

Legal Nature of KINS Guidelines for Nuclear Safety Regulation

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1. Introduction

Statutes for nuclear safety regulation include the Atomic Energy Act and its Enforcement Decree that form the basis of such statutes as well as the Enforcement Rule of the Atomic Energy Act, Rule on Technical Standards for Nuclear Reactor Facilities, etc., and the Rule on Technical Standards for Radiation Safety Control, etc. that constitute ordinances of the Ministry of Education, Science and Technology. There are also public notifications by the Minister of Education, Science and Technology.

The head of the Korea Institute of Nuclear Safety (KINS), which performs certain affairs relating to nuclear safety regulation as commissioned by the Minister of Education, Science and Technology, formulates 'entrusted affairs handling regulations' to efficiently carry out delegated duties, and establishes detailed technical standards and guidelines (hereinafter referred to as "safety regulation guidelines") to ensure effective performance of individual entrusted affairs. They serve as the yardstick for safety reviews, etc.

This complex legal framework for nuclear safety regulation can be broken down as follows according to the general theories of administrative laws: Atomic Energy Act as a law; Presidential Decrees (Enforcement Decrees), and Ministry Ordinances (Enforcement Rule and two rules on technical standards) as legal orders; and various public notifications and KINS safety regulation guidelines that take the form of administrative rules generally not acknowledged as having the effect of laws and regulations. Public notifications which mostly provide for certain matters according to entrustment by higher laws are deemed to have legal legitimacy both academically and in Supreme Court rulings, the Framework Act on Administrative Regulations, etc. However, the legal nature of the safety regulation guidelines that play a pivotal role in the actual nuclear safety regulation remains unclear.

In connection with this situation, an analysis of the legal standing of KINS, which establishes the safety regulation guidelines, is prerequisite to elucidating the legal nature of those guidelines.

Accordingly, this study will initially analyze the standing of the KINS under administrative laws to determine whether its safety regulation guidelines can serve as criteria for nuclear safety regulation, which constitutes administrative regulation. In other words, it will seek to determine whether those guidelines fall under administrative rules. Then, the study will review the general theories of administrative laws pertaining to administrative rules and recent applicable court rulings to clarify the legal nature of the safety regulation guidelines set by the head of the KINS.

2. KINS as an Administrative Entity and Its Authority of Administrative Legislation

According to academic theories, substantive laws, litigation laws, and Supreme Court rulings, the KINS has standing as an administrative entity as follows:

2.1. Administrative Entity under Academic Theories

Administrative entities according to academic theories are defined as "entities with a juridical personality that perform administrative affairs" and comprise the central and local governments, public organizations, and private persons carrying out entrusted public duties. Among them, public organizations refer to groups with a juridical personality established for the attainment of specific national goals. In general, public organizations are regarded as administrative entities to an extent necessary to pursue certain administrative goals. According to such position, KINS, as a special corporation under public laws to which a juridical personality was accorded under Article 9(2) of the Atomic Energy Act and the Korea Institute of Nuclear Safety Act, is an administrative entity within the scope of government-entrusted affairs as provided in Article 111 of the Atomic Energy Act.

2.2. Administrative Entity under Substantive Laws

Article 2(1)4 of the Framework Act on Administrative Regulations provides that administrative agencies are organs that have administrative authority pursuant to laws, municipal ordinances, rules, etc., as well as corporations, groups, or the sub-divisions or individuals thereof to which such authority is delegated or entrusted. Subparagraph 1, Article 2 of the Administrative Procedures Act stipulates that administrative agencies are organs of the central or local government that make and announce decisions on administrative matters and public organizations or the sub-divisions thereof or private persons that otherwise retain administrative authority or to whom administrative authority is delegated or entrusted by laws, regulations, or autonomous statutes. According to the two laws above, the KINS constitutes an administrative agency because it is a public organization to which administrative authority has been entrusted pursuant to Article 111 of the Atomic Energy Act.

2.3. Administrative Entity under Litigation Laws

The KINS is also deemed an administrative agency under the Administrative Litigation Act. The Act provides that "in applying this Act, administrative agencies include administrative organs, public organizations and the sub-divisions thereof or private persons to which certain duties are delegated or entrusted by law." The Supreme Court ruled that "Administrative agencies ... include not only administrative organs such as the central and local governments, but also administrative organs, public organizations, and the sub-divisions thereof or private persons to which administrative authority is delegated or entrusted by law. Accordingly, special administrative organizations constituting public corporations that perform specific public duties pursuant to

special laws under supervision by the central or local government, as special administrative entities independent of the central or local government which serve certain goals of their establishment, fall under such administrative agencies.”

As described above, the KINS has standing as an administrative entity to the extent that it performs entrusted affairs. Therefore, it is believed that the KINS has the authority of administrative legislation in a wider sense, which means that the agency can establish internal standards to handle its duties. The safety regulation guidelines set by the KINS on the basis of such authority constitute administrative rules out of the administrative legislation, which is divided into legal orders and administrative rules, because they are not enforcement decrees, nor enforcement rules. Administrative rules represent general or abstract provisions established by an administrative organ within the scope of its authority for the purpose of stipulating its organization and activities concerning its internal administrative relations. Now, it would be reasonable to examine the legal effect of the KINS safety regulation guidelines (administrative rules) which are formulated to efficiently perform its government-entrusted duties.

3. Legal Effect of Administrative Rules

Based on domestic and overseas court rulings, administrative rules can largely be classified into the three categories below, depending on whether they have external legal effect:

3.1. Supplemental Rules of Laws

In case where a statute explicitly entrusts administrative rules to stipulate legal matters supplementing the statute, such administrative rules are referred to as supplemental rules of Law.

According to court rulings, such supplemental rules, in conjunction with the statute, have the effect of an externally binding legal order, unless the rules go beyond the limitations set by the entrustment by the statute.

3.2. Laws Embodiment Rules

Laws embodiment rules refer to administrative rules specifying the details of a law that are formulated by the relevant administrative organ for the purpose of enforcing the law without explicit entrustment by the law in cases where a highly professional and technical nature as shown in laws on atomic energy, environment, etc. renders it impossible for the law to specifically provide for particular details. Since those rules specify the details of statutes, they have an external and direct binding force. They differ from supplemental rules of laws in that they lack explicit entrustment by a law.

3.3. Business handling rules

Administrative rules whereby a higher administrative organ, without entrustment by statutes, sets the business handling guidelines or the standards for interpretation of the statutes for administrative organs under its command are referred to as business handling rules. They have no external effect.

4. Legal Effect of Safety Regulation Guidelines

It may be said that the safety regulation guidelines have the nature of supplemental rules on grounds that they are based on Article 4(3) of the KINS General Regulations on Handling of Entrusted Affairs established under Article 111(5) of the Atomic Energy Act. However, the General Regulations on Handling of Entrusted Affairs constitute internal criteria that provide for the special authority relations between the Ministry of Education, Science and Technology and KINS under public laws, and accordingly have only an internal effect binding upon the two agencies. Therefore, it is difficult to regard the safety regulation guidelines as supplemental rules on the basis of said regulations.

In addition, the theory of interpretive rules acknowledged by German court rulings is not generally accepted by the Korean Supreme Court. Therefore, it is not adequate to assert that the safety regulation guidelines have an external effect on the basis of said theory.

Accordingly, the safety regulation guidelines are regarded as business handling rules that have no direct external effect.

5. Conclusion

KINS takes charge of a part of the affairs pertaining to nuclear safety regulation and has the authority of administrative legislation as an administrative agency dedicated to such safety regulation. Its safety regulation guidelines established on the basis of such authority directly have no external legal effect, but practically have legal effect for the following two reasons though they lack any direct external legal effect:

Firstly, the safety regulation guidelines bind safety regulation workers of the KINS, requiring them to carry out duties pursuant to the guidelines. Coupled with the authentication of an administrative act (i.e. a dominant effect of such act), the safety regulation guidelines generate a practical effect upon the public, particularly nuclear licensees.

Secondly, considering the Supreme Court ruling (Supreme Court adjudication on May 25, 1999; judgment no. 98 *da* 53134) to the effect that administrative rules, although lacking the nature of laws and regulations, present standards on specific and objective requirements and accordingly are deemed legal to the extent that they cannot be viewed as irrational and unreasonable rules, the safety regulation guidelines that put forward unified criteria for handling of government-entrusted affairs in connection with the provisions of nuclear safety regulation laws containing unclear concepts are acknowledged as lawful if they set forth specific and objective standards within the scope of such nuclear laws.