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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

AEA Technology
QSA Inc.

40 North Avenue

Burlington, MA 01803

Telephone (781) 272-2000

Telephone (800) 815-1383

Facsimile (781) 273-2216

DOCKET NUMBER
PROPOSED RULE PR 110
(69 FR 55785)

Secretary, US Nuclear Regulatory Commission
Washington DC 20555-0001
Attn: Rulemakings and Adjudications Staff

Re: RIN 3150-AH44
Export and Import of Nuclear Equipment and Radioactive Materials: Security Policies

29 Nov 04

AEA Technology QSA Inc appreciates the opportunity to provide comments on the proposed revision to 10 CFR 110. AEA Technology is a world-wide manufacturer and distributor of radioactive material used in medical, industrial and research applications. We import and export more than a thousand shipments a year to 60 different countries. Due to the thousands of import and export shipments we do annually, this proposed rule will have a significant financial and operational impact on our business.

While the intent of the rule is to improve security of high risk sources, this will not be achieved unless all countries adopt and implement the IAEA guidance at the same time and in the same consistent manner. If the implementation is not globally harmonized there will not be an increase in the security of sources. In addition, if not harmonized there will be a significant detrimental impact on industry and the potential for unfair trade, as one country's requirements could be less stringent than another. This could cause companies in a highly regulated country to lose sales to a competitor in another country, as it may be more difficult and take longer to get the necessary licenses. The result would be less control of shipments than exists now.

Implementation Date

It is not clear how long it will take NRC to review and issue export licenses. The final rule is expected to be fully implemented by 31 Dec 2005, this means the review of license applications to 60 countries and potentially 500 end users must be complete before this date just for AEA Technology, there will be many more based on other licensees. Also the review in this time period would have to have assessed the specific countries being requested. It does not seem possible that this will be completed in time. If this is not completed there will be a stop in international trade of sources used in vital operations, ie X-ray of pipeline, aircraft and bridges.

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SEC4-02

These operations are critical to the safe infrastructure of many of the countries. What is the alternative going to be, if a license can not be issued in time?

Activity Limits (new Appendix P)

The rule needs to clarify the legal limit as either the TBq or the Ci as the unit of measure, there are significant differences in these. For example the TBq limit Category 2 for AmBe and Am is 0.6 TBq but the Curie limit is given as 20 Ci, converting the TBq to Ci results in 16.2 Ci. Licensees need to know what limit is the legally applicable limit. The IAEA Code of Conduct states in a footnote to the table, that the TBq are the primary values to be used and the Ci are used for practical usefulness. The NRC rule contains no clarification of this. The legal limit needs to be consistent with what other countries will be using, otherwise the same activity source may be regulated in other countries but not in the US.

For the AmBe sources, this will have a huge impact as many of the Oil Well Logging (OWL) sources are in the 16-20 Ci range, thereby requiring specific export licenses if the limit is set at the 16 Ci. These sources are used worldwide and usually need to ship immediately due to contracted customer needs and to support an equipment problem that requires quick resolution in the field. Requiring a specific export license prior to shipment will slow down the ability to respond quickly.

In addition, if this is set at the 16 Ci, this is inconsistent with the amount in the security order for manufacturing and distribution facilities where additional controls are required for more than 20 Ci AmBe not 16 Ci. This has a significant potential to create confusion for the licensees that are trying to comply with many different regulatory requirements. It also creates an inconsistency which the general public may perceive as a regulatory loop hole and decrease confidence in the nuclear industry.

Licenses (10 CFR 110.23 (a)(7))

It is not clear from the proposed rule how the export licenses will be issued. Requiring a specific license for each country and/or for each end destination of the Category 1 and 2 sources will effectively stop shipments. This is due to the administrative burden of applying for and getting the license, this could result in anywhere from 60 (each country) – 500 licenses (each end user) being needed. If a generic export license is issued it would have to include all known (at the time of application) destinations. When a new customer or new location is added, this would require an amendment to the license resulting in a delay in the shipment or perhaps loss of the sale until the amendment request is processed. There are many cases (especially in Canada) where a new customer or new destination is needed quickly. This would result in an administrative burden on both the licensee and the NRC to process. In addition, NRC will probably require a fee for each amendment. From both an administrative and financial perspective this would be unworkable and would definitely result in loss of business with no improvement to security.

If a US company is doing business in another country, will a specific license issued from that country be required, or is review and acceptance of the US license adequate?

It is not clear how the assessment of the importing country's regulatory program is going to be performed. Will this assessment be performed consistently by all the various countries? Can IAEA do this assessment and issue a list of approved countries to all countries, then a consistent method and format will be used. This would also eliminate the redundant effort of several countries performing assessments on the same countries.

The proposed rule also requires that the exporter obtain copies of the users license. This will be impossible in some cases as licenses are not issued by some Regulatory Authorities. Trinidad does not have a Regulatory Authority and approximately 70-100 shipments a year go there for use in industrial radiography. These sources are necessary for vital work to be done and can not be delayed or stopped. Although there is no Regulatory Authority, they have a safe operating history and should not be penalized by the NRC not issuing an export license for that country.

Some countries only issue specific import permits for each shipment instead of a license and these are time sensitive. It would be critical to time the issue of the export license to the dates of the permit.

In addition a license will be in the local language; does the exporting company have to translate to assure all conditions on the license are complied with? This would create a financial burden and a significant time delay in getting shipments to the user.

Under our existing export policy, we require end user statements from the consignee (sample enclosed). New customers are thoroughly checked out for legitimacy prior to accepting an order by research via the internet for customer information along with business directories etc.

All customers are checked against the following lists prior to acceptance of order:

- Bureau of Industry and Security (BIS)
- Country Control Chart
- Denied Entity list
- Specially designated nationals
- US NRC 10 CFR 110 list

Dependent on what is being ordered, final destination and product classification we may also check:

- BIS – munitions list
- CIA – World Factbook by country
- US State Department
- Department of Treasury
- Advice of Export lawyers

Advance notification (10 CFR 110.50(b)(4))

The proposed rule requires 24 hour notification and if practical 10 day advance notification of both import and export shipments. This is not possible for the majority of shipments, as most industrial radiography shipments are not known until the day of shipment. The specific details of

the contents (ie serial number, actual activity) of that shipment are not known until the source is actually manufactured and prepared for shipment. As Ir-192 has a short half life (74 days), we and the customer do not want to delay shipping out a source in order to provide specific details. We can easily notify at time of shipment once all relevant details are known. This will still give ample time to recall a shipment if needed due to any regulatory concern.

This notification requires that a copy of the recipient's authorization is sent to NRC, this is redundant if the overall export license lists out all intended recipients. If the license is issued for a country, then the prevailing procedures in place at the exporter, ie end user requirements will provide the same level of control. It is not clear what benefit is gained by sending a copy of the recipient's license to NRC and Importing country with each shipment. This will also make it more difficult to make the notification if more than a simple email is required.

Typically we do not receive advance notification of imports when the customer is returning decayed sources, many of these will be above the Category 2 limit and would require this notification. We can easily notify at time of receipt of a source. As we usually do not have any knowledge of a specific incoming shipment we will not be able to provide advance notification. Typical industry practice is that for routine returns of spent sources (industrial radiography), the manufacturer accepts returns to help get the sources out of the field. If advance notification is required, then this will delay getting spent or disused sources back to a "safe" location.

Based on our experiences, we recommend the following alternatives and/or clarifications to the proposed rule:

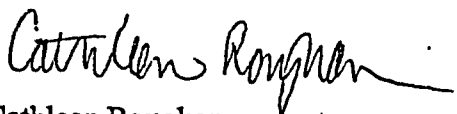
- 1) Have NRC issue a broad scope export license to cover the countries requested by the licensee, details on specific end users should not be on the license as this will frequently change. Amendment is only required when a new country of destination is needed. It would be very useful up front to have access to a list of countries which the NRC has already assessed and found acceptable.
- 2) Have IAEA generate a list of acceptable countries that all countries can use, instead of redundant assessments by multiple countries.
- 3) Allow use of end user statements instead of licenses and to allow the exporter/shipper to use local QA procedures to validate or verify legitimacy of end user using standard business practices in accordance with already existing Customs requirements.
- 4) For Category 2 limits, notification of export shipments to NRC can be done via email at time of shipment. We currently do this for customer notifications to comply with the additional security measures for communicating notice of shipment to recipient. Notification of imports can be done at time of receipt for Category 2 limits. Advance notification for Category 1 shipments can be done prior to receipt or shipment, as there is much more notice and control of these shipments.

We believe these practices provide the same level of security as those methods currently proposed in 10 CFR 110, with less administrative, financial and operational burdens than what is currently proposed.

We are very concerned about the time it will take NRC to process the export license applications and amendments. For both radiography and oil well logging, these jobs are usually part of a construction project and must be performed in accordance with a previously established schedule. If there is a delay in receiving the source, it will jeopardize the project or delay performing of safety critical inspections. We request that NRC process these applications in a timely manner and have an alternative plan in place so that current shipments to existing end users don't stop in Dec 2005.

Thank you for the opportunity to comment on these important proposed regulations. If you would like additional information, please contact me at 781-505-8210.

Sincerely,

A handwritten signature in cursive script, reading "Cathleen Roughan".

Cathleen Roughan
Regulatory Affairs and Quality Assurance Manager

Cc: Hank Kaczowka, President AEA Technology QSA Inc

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