can be accommodated. These actions taken in the context of the low number of shipments which are projected will occur each year (twenty to thirty) should result in no significant economic impacts.

With regard to potential delays caused by difficulties in obtaining confirmation of receipt for export shipments, the proposed amendments have been changed by adding the stipulation that for export shipments the licensee need only confirm that a particular export shipment has left its scheduled port of exit from the United States intact, rather than requiring that receipt be confirmed at its foreign destination. This provision is consistent with the objective of the existing regulation which is to assure that an aggregate formula quantity of SSNM constituted by several shipments of SSNM of moderate strategic significance not be permitted to be transported within the United States without appropriate physical protection.

(3) One comment suggested that the NRC did not intend to include low-enriched uranium in the requirements for notifying the NRC of shipments of SSNM of moderate strategic significance, and that the language of § 73.72 should be changed accordingly. The NRC did not intend that shipments of SSNM of moderate strategic significance containing no SSNM be included in the notification requirements of § 73.72, or that such shipments should be subject to delays pursuant to the proposed amendments. Therefore, the suggestion has been adopted and § 73.72 has been modified accordingly.

With respect to the proposed amendments, the resolution of the comments received not resulting in changes is as follows:

(1) A comment by the Department of Energy (DOE) recommended that the proposed amendments be limited to delaying licensed shipments involving the commingling of five kilograms or more of SSNM in transport vehicles or storage facilities. The DOE stated that addressing aggregate quantities of special nuclear material of moderate strategic significance in all possible combinations of licensed shipments is not justified. Concern was also expressed that the proposed amendments would still permit commingling of DOE Category III shipments with licensed shipments such that the total would amount to a formula quantity, thus defeating the purpose of the proposed amendments.

The authority given the staff to delay shipments of SSNM of moderate strategic significance is intended to be exercised on a case-by-case basis to the extent necessary to assure protection of the public health and safety and common defense and security. This will allow the staff to eliminate all significant opportunities for thefts of formula quantities of SSNM.

Regarding DOE's concern for commingling of shipments, carriers are required under the terms of a general license, issued pursuant to § 70.20(a), to provide protection for formula quantities of SSNM in their possession, regardless of whether such material was intended to be transported as one or more separate shipments. Thus, carriers are obligated to protect a formula quantity of SSNM if an NRC licensed Category II shipment is commingled with a DOE Category III shipment and the total amount of SSNM exceeds a formula quantity.

(2) Another comment suggested that the decision criteria for delaying shipments should be part of the regulation and that consideration should be given to giving priority for advanced scheduled shipments of required deliveries to operating reactors.

In response to the above comment, the staff has decided to enlarge upon the list of decision criteria last published in the Federal Register with the proposed amendments.

According to the revised criteria, staff decisions to delay shipments of special nuclear material will be based upon the following criteria: (1) Total time needed to complete the shipment, (2) the impact of a schedule delay on the use of the SSNM at the delivery site, (3) expected routing, (4) relationship of the material to the national defense or to other essential programs in the nation's interest, (5) whether a licensee might volunteer to delay shipment, (6) the possible impacts on the shipper/carrier relationship with regard to availability of shipment vehicles and other special arrangements which would be difficult to rearrange, and (7) how far in advance of the proposed shipment date the NRC was notified of the intent to make the shipment. Regulatory Guide 5.59 entitled "Standard Format and Content for a Licensee Physical Security Plan for the Protection of Special Nuclear Material of Moderate or Low Strategic Significance," will be modified accordingly to reflect these criteria and the proposed amendments.

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

amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 73, are published as a document subject to codification.

1. The authority citation for Part 73 reads as follows:

Authority: Sec. 1611, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201). Secs. 202, 206, Pub. L. 83-438, 88 Stat. 1244, 1248; 42 U.S.C. 5842, 5846, unless otherwise noted.

2. A new § 73.67(e)(6) is added to read as follows:

§ 73.67(e) In-Transit Requirements for Special Nuclear Material of Moderate Strategic Significance.

(6) If, after receiving advance notice pursuant to § 73.72 from a licensee planning to import, export, transport, deliver to a carrier for transport in a single shipment, or take delivery at the point where it is delivered to a carrier, special nuclear material of moderate strategic significance containing in any part strategic special nuclear material, it appears to the Commission that two or more shipments of special nuclear material of moderate strategic significance, constituting in the aggregate an amount equal to or greater than a formula quantity of strategic special nuclear material, may be en route at the same time, the Commission may order one or more of the shippers to delay shipment according to the following provisions:

(i) The shipper shall provide to the Commission, upon request, such additional information regarding a planned shipment as the Commission considers pertinent to the decision on whether to delay such shipment.

(ii) The receiver of each shipment, or the shipper if the receiver is not a licensee, shall notify the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A by telephone, no later than 24 hours after arrival of such shipment at its final destination, or after such shipment has left the United States as an export, to confirm the integrity of the shipment at the time of receipt or exit from the United States.

(iii) The Commission shall notify the affected shippers no later than two days before the scheduled shipment date that a given shipment is to be delayed.

(iv) Shipments of special nuclear material of moderate strategic significance which are protected in accordance with the provisions of §§ 73.20, 73.25, and 73.26 shall not be subject to orders to delay shipment nor considered to constitute a portion of an aggregate formula quantity of strategic special nuclear material for the purposes

of determining whether any shipments must be delayed.

3. Section § 73.72 is revised to read as follows:

§ 73.72 Requirement for advance notice of shipment of special nuclear material.

(a) Each licensee who plans to import, export, transport, deliver to a carrier for transport in a single shipment, or take delivery, at the point where it is delivered to a carrier, the following materials, shall notify the Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix A by U.S. Mail, postmarked at least 7 days in advance of the shipping date: (1) formula quantities of strategic special nuclear material, or (2) special nuclear material of moderate strategic significance containing in any part strategic special nuclear material.

(b) The following information shall be furnished in the advance notice: shipper, receiver, carrier(s), estimated dates and times of departure and arrival, transfer point(s), and mode(s) of shipment.

(c) The Director of the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office shall also be notified by telephone 7 days in advance of the shipping date that an advance shipping notice has been sent by mail, and of any changes to the shipment itinerary prior to the shipment date. Road shipments or transfers with one-way transit lines of 1 hour or less in duration between installations of a licensee are exempt from the requirements of this section.

Dated at Washington, D.C., this 29th day of December 1980.

For the U.S. Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-3493 Filed 2-17-81; 8:45am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-41]

Staff Accounting Bulletin No. 41

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: These interpretations of the staff deal with matters relating to the application of the financial accounting and disclosure rules for oil and gas

producers adopted in Accounting Series Release Nos. 257 and 261. In particular, the interpretations set forth the staff's views on questions pertaining to the effect of the recently announced, accelerated decontrol of oil prices on the computation of future net revenues, the phaseout period for windfall profit tax, and accounting changes by first-time registrants engaged in oil and gas producing activities.

DATE: February 6, 1981.

FOR FURTHER INFORMATION CONTACT: James D. Hall or Rita J. Gunter, Office of the Chief Accountant, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549 (202-272-2133).

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval; they represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

George A. Fitzsimmons,
Secretary.

February 6, 1981.

Staff Accounting Bulletin No. 41

The staff hereby adds questions 9 and 10 to Topic 6-D-2 and adds a new Topic 6-J, setting forth the staff's views on questions pertaining to the effect of the recently announced, accelerated decontrol of oil prices on the computation of future net revenues, the phaseout period for windfall profit tax, and accounting changes by first-time registrants engaged in oil and gas producing activities.

Topic 6: Interpretation of Accounting Series Releases

D. Accounting Series Release No. 257—Requirements for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities.

2. Estimates of Future Net Revenues

Question 9

The Crude Oil Windfall Profit Tax Act of 1980 provides for a phaseout period which is to be a 33-month period beginning no earlier than December 1987 and not later than December 1990, depending on when Government revenues from the windfall profit tax reach \$227.3 billion. For what periods should registrants give effect to the