

# Proposed Rules

Federal Register

Vol. 69, No. 179

Thursday, September 16, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 110

[3150-AH44]

#### Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to the export and import of nuclear equipment and radioactive materials. This proposed rule is intended to reflect recent changes to the nuclear and radioactive material security policies of the Commission and the Executive Branch, for the import and export of radioactive material. A specific license will be required for the import and export of high-risk radioactive material.

**DATES:** Submit comments by November 30, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH44 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personally identifiable information, such as your home e-mail address, will not be removed from your comments.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit

comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail [cag@nrc.gov](mailto:cag@nrc.gov). Comments can also be submitted via the Federal Rulemaking Portal <http://www.regulations.gov>.

*Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Suzanne Schuyler-Hayes, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington DC. 20555-0001, telephone (301) 415-2333, e-mail: [ssh@nrc.gov](mailto:ssh@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

As a result of the terrorist attacks in the United States on September 11, 2001, the Nuclear Regulatory Commission has undertaken a comprehensive review of nuclear and radioactive material security requirements, with particular focus on

high-risk radioactive material. This material, including certain quantities of cobalt-60, cesium-137, iridium-192 and americium-241 isotopes, has the potential to be used in a radiological dispersal device (RDD) or a radiological exposure device (RED) in the absence of proper security measures. This review takes into consideration the changing domestic and international threat environments and related U.S. Government supported international initiatives in the nuclear security area, particularly activities conducted by the International Atomic Energy Agency (IAEA).

Recently, the Commission issued a series of domestic Orders concerning security measures applicable to high-risk radioactive material. These Orders include enhanced security requirements which are also known as "Additional Security Measures," or ASMs. The ASMs have been issued to domestic licensees of the NRC and Agreement States, under the Commission's exclusive authority to provide for the common defense and security. They have not been made available to the general public because they contain sensitive security information that is protected for public disclosure as Safeguards information in accordance with section 147 of the Atomic Energy Act. The ASMs include several provisions that pertain to export and import shipments, particularly concerning security during transportation and advance notice of proposed shipments. It is anticipated that these orders may be reflected in the U.S. Code of Federal Regulations covering radioactive material (primarily revisions to 10 CFR Parts 30-36 and 70).

The Commission has also supported U.S. Government efforts to establish common international guidance for safety and security measures for radioactive sources. This effort resulted in a major revision to the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct or Code). The revised Code of Conduct was approved by the IAEA Board of Governors in September 2003, and is available on the IAEA Web site at <http://www.iaea.org/Publications/Standards/index.html>. Following approval of the current Code of Conduct, the Commission has played a key role in multilateral meetings of technical and legal experts convened by

the IAEA to develop guidance under the Code relating to export and import of high-risk radioactive material. It is expected that the draft "Guidance for the Import and Export of Radioactive Sources in Accordance with the IAEA Code of Conduct on the Safety and Security of Radioactive Sources" (IAEA Export/Import Guidance) developed by those experts will be submitted to the IAEA Board of Governors for approval at its September 2004 meeting and subsequently published by the IAEA.

The Code of Conduct provides guidance for the export and import of Category 1 and 2 radioactive sources described in Table 1 of Annex 1 of the Code, as discussed below. Table 1 includes a list of high-risk radionuclides with activities corresponding to thresholds of concern that is essentially identical to the list found in the proposed Appendix P to be added to 10 CFR Part 110. While the radionuclides and threshold quantities are the same, the proposed Part 110 appendix uses the more encompassing term "radioactive material" rather than "sources." Therefore, unlike the Code of Conduct, the proposed rule encompasses the import and export shipments of bulk radioactive material, in addition to sealed sources.

The U.S. Government has formally written to the IAEA Director General expressing its non-legally binding political commitment to work toward following the guidance contained in the Code of Conduct. In addition, the IAEA Export/Import Guidance is virtually the same, with relatively few modifications, as the export/import guidance text endorsed earlier by President Bush and 28 other Leaders at the 2004 G-8 Sea Island and U.S.-European Union Shannon Summits. Although the Code and the supporting IAEA Export/Import Guidance are not legally binding on IAEA Member States, the Commission nevertheless believes it essential for Commission to update its export/import regulations to reflect the guidance in the Code of Conduct and the Export-Import Guidance consistent with our responsibilities under the Atomic Energy Act, and the Commission's mission of promoting the common defense and security, as well as for achieving a globally harmonized approach to ensure a level playing field for commerce. This proposed rule is intended to accomplish these objectives.

#### Discussion

The Nuclear Regulatory Commission proposes requiring specific licenses for the export and import of high-risk radioactive material as identified above. This proposed rule follows the guidance

contained in the IAEA's Code of Conduct and is consistent with the Code's section on "Import and Exports of Radioactive Sources" (paragraphs 23-29). This section of the Code is intended to guide countries in the development and harmonization of policies and laws on exports and imports of high-risk radioactive sources to ensure that such sources are only exported to authorized end-users in countries with adequate regulatory controls and that sources are not diverted for illicit use. Under the sections of the Code of Conduct relating to exports and imports of radioactive sources, exports and imports of such radioactive sources should take place with the awareness of the exporting country authority and with the prior notification of the importing country authority. Additionally, exports of Category 1 quantities of such material require the consent of the importing country. While prior notification to the importing government authority, may originate from either the exporting licensee or exporting government authority, consents to the import of Category 1 sources must be provided on a government to government basis.

The Code of Conduct provides that, unless there are exceptional circumstances, a country should authorize the import or export of high-risk radioactive material only if it is satisfied that the recipient is authorized to receive and possess the radioactive material and the importing country has the technical and administrative capability, resources and regulatory structure needed to ensure that the radioactive source will be managed in a manner consistent with the provisions of the Code.

The specific radioactive material and amounts covered by this rule are listed in the proposed Appendix P to Part 110 and are essentially identical to the list of high-risk radioactive materials in Categories 1 and 2 in Table 1 of the Code of Conduct. With the exception of plutonium, the high-risk radioactive materials listed in Appendix P are categorized as byproduct material as defined in the Atomic Energy Act of 1954, as amended. Although Radium-226 is encompassed by the Code of Conduct, it is not listed in Appendix P or covered by the proposed regulation because radium, as a naturally occurring radioactive material, is not subject to Commission's licensing authority. However, radium-226 is subject to export/import controls administered by the Department of Commerce. It should be noted that, in response to NRC's request for information, to date no NRC or Agreement State licensee reported possessing, importing, or exporting

Category 1 or 2 amounts of radium. The proposed rule requirements described in this notice would apply to all identified licensees, both NRC and Agreement State.

*Exports.* Under the Atomic Energy Act and 10 CFR Part 110, the principal criterion for approving exports of the materials listed in Appendix P is a finding that the export is not inimical to the common defense and security of the United States. The non-inimicality finding is relevant to both the nuclear proliferation significance of exports and the related security concerns of high-risk radioactive material falling into the hands of non-state organizations, including terrorist groups. In making its inimicality determination, the Commission will, consistent with the Code's guidance, consider whether the importing country has the technical and administrative capability and the resources and regulatory structure to manage the high-risk radioactive material in a safe and secure manner, and has authorized the recipient to receive and possess this material. Under the proposed rule, the Commission will require the applicant for the export license to provide the NRC with pertinent documentation demonstrating that the recipient of the radioactive material has the necessary authorization under the laws and regulations of the importing country to import, receive, and possess the material. For proposed exports of Category 1 amounts of high-risk radioactive material listed in Appendix P, the Commission will also assess whether the government of the importing country has provided its consent to the import. Consistent with the Code, in cases where a recipient may lack the necessary authorization to receive and possess the radioactive material or where a receiving state may be lacking in technical and administrative capability, resources, or regulatory structure, the NRC may, in exceptional circumstances, also consider as part of its overall inimicality determination whether an alternative arrangement has been or can be made to manage the radioactive material in a safe and secure manner. In examining these and other factors that may be pertinent to assessing whether the proposed export will be inimical to the U.S. common defense and security, the Commission may seek the advice of the Executive Branch and will take into account information it receives as part of regular interactions with its foreign regulatory counterparts, the International Atomic Energy Agency, and the Executive Branch. The Commission anticipates that further

guidance on what constitutes “exceptional circumstances” and other aspects of the Code will be set forth in the IAEA Export/Import Guidance discussed above, and will consider that guidance in preparation of the final rule. If, after considering the above information the Commission authorizes the export, then export licensees will be required to provide prior notification to the importing country authority and to the NRC of individual shipments.

**Imports.** For imports, the licensing criteria are non-inimicality to the U.S. common defense and security and a finding that the import does not constitute an unreasonable risk to the public health and safety. Since all recipients in the U.S. must be properly authorized by the NRC, an Agreement State or the Department of Energy to possess such radioactive material, the proposed changes to Part 110 for imports under NRC’s licensing authority of high-risk radioactive material will simply require (1) that the U.S. recipient is authorized to receive and possess the radioactive material and (2) prior notification to the NRC of individual shipments. The Commission will expect the applicant for the import license to provide the Commission with pertinent documentation that each recipient of the radioactive material has the necessary authorization to receive and possess this material. For proposed imports into the U.S. of Category 1 amounts of high-risk radioactive material and for proposed imports allowed under provisions for exceptional circumstances, the Commission will also be responsible for providing the necessary formal U.S. Government consent to the export authority of the exporting country.

**Conclusion.** The proposed criteria discussed above for approving specific export and import licenses for high-risk radioactive material will provide the Commission with the necessary flexibility to process each application on a case by case basis. For example, the Commission may wish to limit exports to new recipients or to a State with limited experience with its regulatory infrastructure to single shipments of radioactive material. On the other hand, in States with mature regulatory infrastructures with known and competent recipients, the Commission intends to use the provisions of § 110.31(e) by issuing broad specific export and import licenses for multiple radionuclides, shipments, and destinations and with authorizations for up to five years or more. The duration of the import or export authorization will be consistent with the expiration date of the recipient’s authorization to possess or use the radioactive material.

However, each shipment under these export/import licenses that meets or exceeds the Category 2 limits in Appendix P will require prior notification as discussed above.<sup>1</sup>

#### **Implementing Date**

The final rule will have an implementation date which will allow a period of six months for exporters and importers to apply for and receive required specific export and import licenses.

#### **Summary**

The proposed changes to the Commission’s export/import regulations in Part 110 apply to a small number of high-risk radioactive materials when exported or imported in amounts exceeding clearly defined limits. They also provide the Commission with flexibility to treat each export and import license application on a case-by-case basis, with the ability to accommodate the still evolving domestic and international security measures for high-risk radioactive material.

#### **Section by Section Analysis**

**Subpart C—Licenses.** Proposed changes would indicate that all exports and imports of high-risk radioactive material listed in a new Appendix P to this Part require specific licenses if amounts involved meet or exceed that set out in that appendix.

In § 110.23, changes would be made to paragraph (a)(3) clarifying that individual export shipments of americium-241 under a general license must be less than the amounts specified in Category 2 of Appendix P to this Part. (Currently, this section authorizes individual shipments of several 20 curie quantities of americium-241 to most countries as long as the 200 curie per country limit is not exceeded.)

In § 110.23, a new paragraph would require that individual export shipments of the high-risk radioactive material listed in a new Appendix P to this Part and conducted under the general license provisions of this paragraph be below the amounts indicated for Category 2.

In § 110.27, a new paragraph would require that individual import shipments of high-risk radioactive material listed in a new Appendix P to this Part and conducted under the general license provisions of this paragraph be below the amounts indicated for Category 2.

<sup>1</sup> The more restrictive requirements for the export of plutonium 238 and 239 contained in § 110.21 will continue to be the limiting controls.

In § 110.32, a new paragraph (g) is added to clarify documentation requirements accompanying an export license application for radioactive material listed in proposed new Appendix P.

**Subpart D—Review of License Applications.** Proposed changes would indicate licensing criteria for high-risk radioactive material exports and imports.

In § 110.42 a new paragraph would specify the licensing criteria for the export of high-risk radioactive material listed in a new Appendix P to this Part in amounts indicated for Categories 1 and 2.

In § 110.43 a new paragraph would specify the licensing criteria for the import of high-risk radioactive material listed in a new Appendix P to this Part in amounts indicated for Categories 1 and 2.

In § 110.45 a new paragraph would describe the requirements for issuing import licenses for high-risk radioactive material listed in a new Appendix P to this Part in amounts specified in Categories 1 and 2.

**Subpart E—License Terms and Related Provisions.** Proposed changes would clarify that transportation issues are covered by NRC’s domestic regulations.

In § 110.50, a new paragraph is added covering advance notification requirements. Also, the word “transport” would be added after “use” in paragraph (a)(3); and the term “71” would be added after “70” in (renumbered) paragraph (b)(5). This would clarify that “transportation” is not covered directly in Part 110 and to indicate that 10 CFR Part 71 of NRC’s domestic regulations cover transportation.

A new Appendix P to Part 110 would list the high-risk radioactive material and quantities requiring specific export and import licenses.

#### **Voluntary Consensus Standards**

The National Technology Transfer Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no voluntary consensus standards addressing this subject matter.

#### **Environmental Impact: Categorical Exclusion**

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an

environmental impact statement nor an environmental assessment has been prepared for this rule.

#### Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to OMB for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 2.4 hours per application, 15 minutes per notification, and 15 minutes per recipient's certification to the licensee including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0036 and 3150-0027), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by October 18, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

#### Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor,

and a person is not required to respond to, the information collection.

#### Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Single copies of the analysis may be obtained from the Office of International Programs, U.S. Nuclear Regulatory Commission, at 301-415-2333 or by e-mail at [ssh@nrc.gov](mailto:ssh@nrc.gov). The Commission requests public comment on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule does not have a significant impact on a substantial number of small entities. This rule is necessary to reflect the nuclear and radioactive material security policies of the Executive Branch and to comply with evolving international agreements to which the U.S. Government subscribes.

#### Backfit Analysis

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

#### List of Subjects in 10 CFR Part 110

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; notice is hereby given that the NRC is proposing to adopt the following amendments to 10 CFR Part 110.

#### PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

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

**Authority:** Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102-496 (42 U.S.C. 2151 *et seq.*).

2. In § 110.23, paragraph (a)(3) is revised and a new paragraph (a)(7) is added to read as follows:

#### § 110.23 General license for the export of byproduct material.

(a) \* \* \*

(3) For americium-241, exports of any country listed in 110.29 must not exceed one curie (308 milligrams) per shipment or 100 curies (30.8 grams) per year and must be contained in industrial process control equipment or petroleum exploration equipment. Exports to countries other than those listed in 110.28 or 110.29 must be contained in industrial process control equipment or petroleum exploration equipment and individual shipments must be less than the amounts specified in Category 2 of Appendix P to this Part.

\* \* \* \* \*

(7) Individual export shipments of byproduct material must be less than the amounts specified in Category 2 of Appendix P to this Part.

\* \* \* \* \*

3. In § 110.27, the introductory text of paragraph (a) is revised and paragraph (f) is added to read as follows:

#### § 110.27 General license for import.

(a) Except as provided for in paragraphs (b), (c), and (f) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the consignee is authorized to possess the material under:

\* \* \* \* \*

(f) Individual import shipments of radioactive material must be less than

the amounts specified in Category 2 of Appendix P to this Part.

4. In § 110.32, a new paragraph (g) is added to read as follows:

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

\* \* \* \* \*

(g) For proposed exports of material listed in Appendix P to this part, pertinent documentation that the recipient of the material has the necessary authorization under the laws and regulations of the importing country to import, receive, and possess the material.

5. In § 110.42, new paragraphs (e) and (f) are added to read as follows:

**§ 110.42 Export licensing criteria.**

\* \* \* \* \*

(e) In making its findings under paragraphs (a)(8) and (c) of this section for proposed exports of radioactive material listed in Appendix P to this Part, the NRC shall consider whether:

(1) The receiving country has the appropriate technical and administrative capability, resources and regulatory structure to manage the material in a secure manner; and

(2) The foreign recipient is authorized to receive and possess the material; or

(3) In exceptional circumstances, that an alternative arrangement has been made to manage the material in a safe and secure manner.

(f) For proposed exports of Category 1 amounts of radioactive material listed in Appendix P to this Part, the receiving country consents to the import of the material.

7. In § 110.43, a new paragraph (e) is added to read as follows:

**§ 110.43 Import licensing criteria.**

\* \* \* \* \*

(e) With respect to the import of radioactive material listed in Appendix P to this Part, the U.S. recipient is authorized to possess the material under a contract with the Department of Energy or a license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

8. In § 110.45, a new paragraph (b)(5) is added to read as follows:

**§ 110.45 Issuance or denial of license.**

\* \* \* \* \*

(b) \* \* \*

(5) With respect to a proposed import of radioactive material listed in Appendix P to this Part, the U.S. recipient is authorized to possess the material under a contract with the Department of Energy or a license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

\* \* \* \* \*

9. § 110.50 is amended as follows:

a. In paragraph (a)(3), add the word “transport” after the word “use,”

b. Paragraphs (b)(4) and (b)(5) are redesignated as (b)(5) and (b)(6),

c. Add the number “71” after “70” in the newly redesignated paragraph (b)(5), and

d. Add a new paragraph (b)(4) to read as follows:

**§ 110.50 Terms.**

\* \* \* \* \*

(b) \* \* \*

(4) A licensee authorized to export or import material listed in Appendix P to this Part is responsible for notifying NRC and the importing country in advance of each shipment. A list of points of contacts in importing countries is available at NRC’s Office of International Programs (see § 110.4).

The NRC office responsible for receiving advance notifications for all export and import shipments will be specified on each specific export and import license. Notifications must be made at least 24 hours in advance of each shipment, and to the extent practical, 10 days in advance of each shipment. Notifications may be electronic or in writing and should contain the following information:

(i) A copy of the authorization applicable to export shipments as required by § 110.42, paragraph (e)(2),

(ii) Estimated dates of when the shipment is to begin and end,

(iii) Exporting or importing facility,

(iv) Recipient,

(v) Radioactive material and specific activity,

(vi) Aggregate activity level, and

(vii) Number of radioactive sources and their unique identifiers (such as the manufacturer, model number and serial number). If the unique identifiers are not available, a description of the radioactive source shall be provided.

\* \* \* \* \*

10. A new Appendix P to part 110 is added to read as follows:

**APPENDIX P TO PART 110.—HIGH RISK RADIOACTIVE MATERIAL**

Radioactive material	Category 1		Category 2	
	Terabequerels (TBq)	Curies (Ci)	Terabequerels (Tbq)	Curies (Ci)
Americium-241 .....	60	2,000	.6	20
Americium-241/Be .....	60	2,000	.6	20
Californium-252 .....	20	500	.2	5
Curium-244 .....	50	1,000	.5	10
Cobalt-60 .....	30	800	.3	8
Cesium-137 .....	100	3,000	1	30
Gadolinium-153 .....	1,000	30,000	10.0	300
Iridium-192 .....	80	2,000	.8	20
Plutonium-238 <sup>1</sup> .....	60	2,000	.6	20
Plutonium-239/Be <sup>1</sup> .....	60	2,000	.6	20
Promethium-147 .....	40,000	1,000,000	400.0	10,000
Selenium-75 .....	200	5,000	2.0	50
Strontium-90 .....	1,000	30,000	10.0	300
Thulium-170 .....	20,000	500,000	200.0	5000
Ytterbium-169 .....	300	8,000	3.0	80

<sup>1</sup> The limits for Pu-238 and Pu-239/Be in this table apply for imports to the U.S. The limits for exports of Pu-238 and Pu-239/Be can be found in § 110.21.

Dated at Rockville, Maryland, this 10th day of September, 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04-20855 Filed 9-15-04; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1

[REG-169135-03]

RIN 1545-BC99

#### Treatment of Certain Nuclear Decommissioning Funds for Purposes of Allocating Purchase Price in Certain Deemed and Actual Asset Acquisitions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the treatment of certain nuclear decommissioning funds in the allocation of purchase price in deemed and actual asset acquisitions under sections 338 and 1060. The text of those temporary regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments must be received by December 15, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-169135-03), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-169135-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>, or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-169135-03).

**FOR FURTHER INFORMATION CONTACT:** Richard Starke at (202) 622-7790 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of

the **Federal Register** amend 26 CFR 1 relating to sections 338 and 1060. The temporary regulations affect the treatment of certain nuclear decommissioning funds in the allocation of purchase price in deemed and actual asset acquisitions under sections 338 and 1060. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person timely submitting written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nevertheless, the IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. This certification is based on the fact that the regulations provide relief to purchasers of nuclear power plants, which are generally not small businesses. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of these regulations.

#### Drafting Information

The principal author of these regulations is Richard Starke, Office of the Associate Chief Counsel (Corporate).

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

**Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.338-6 is amended by adding paragraph (c)(5) to read as follows:

#### § 1.338-6 Allocation of ADSP and AGUB among target assets.

[The proposed text of this section is the same as the text of § 1.338-6T(c)(5) published elsewhere in this issue of the **Federal Register**.]

**Par. 3.** Section 1.1060-1 is amended by revising paragraph (c)(3) to read as follows:

#### § 1.1060-1 Special allocation rules for certain asset acquisitions.

[The proposed text of this section is the same as the text of § 1.1060-1T(c)(3) and (e)(1)(ii)(C) published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04-20915 Filed 9-15-04; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[RME Docket Number R08-OAR-2004-CO-0001; FRL-7813-4]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Denver Revised Carbon Monoxide Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Colorado. On October 15, 2003, the Governor of Colorado submitted a revised maintenance plan for the Denver-Boulder metropolitan (hereafter, Denver) carbon monoxide (CO) maintenance area for the CO National Ambient Air Quality Standard (NAAQS). The revised maintenance plan also contained a revised transportation conformity budget for the year 2013. EPA is proposing approval of the Denver CO revised maintenance plan and revised transportation conformity budget. This action is being