



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

SECRETARY

June 9, 2010

COMMISSION VOTING RECORD

DECISION ITEM: SECY-10-0044

TITLE: REVIEW OF FINAL RULE PACKAGE, "EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART 110, RIN 3150-A116)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 9, 2010.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook", with a checkmark to the right.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO

VOTING SUMMARY - SECY-10-0044

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X				X	5/21/10
COMR. SVINICKI	X				X	5/17/10
COMR. APOSTOLAKIS	X				X	5/21/10
COMR. MAGWOOD	X				X	5/14/10
COMR. OSTENDORFF	X				X	5/18/10

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 9, 2010.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Jaczko

SUBJECT: SECY-10-0044 – REVIEW OF FINAL RULE PACKAGE,
“EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND
MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART
110, RIN 3150-AI16)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

8/21/0

DATE

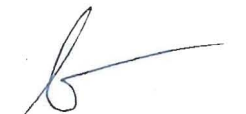
Entered on “STARS” Yes x No _____

**Chairman Jaczko's Comments on SECY-10-0044
Review of Final Rule Package, "Export and Import of Nuclear Equipment and
Material; Updates and Clarifications"**

I believe that this revised 10 CFR 110 will result in improvements to the efficiency and implementation of our import and export oversight activities, and I appreciate the excellent work that the staff has done in developing this rule.

For the benefit of the new members of the Commission who are deliberating on this final rule, I would like to reiterate the concern I raised during the proposed rule stage regarding the elimination of the requirement for specific licenses for import of Category 1 and 2 sources. I continue to be concerned that this one aspect of the rule will allow the import of risk-significant sources into this country under the general license approach.

In addition, there have been some recent instances of sources being exported from the U.S. that ended up in, or were on their way to, embargoed countries. The requirements in 10 CFR 110.20 do not specifically require that the exporters of sources covered under the general license identify the ultimate consignee in the same way that it does for specific licenses in 10 CFR 110.32. This is a weakness in our regulations that staff should determine the best method for addressing, whether in a separate rulemaking or in guidance.



Gregory B. Jaczko

5/21/10

Date

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-10-0044 – REVIEW OF FINAL RULE PACKAGE,
“EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND
MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART
110, RIN 3150-A116)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

05/7/10


DATE

Entered on “STARS” Yes No _____

Commissioner Svinicki's Comments on SECY-10-0044
Review of Final Rule Package, "Export and Import of Nuclear Equipment and Material;
Updates and Clarifications" (10 CFR Part 110, RIN 3150-A116)

I approve publication of the final rule amending the regulations associated with imports and exports of nuclear equipment and material as proposed in SECY-10-0044. In my vote on the draft proposed rule (SECY-09-0013), I approved the proposed rule with specific exceptions. I disapproved the proposed rule change that would remove the existing requirement for Commission review of any export application subject to special limitations as determined by the staff or a majority of the Commissioners and would replace it with a requirement that the Commission review only those license applications "raising significant policy issues" as determined by persons undefined in the rule. I also objected to the revision that raised the threshold for Commission review from one effective kilogram of high-enriched uranium to the "more than five" effective kilograms in the final rule. My vote also stated that the proposed rule should use a parallel construction to the language in section 110.40 in defining which export applications will receive Commission review.

I recognize that my disapproval of these changes was not endorsed by a majority of the Commission, and therefore, was not reflected in the proposed rule published for public comment. Not surprisingly, no public comments were received on the matters that I previously disapproved, as those issues essentially address internal Commission processes. I continue to hold my prior view on these items and, for that reason, endorse the clarifying inserts made by Commissioner Magwood in his vote with the exception of striking the sentence on page 41, which I would retain and modify as follows: "**However, Any** export that is subject to special limitations as determined by the staff or the Executive Branch **is will be** considered ~~to be~~ one that raises ~~an important~~ **a significant** policy issue and will continue to require Commission review."



Kristine L. Svinicki 05/17/10

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER APOSTOLAKIS
SUBJECT: SECY-10-0044 – REVIEW OF FINAL RULE PACKAGE,
“EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND
MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART
110, RIN 3150-AI16)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

5/21/10

DATE

Entered on “STARS” Yes X No _____

COMMISSIONER APOSTOLAKIS' COMMENTS ON SECY-10-0044

I support publication of this final rule as proposed in SECY-10-0044. These amendments should improve the regulatory framework for the export and import of nuclear equipment, material and radioactive waste. I commend the staff for identifying amendments that should enhance the efficiency and consistency of import and export licensing while maintaining appropriate controls for safety and security and the consideration of significant policy issues.

I concur with Commissioner Magwood's proposed edits, as further edited by Commissioner Svinicki, and with Commissioner Ostendorff's additional edits.



George Apostolakis 5/2/10

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-10-0044 – REVIEW OF FINAL RULE PACKAGE,
“EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND
MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART
110, RIN 3150-AI16)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached X None _____

I appreciate the staff's efforts to update, clarify, and correct some provisions of Part 110. I believe that the proposed revisions will improve the NRC's regulatory framework while maintaining appropriate controls on the import and export of radiological materials. The staff's efforts will ensure safety and security while improving the efficiency and consistency of licensing actions.



SIGNATURE

5-14-10

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Magwood's Comments on SECY-10-0044

I appreciate the staff's efforts to update, clarify, and correct some provisions of Part 110. I believe that the proposed revisions will improve the NRC's regulatory framework while maintaining appropriate controls on the import and export of radiological materials. The staff's efforts will ensure safety and security while improving the efficiency and consistency of licensing actions.

/RA/

William D. Magwood, IV

5/14/10

Date

Insert on bottom of Page 40 of SOC immediately after "The change mandates Commission review of export and import license applications that raise significant policy issues."

Significant policy issues may include, but are not limited to, the proposed initial decision on whether to issue a license with special limitations to a country, or the proposed decision on issuance of a license covering a facility where major safety or security issues have been recently raised. If the staff is uncertain whether a license application raises a significant policy issue, the license application should receive Commission review.

On top of page 41 of SOC delete first full sentence starting "Any export that is subject to special limitations as determined by the staff or the Executive Branch is considered..."

characterization (physical and chemical characteristics) of the waste being imported for treatment or management must be provided in the application.

Paragraph (g) is deleted to conform to the change that allows Category 1 and Category 2 quantities of radioactive materials to be imported under a general license. This change is discussed in more detail in the section-by-section analysis for §110.27.

Paragraph (h) is redesignated as new paragraph (g) and allows the exporter of Category 2 quantities of material listed in Table 1 of Appendix P to provide the pertinent documentation that the recipient of the material has the necessary authorization under the laws and regulations of the importing country to receive and possess the material to the NRC at least 24 hours prior to the shipment. The requirement that the applicant for a Category 1 export license provide the NRC, at the time the application is submitted, with pertinent documentation demonstrating that the recipient of the radioactive material has the necessary authorization (usually in the form of a license) under the laws and regulations of the importing country to receive and possess the material remain unchanged.

Subpart D – Review of License Applications

Section 110.40, Commission review. This final rule amends this section to reduce the number of export license applications that require Commission review, and instead focuses Commission review on the export license applications that raise significant policy issues. For example, mandatory Commission review of export applications for nuclear grade graphite for nuclear end use and 1,000 kilograms or more of deuterium oxide are no longer required unless the export raises an important policy issue. This change also increases the proposed export of one effective kilogram of high-enriched uranium, plutonium or uranium-233 to five effective kilograms for mandatory Commission review. The change mandates Commission review of import license applications that raise significant policy issues. By focusing on policy issues, this

not 1170
not attached

change increases efficiency and reduces fees on routine NRC export applications. Any export that is subject to special limitations as determined by the staff or the Executive Branch is considered to be one that raises an important policy issue and will continue to require Commission review. This final rule also adds a requirement for Commission review of export applications of material listed in Table 1 of Appendix P to Part 110 involving exceptional circumstances, as defined in §110.42, or Category 1 quantities of material to any country listed in §110.28.

Section 110.41, Executive Branch review. The final rule makes a minor editorial change and requires Executive Branch review of exports raising significant policy issues, including exports of radioactive material listed in Table 1 of Appendix P to Part 110 involving exceptional circumstances, as defined in §110.42. Also, the export of radioactive material listed in Table 1 of Appendix P to any country listed in §§ 110.28 or 110.29 requires the review of the Executive Branch in accordance with § 110.41(a)(9).

Section 110.43, Import licensing criteria. This final rule clarifies that, with respect to the import of radioactive waste, the NRC consults with, as applicable, the Agreement State in which the facility is located and the low-level waste compact commission(s) to confirm that an appropriate facility has agreed to accept and is authorized to possess the waste for management or disposal. This change addresses commenters questions that the NRC received on the scope of the Agreement State and low-level waste compact commission's role (if applicable) regarding the NRC's review of import applications for radioactive waste.

Additionally, this final rule removes the import licensing criteria related to the imports of radioactive material listed in Appendix P. This change conforms §110.43 with the change to allow Category 1 and Category 2 quantities of radioactive materials to be imported under a general license. This change is discussed in more detail in the section-by-section analysis for §110.27.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-10-0044 – REVIEW OF FINAL RULE PACKAGE,
“EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND
MATERIAL; UPDATES AND CLARIFICATIONS (10 CFR PART
110, RIN 3150-AI16)

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached X None _____

I approve publication of this final rule, subject to the attached comments. I also approve Commissioner Magwood’s changes, as further edited by Commissioner Svinicki.

(This confirms my original vote, signed on my behalf by Jason Zorn on 5/18/10)



SIGNATURE

5/20/10

DATE

Entered on “STARS” Yes X No _____

Commissioner Ostendorff's Comments on SECY-10-0044
Final Rule Package: Import and Export of Nuclear Equipment and Material (Part 110)

I approve publication of the final rule, "Review of Final Rule Package, Export and Import of Nuclear Equipment and Material; Updates and Clarifications." I commend the staff on their work in producing this rule. It is important to maintain consistency throughout the Commission's regulations with respect to the agency's approach to the security of radioactive materials. I believe that this final rule properly aligns our Part 110 regulations with other domestic requirements, making them consistent with the need to address the security of radioactive materials using a risk-based approach. The NRC has put expended significant effort over the last decade to ensure that radioactive materials are subject to the appropriate security controls, and it is my belief that this final rule continues that sound approach.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-A116

[NRC-2008-0567]

Export and Import of Nuclear Equipment and Material; Updates and Clarifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The United States Nuclear Regulatory Commission (NRC) is amending its regulations that govern the export and import of nuclear equipment and material. This rule allows International Atomic Energy Agency Code of Conduct on the Safety and Security of Radioactive Sources Category 1 and 2 quantities of radioactive materials to be imported under a general license. This rule also revises the definition of “radioactive waste” and removes the definition of “incidental radioactive material.” In addition, this rule updates, clarifies, and corrects several provisions.

DATES: The rule is effective on [INSERT DATE THAT IS 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC–2007–0009]. Address questions about NRC dockets to Ms. Carol Gallagher 301–492–3668; e-mail Carol.Gallagher@nrc.gov.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into 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's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, MS-O4E21, Washington, DC 20555-0001; telephone: (301) 415-2347; e-mail: brooke.smith@nrc.gov or Jill Shepherd, Licensing Officer, Office of International Programs, U.S. Nuclear Regulatory Commission, MS-O4E21, Washington, DC 20555-0001; telephone: (301) 415-3635; email: jill.shepherd@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

II. Analysis of Public Comments on Proposed Rule

III. Section-by-Section Analysis

I. Background

On June 23, 2009, the NRC published a proposed rule that requested comments on the proposed changes to 10 CFR Part 110 (Part 110), Export and Import of Nuclear Equipment and Material (74 FR 29614). This final rule updates, clarifies, and corrects several provisions in Part 110 to improve NRC's regulatory framework for the export and import of nuclear equipment, material, and radioactive waste. It also clarifies and corrects the regulations addressing the general license for the export of byproduct material. In addition, changes are made to the regulations governing the export and import of International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources Category 1 and Category 2 quantities of radioactive materials listed in Appendix P to Part 110 and the definition of "radioactive waste" in Part 110. A discussion of the most significant changes follows.

A. Category 1 and 2 Quantities of Radioactive Material Listed in Appendix P to Part 110.

The NRC reevaluated the need for a specific license for the import of Category 1 and 2 quantities of radioactive material to a U.S.-licensed user in light of enhancements made to the NRC's domestic regulatory framework. As a result, the NRC is amending Part 110 to allow imports of Category 1 and 2 quantities of materials listed in Appendix P under a general license.

After the attacks of September 11, 2001, the Commission determined that certain licensed material should be subject to enhanced security requirements and safeguarded during transport, and that individuals with unescorted access to risk-significant quantities of radioactive material should be subject to background investigations. The results of vulnerability assessments performed by the NRC were used in the development of security enhancement orders that were issued to licensees using a graded approach based on the relative risk and quantity of material possessed by the licensee. (EA-05-

090) (70 FR 72128; Dec. 1, 2005). These security orders specifically address the security of byproduct material possessed in quantities greater than, or equal to, Category 1 and 2 quantities. The orders provide for enhanced security measures for such things as license verification before transfer, intrusion detection and response, access control, and coordination with local law enforcement authorities. The orders also contain requirements for the licensee to determine the trustworthiness and reliability of individuals permitted unescorted access to risk-significant radioactive materials. The determination involves a background investigation of the individual.

With the passage of the Energy Policy Act of 2005 giving the NRC new fingerprinting authority, the Commission determined that individuals with access to Category 1 and 2 quantities of radioactive material warrant fingerprinting and FBI criminal history records checks. ~~The Agreement States have also imposed these requirements on their licensees using these types of materials.~~

By the end of 2007, the NRC had issued orders to all NRC licensees that possessed Category 1 or 2 quantities of radioactive material (EA-07-305) (72 FR 70901; December 13, 2007) to require fingerprinting and FBI criminal history records checks for unescorted access to Category 1 or 2 quantities of radioactive material.

For all of these requirements, NRC Agreement States have also imposed legally-binding measures on their licensees possessing Category 1 and 2 quantities of radioactive material.

During the same time period, the NRC issued two sets of orders to licensees transporting radioactive material in quantities greater than, or equal to, Category 2. The additional security measures contained in the orders provide for enhanced security measures during transportation that are beyond the current regulations, including enhanced security in preplanning and coordinating shipments, advance notification of shipments to the NRC and States through which the shipment will pass, control and

monitoring of shipments that are underway, trustworthiness and reliability of personnel, information security considerations, and control of mobile or portable devices.

The security requirements put in place by the orders supplement the existing domestic regulatory requirements. A rulemaking is currently underway that, if promulgated, would incorporate security requirements for Category 1 and 2 quantities of radioactive material into the domestic regulations. (SECY-09-0181; December 14, 2009 (ML0928201950)).

Another significant enhancement pertinent to these materials is the establishment of the National Source Tracking System (NSTS) that tracks from “cradle to grave” transactions involving Category 1 and 2 radioactive sources (71 FR 65686; November 8, 2006). Licensees are responsible for recording the manufacture, shipment, arrival, and disposal of all licensed and tracked Category 1 and 2 sources. For every nationally tracked source that is imported, the facility obtaining the source is required to report the information to the NSTS by the close of the next business day after receipt of the imported source. With the NSTS in place, there is much more information about imported sources available to the staff.

In light of the many security enhancements, the Commission had decided to eliminate ~~the~~ the specific license requirement in § 110.27(f) for imports of radioactive material listed in Table 1 of Appendix P to Part 110 ~~has been removed~~. Conforming changes have been made to §§ 110.32, 110.43, and 110.50. Imports of radioactive material into the United States under a general license continue to be contingent on the consignee being authorized to receive and possess the material under a general or specific NRC or Agreement State license. See § 110.27(a). Moreover, importers of Category 1 and 2 materials under a general license are still subject to the notification requirements prior to shipment as required by § 110.50. The advance notification of imports of Category 1 and 2 quantities of material, § 110.50 (c) is revised to require the

that exporting or importing material for recycling, waste treatment, or other waste management process that generates radioactive material for disposal in a Part 40 or Part 61 facility (or the equivalent) requires a specific export or import license.

The final rule removes the definition of “incidental radioactive material” from Part 110. This rule does incorporate aspects of IRM into the revised definition of radioactive waste and the exclusions from that definition. The scope of the exclusion related to contamination on service equipment (including service tools) used in nuclear facilities (if the service equipment is being shipped for use in another nuclear facility and not for waste management purposes or disposal) is expanded and broadened to include some of the material that previously fell under the definition of IRM such as launderable protective clothing.

In response to comments, the ~~NRC staff~~ the Commission clarified that the first exclusion to the definition of “radioactive waste” applies only to sources of U.S. origin. Disused sources that originated in a country other than the United States would be considered “radioactive waste” under Part 110. Exclusion two is revised to clarify that the broader meaning of “nuclear facility” is intended and that the material must be shipped solely for recovery and beneficial reuse of the non-radioactive material. In addition, an illustrative list of activities that would meet the standard set forth in exclusion two is added to the Statement of Considerations. The ~~NRC staff~~ Commission also added a sixth exclusion to the definition of “radioactive waste” to address the question of recycling activities that would not be considered as radioactive waste, such as utilizing depleted uranium in shielding applications or catalyst manufacturing. The six exclusions are set forth below:

1. Radioactive material in sealed sources or devices containing sealed sources that are of U.S. origin and being returned to any manufacturer, distributor or other entity which is authorized to receive and possess them. This change allows the return of U.S.

d) Importing contaminated magnesium metal and using the recovered magnesium as a neutralizing agent for disposing of mixed waste in a licensed disposal facility.

3. Materials exempted from regulation by the NRC or equivalent Agreement State regulations. This exclusion is consistent with the previously mentioned revision that links the requirement for a specific import or export license for radioactive waste to the specific licensing requirements in 10 CFR Chapter 1 (e.g., Parts 30, 40, and 70). This change eliminates some of the differences between NRC's export and import regulations and domestic regulation of the same material or equipment.

4. Materials generated or used in a U.S. Government waste research and development testing program under international arrangements.

5. Materials being returned by or for the U.S. Government or military to a facility that is authorized to possess the material. This exclusion recognizes that the U.S. Government or military will, in certain circumstances, seek to return material to the United States. Material returned must be to a facility that is authorized to possess the material.

6. Materials imported solely for the purposes of recycling and not for waste management or disposal where there is a market for the recycled material and evidence of a contract or business agreement can be produced upon request by the NRC. This exclusion was added to address concerns regarding the legitimate recycling of radioactive material that might otherwise be seen as waste. For example, under certain circumstances, this exclusion would permit the import under general license of depleted uranium for use in shielding applications or catalyst manufacturing.

In response to comments, the ~~staff~~ Commission revised §§ 110.43 and 110.45 to clarify that the NRC consults, as applicable, with the Agreement State in which the facility is located and low-level waste compact commission(s).

Comment: One commenter suggested that the definition of “radioactive waste” should include other disposal methods that are approved by the NRC and Agreement States such as alternative disposals under 10 CFR 20.2002.

Response: The intent of the proposed changes to the definition of “radioactive waste” is to align the NRC’s export and import regulations with its domestic regulations; therefore, if a specific license is required for a domestic licensee to possess the material, then a specific license to export/import the material would also be required. The NRC and Agreement State licensees may request approval for alternative disposal methods for wastes held under their domestic possession license in accordance with 10 CFR 20.2002 or equivalent Agreement State regulations. Waste could not be imported and directly disposed of under 10 CFR 20.2002, as this type of authorization can only be granted to persons regulated by the NRC or the Agreement States. No change was made to the proposed definition of “radioactive waste” as a result of this comment.

Comment: One commenter suggested revising the proposed definition of “radioactive waste” to clarify that it does not include spent fuel. The respondent noted that it is not clear from the definition what the term “equivalent facility” includes and therefore the definition could be construed to include a facility for the disposal or storage of spent fuel or material that results from recycling, treatment or processing of spent fuel. This commenter also stated that the term “material imported for recycling...” could be read to include spent fuel. Another commenter also noted that the term “recycling” could be confused with the reprocessing of nuclear fuel.

Response: The ~~proposed~~ change to the definition of “radioactive waste” in Part 110 refers exclusively to low level radioactive waste (LLW). Spent or irradiated fuel is not

considered to be LLW; therefore, the definition of “radioactive waste” in Part 110 does not include spent or irradiated fuel. A sentence has been added to the proposed definition of “radioactive waste” to clarify in this final rule that it does not include spent or irradiated fuel.

Comment: One commenter expressed concern about implementation of the revised definition of “radioactive waste” and the correlation between the need for a specific export or import license and the need for a specific domestic license for the same material. This commenter asked if the NRC will make its determination based on whether the conditions in the domestic specific license held by the potential exporter or importer allow possession of the foreign material. The commenter also asked if the NRC will judge the need for an export or import license only against NRC-issued specific licenses or against Agreement State-issued licenses as well. The commenter noted that the NRC and Agreement States have flexibility in writing license conditions and consequently, there may be a lack of national uniformity in the kinds of radioactive materials a domestic specific licensee may possess.

Response: An NRC import license only allows material to be brought into the United States. Once the material is in the United States, the material is subject to the domestic authorization process and operates no differently than if the material were of domestic origin. The import license is not a mechanism to alter the established domestic authorization process, including Agreement State regulations. The NRC will not issue an import license for radioactive waste unless the U.S. importer is authorized to possess the material under the applicable domestic regulation, whether that regulation is an Agreement State's or NRC's. No change was made to the proposed definition of “radioactive waste” as a result of this comment.

Response: The definition of “radioactive waste” in Part 110 refers exclusively to low-level radioactive waste. There are currently several low-level waste disposal facilities in the United States. High-level waste is not addressed in this final rule. Therefore, no change was made to the proposed definition of “radioactive waste” as a result of this comment.

Comment: One commenter suggested that the term “recycling” in the proposed definition of “radioactive waste” be removed or defined further to clarify that recycling under the general license is authorized when the recycling provides for a beneficial re-use of the material. Another commenter noted that the proposed definition of “radioactive waste” is ambiguous with regard to the import of radioactive materials imported and used as “raw” materials directly by manufacturing facilities as opposed to waste processing facilities. The commenter stated that the proposed definition includes “radioactive material” that requires a specific license for possession and is intended for disposal, recycling, waste treatment or some other waste management process. As asserted by the commenter, the ambiguity is that as raw material, waste treatment or waste management would not apply to such non-waste; however, “recycling” without further clarification seems to inadvertently include non-waste, “raw” materials. The commenter suggested that the term “recycling” be modified to a more restrictive phrase such as “waste component recycling” which would clearly not apply to “raw” materials. As another possibility, the commenter suggested restricting the definition of radioactive waste to those imports that are consigned to licensed waste treatment and disposal facilities, so that imports of radioactive material going to licensed manufacturing facilities would not be included.

Another commenter addressed the concept of recycling in the context of exclusion two to the proposed definition of “radioactive waste₁”, stating that the term “recycling” in the main part of the definition seems to conflict with “recovery and beneficial use” in the exclusion. In the commenter’s view, recycling means the recovery

use yet waste may be generated as they are recycled. In the United States, these wastes would be managed safely in accordance with domestic licensing requirements.

The ~~NRC-Commission~~ is aware that there could be instances in which a person intends to import what is in fact radioactive waste, but which is argued to be for recycling purposes (i.e., sham recycling). Any person who imports materials under a general license for recycling, but with the purpose of disposing of them in the United States, would be subject to NRC enforcement action. In addition, there may be instances in which some small value may be obtained from the materials that are imported, but the primary intention is for disposal. In such cases, to avoid possible enforcement action, the ~~staff-Commission~~ recommends that the NRC be consulted before any such imports are made. This final rule includes the six exclusions under the definition for “radioactive waste.”

The ~~NRC-Commission~~ does not accept the second commenter’s suggestion to add the word “recycling” to exclusion two because the use of the word “recycling” could potentially open exclusion two to other general forms of recycling, which would not meet the intent of the exclusion. The intent of exclusion two is exclusively for the importation of materials being recovered and reused in an NRC- or Agreement State-licensed facility.

Comment: Several commenters addressed the proposed changes to exclusion one to the definition of “radioactive waste” regarding sealed sources and devices. Two commenters expressed support for the proposed changes and stated that they will allow for sources to be transferred and transported easily to an entity that may be able to recertify the source or recycle the source for beneficial use rather than disposal. Another commenter suggested that the purpose of the exclusion should be clarified to

indicate that it does not cover importing sources originating in other countries for disposal in the United States.

Response: Exclusion one to the proposed definition of "radioactive waste" has been revised in this final rule to clarify that this exclusion only applies to sources of U.S. origin. Disused sources that originated in a country other than the United States would be considered "radioactive waste" under Part 110. Therefore, in the case of an import, a specific license is required for the importation of sources (in the form of waste or disused sources) originating outside of the United States for disposal in the United States. Licensing and notification requirements for Category 1 and 2 quantities of materials listed in Table 1 of Appendix P to Part 110 are applicable.

Comment: One commenter stated that importation of material destined for re-use should require a specific license. The application for a specific license constitutes a form of public disclosure and the public should be aware of radioactive materials, such as radioactive metals, that may be reused. This commenter asserted that reused radioactive metal could contaminate the general supply of reused scrap metal if it eventually makes its way back to unrestricted use. Consequently, the public should be notified and provided the opportunity to comment on a specific license for the import of radioactive materials proposed for reuse.

Response: The intent of this ~~proposed~~ change is to address the re-use and recovery of these materials for use in an NRC- or Agreement State-licensed facility. Once imported to an NRC- or Agreement State-licensed facility the material and any waste generated as a result of the re-use or recovery process is subject to NRC or Agreement State

domestic licensing requirements. Therefore, no change was made to the proposed definition of “radioactive waste” as a result of this comment.

Comment: Several commenters asserted that the second exclusion to the proposed definition of “radioactive waste” could be abused if only a small fraction of the import is for recovery or beneficial use of the non-contaminated material. Two commenters addressed the proposed language “not solely for waste management purposes or disposal” at the end of the exclusion. One commenter stated that this phrase should be further clarified, changed or replaced to indicate that the portion of the import destined for disposal must, at all times, be considered radioactive waste. Another commenter thought the closing phrase unnecessary because, if the import is for recovery and reuse of the non-radioactive material, then the import would never be “solely” for waste management purposes or disposal. This commenter speculated that the intent of the language is to ensure good faith intent for recovery and reuse of the material. This commenter recommended that this concern be addressed by stating that the purpose is “primarily” for recovery and re-use since all recovery efforts will likely have some waste processing or disposal aspects. The term “primarily” is proposed to make it clear that the recovery operation produces a product that is in fact useful and that the recovery operation is in good faith and not a pretense for waste management. The commenter recommended rewording the exclusion to read “...if the material is being shipped primarily for recycling, i.e., recovery and beneficial use of the non-radioactive material in a nuclear facility.” Another commenter asserted that some of the exclusions under the proposed definition of “radioactive waste” should be more restrictive. Specifically with regard to the second exclusion, the commenter stated that the disposable radioactive portion of the imported material should be recognized as “radioactive waste” at the time

Comment: One commenter noted that the clear intent of the proposed rule, as expressed in the Statement of Considerations to the proposed rule, is to grant a general license for the import of materials that are exempt from domestic licensing (e.g., material exempted by 10 CFR 40.13(a)) by the NRC. Section 110.27(a) of the proposed rule would grant a general license for the import of byproduct, source, and special nuclear material if the U.S. consignee were authorized to possess such material under a general or specific license from the NRC or an Agreement State. The commenter asserted that while the new definition of "radioactive waste" in the proposed rule would exclude "exempt" material such as 10 CFR 40.13(a) material, the controlling provision for the import of material under proposed §110.27(a) seems to be the possession of an existing general or specific license. The commenter stated that under the framework for the domestic licensing of byproduct, source, or special nuclear material, general licenses are not synonymous with "exemptions" for material: no license is required for the possession of exempt material. The commenter stated that §110.27(a)(2) of the current regulations does grant a general license for the import of "exempt" material; however, this section would be deleted under the proposed rule, and the commenter suggested that original language be retained.

Response: The NRC's ~~proposed~~ revisions to the definition of "radioactive waste" in Part 110 are designed, in part, to align export/import licensing criteria with domestic regulations that are implemented by the NRC and the Agreement States. If a specific license is required domestically, a specific import or export license would also be required. The ~~proposed~~ changes to the definition of "radioactive waste" and the deletion of §110.27(a)(2) are consistent with the intended alignment in that if the material (meaning any exempt material, not just material in the form of waste) is exempt from

specificity in an application, this commenter is primarily concerned with the concept of waste characterization versus waste classification prior to its import. Specifically, the commenter noted that under the proposed rule, the NRC would only require an applicant to classify the radioactive waste in accordance with 10 CFR 61.55 when the waste is being imported for direct disposal. The commenter stated that this provision is too narrowly written and most waste would escape classification. The commenter asserted that if the imported waste was first processed or managed and then disposed of, under the proposed rule, the waste would not be classified prior to import. This commenter also stated that by allowing the importer to characterize the waste rather than classify it prior to import, the NRC may allow the import of radioactive waste that cannot be disposed of in this country. Further, the host state or compact would have insufficient information to make an informed decision about the appropriateness of the waste for disposal at facilities under its jurisdiction. Another commenter stated that in the past, there have been situations where all the disposition pathways for waste resulting from the processing of imported radioactive wastes were not clearly identified in the original import license application. The commenter recommended that the NRC require license applications for the import of radioactive waste to include a list of all facilities that are projected to receive wastes for disposal that result from imported wastes. This should include licensed low-level waste disposal facilities as well as landfills that are licensed to accept materials such as those surveyed for bulk release (exempt wastes). The commenter stated that this would ensure that parties responsible for evaluating the application have the information necessary to conduct a thorough review.

Response: As discussed above in Section II.D of this document, the NRC's proposed revisions to the definition of "radioactive waste" in Part 110 are designed, in part, to align export and import licensing criteria with domestic regulations that are implemented by

the NRC and the Agreement States. Therefore, if a specific license is required to possess the material domestically, a specific license would be required to import or export that waste material. In accordance with domestic regulations, the NRC, when processing applications for the import of radioactive waste, would follow the waste attribution approaches used in the United States, which are, in almost all cases, developed by the Agreement States and compacts.

Under domestic licensing requirements, waste disposed of at a Part 61 or equivalent Agreement State-licensed facility must be classified in accordance with 10 CFR 61.55. Under the shipping manifest requirements in Appendix G to 10 CFR Part 20, waste must be classified when it is being shipped for disposal. It is not required to be classified before shipment for disposal, i.e., waste being sent to a processor need not be classified, but waste being shipped directly for disposal must be classified in accordance with 10 CFR 61.55. The waste classification requirements are designed to provide for protection against an inadvertent intruder into a waste disposal site 100 years or more after the site is closed. For higher concentrations of waste (and higher waste classes), additional measures are required at the disposal site to ensure that the intruder is protected even for wastes that pose a greater hazard. Thus, the classification of waste at intermediate points in its processing is not relevant to the purpose of waste classification.

The ~~proposed final rule would~~ does not require classification of waste being imported to a waste processor because such classification would have no safety relevance at that time. The licensed waste processor, after processing the waste, must classify the waste which would ensure that the disposal site facility requirements are met. ~~The~~ This approach ~~proposed in the rulemaking~~ is consistent with domestic requirements. It should be noted that the NRC Chairman, on October 8, 2009, requested a vote paper from the NRC staff addressing blending of low-level radioactive

waste. While blending is not related to the import of waste, the issue of when waste is to be classified will be addressed in the paper. Current regulations require that waste be classified when shipped for disposal. If, as a result of this current review, changes are made in classification requirements or practices, the staff will implement review procedures for waste import applications consistent with new domestic practices or requirements.

While it is agreed that it is undesirable to import waste that cannot be disposed of in the United States, the NRC will ensure, in its review of license applications, that when there is uncertainty regarding the final waste classification of waste to be disposed of, that an export license application has been applied for to ensure that no waste is left in the United States without a disposal option. This ensures that any waste without a domestic disposal option will not be orphaned in the United States, but will be returned to the country of origin.

With respect to Agreement States and compacts making informed decisions, the ~~staff~~ NRC will ensure in its consultations with States and compacts, as applicable, that the waste to be processed and disposed of meets the classification requirements of the disposal facility and the license conditions of any intermediate facilities, such as a waste processor. The ~~proposed final~~ rule notes that license applicants ~~would~~ need to characterize the waste before import to ensure that it meets the license requirements for a domestic processor. However, consistent with domestic regulations, classification ~~would~~ is not ~~be~~ required, since waste classification is designed to ensure safety of waste to be disposed of, and is not related to safety of the waste at intermediate points in its processing.

In response to the concerns raised by the second commenter regarding clearly identifying an imported waste's disposition pathway, the ~~proposed rule stated that the~~ NRC ~~would~~ will consult with the Agreement State and, if applicable, the low-level waste

compact commission to ensure that an appropriate facility is authorized to accept waste for management or disposal.

With respect to the commenter's recommendation that import license applications include a list of all facilities projected to receive imported waste, under domestic regulations a waste processor receiving foreign waste could only transfer processed waste to authorized recipients. Thus, there would be no safety or security concerns, once waste was received by an authorized waste processor.

It is possible that other waste management or disposal facilities receiving waste from a processor could be subject to laws or regulations applicable to foreign wastes; however, assurances that foreign waste could be accepted at these facilities would be needed. Such assurance could come from consultations with the States and compacts. In cases where foreign waste is attributed to the foreign low-level waste generator, the ~~staff~~ NRC will consult with other affected States and compacts that receive processed waste. Section 110.32(f)(6) places an obligation on the foreign waste import applicant to identify where the waste, not attributed to the processor (i.e. foreign waste that remains attributed to the foreign low-level waste generator), will be disposed of within the United States. Again, in accordance with domestic regulations, ~~staff~~ the NRC will follow the waste attribution approaches developed by the Agreement States and compacts in its processing of applications to import foreign waste. There, the applicable provisions of the proposed rule are unchanged in this final rule.

Comment: Several commenters expressed support for the proposed revisions to §§110.43 and 110.45, that provided clarification that the NRC consults (with respect to the import of radioactive waste) with the host State(s), and, if applicable, the appropriate low-level waste compact commission(s) to confirm that an appropriate facility has agreed to accept and is authorized to possess the waste for management or disposal.