

provided before the export or import takes place.

One Federal official asked how other Federal agencies would be notified of an application for a specific license. The Department of State, as lead Executive Branch agency for the review of nuclear exports, has agreed to notify other appropriate Federal agencies. For an import application, the NRC would itself seek the views of appropriate Federal and State agencies. The NRC recognizes the unique interest and responsibilities of the States under the Low-level Radioactive Waste Policy Act for safe management and disposal of LLW. Therefore, consultation with affected States is appropriate.

One commenter expressed concern that the proposed rule did not include a provision for informing LLW compacts before issuance of a specific license for import or export of radioactive waste. Section 110.70(b) has been revised to require that the Commission publish in the **Federal Register** a notice of receipt of an application for a specific license for the export or import of radioactive waste (other than incidental radioactive material). To promote consideration of LLW compacts' restrictions on waste disposal, the Commission will exchange information and views with interested compacts. The NRC also intends to take other reasonable steps to inform States and LLW compacts of pending requests for specific licenses for import or export of radioactive waste, but believes it to be unnecessary to spell this out in the regulations.

One commenter suggested that the Department of Transportation and the Customs Service should be able to initiate efforts to determine the validity of statements made with respect to a particular export or import. The Commission expects that if the Department of Transportation or the Customs Service encounters a questionable export, they will seek assistance from the NRC. The NRC will then work with the Department of State and other concerned parties in resolving questions raised in such circumstances.

Another commenter referred, among other things, to the proposed rule's inconsistency with NRC's below regulatory concern (BRC) policy. The BRC policy has been withdrawn by the NRC (See 58 FR 44610; August 24, 1993).

One commenter suggested offering the import and export licensing program to the Agreement States for administration over its licensees. The NRC disagrees with this suggestion. This transfer would be inconsistent with Section 274 c. of the Atomic Energy Act, which specifically provides that no agreement

entered into under the Agreement States program shall provide for discontinuance of any NRC authority with respect to the export from or import into the United States of byproduct, source, or special nuclear material. However, NRC's export and import licensing authority does not diminish any separate authority vested in States and LLW compacts, by the Atomic Energy Act or the Low-Level Radioactive Waste Policy Act, in regard to the licensing, handling, and disposal of radioactive materials within the United States.

III. Overview of New Rule

The purpose of this rule is to conform NRC's regulations on export and import of nuclear equipment and material with the principles of the IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste. The Code's guidelines state that each individual country should take the appropriate steps necessary to ensure that the international transboundary movement of radioactive waste is managed safely. This rule is designed to serve that purpose.

The final rule requires that a person file an application with the NRC for a specific license to export or import radioactive waste, including mixed waste, but distinguishes a separate category of "incidental radioactive material". Radioactive waste subject to the specific licensing requirements of Part 110 may not be exported from or imported into the United States unless the NRC has granted such a license. The export and import of incidental radioactive material (i.e., radioactive material not subject to the specific licensing controls of Part 110 that is contained in or a contaminant of any non-hazardous, non-radioactive material that is exported or imported for recycling or resource recovery) continues to be covered by the general license provisions of Part 110. However, an exporter must file an NRC Form 7 before a shipment of incidental radioactive material takes place if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms. (Use of the 100 kilogram threshold is consistent with the threshold established in § 110.27(b). This provision provides that a general license may not be used for import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment.) The final rule takes into account changes made in Part 110 by the final rule on Specific Licensing of Exports of Certain Alpha-Emitting Radionuclides and Byproduct

Material, published on September 26, 1994 (59 FR 48994).

The NRC has decided that it is consistent with the IAEA Code of Practice not to include the following within the definition of radioactive waste:

(These kinds of shipments will continue to enter or leave the United States under general or specific license, whichever is applicable under Part 110 to the nuclear material in question.)

1. Radioactive material in used sealed sources, or devices containing used sealed sources, being sent to any qualified manufacturer authorized to receive and possess them. This exclusion acknowledges that shipment of used sources to a qualified manufacturer should be handled as expeditiously as possible because these types of shipments help to ensure that used sources are handled in a safe and responsible manner.

2. Radioactive material that is a contaminant on equipment (including service tools) used in nuclear facilities, if the equipment is being shipped for use in another nuclear facility and is not being shipped for management or disposal. This exclusion recognizes that equipment used in nuclear facilities frequently becomes contaminated. However, this does not prevent the equipment from being used to service other nuclear facilities instead of being subject to disposal or waste management.

3. Return of military and other U.S. Government radioactive waste to the United States when destined for a Federal or military facility authorized to possess the waste (see § 110.27). This exclusion from specific licensing was requested by the Department of State.

4. Radioactive waste generated in support of U.S. Government waste research and development testing programs under international arrangements. This exclusion recognizes that shipment of the waste is not for the purpose of disposal or waste management and that the exclusion will facilitate government-to-government waste research programs.

In addition incidental radioactive material can continue to enter or leave the country without specific NRC approval. However, an export of incidental radioactive material requires the filing of an NRC Form 7 if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms.

In applying for a specific license, applicants for the export or import of radioactive waste must include the information required by §§ 110.31 and