

110.32 of Part 110 for export and import of nuclear equipment and material. In addition, this final rule also requires the submission of the following information for the proposed export or import of radioactive waste: information on the volume and classification of the waste, the chemical and physical characteristics of the waste, its routing (including countries to be transited), and its disposition (including waste management). In the case of proposed imports, the information provided must include the industrial or other process responsible for generation of the waste and whether the compact and host State have agreed to accept the waste. The application must contain sufficient information to allow NRC to make a determination on whether a license should be granted. A notice of receipt of each application for a specific license for export or import of radioactive waste will be published in the **Federal Register**.

As is the case with all applications for a specific license for export of radioactive material, the review of an application for a specific license for a proposed export of radioactive waste is governed by whether licensing the proposed export would be inimical to the common defense and security interests of the United States. The Commission's review is also governed by whether the receiving country consents to receipt of the radioactive waste.

It is NRC's policy that the agency normally will not consider extraterritorial impacts. The latter policy was enunciated by the Commission in Westinghouse Electric Corporation (Exports to the Philippines), CLI-80-14, 11 NRC 631 (1980), where (among other things) the Commission refused to consider the health, safety, and environmental impacts on Philippine citizens of a proposed reactor export to the Philippines on the ground that the Commission should not consider such impacts upon the citizens of another country. (Though there was some divergence in the reasoning of the judges, the Commission's decision was upheld in *NRDC v. NRC*, 647 F.2d 1345 (D.C. Cir. 1981).) The rationale for the Commission's conclusion was that the regulation of economic and industrial activities taking place within a nation's territorial boundaries is a function of the territorial sovereign.

The IAEA Code of Practice provides in clear terms that a receiving State should not permit receipt of radioactive waste for management or disposal unless the receiving country has an appropriate "administrative and

technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards." In contrast, the Code of Practice is far from clear when it states that it is the sending State's obligation to satisfy itself "in accordance with the receiving State's consent" that the receiving State is meeting the foregoing requirement. The Code does not explain the intended meaning of the phrase "in accordance with the receiving State's consent," and it does not indicate how the sending State is expected to satisfy itself regarding the receiving State's capability.

The NRC will expect a receiving State to indicate to the Department of State, during the process for obtaining the receiving State's consent, that it has found that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste. At this time, however, the NRC is not prepared to include provisions in this final rule that would necessitate independent and specific NRC assessments and findings and an opportunity for adjudication regarding the adequacy of the receiving State's administrative and technical capacity and regulatory structure for managing and disposing of the waste. This decision flows from (1) The ambiguity of the guiding provision in the IAEA Code, (2) the NRC's longstanding policy of not considering health, safety and environmental impacts in foreign countries, (3) the ongoing work—under the aegis of the IAEA—to develop a Convention on Safety of Radioactive Waste Management, and (4) Congressional inaction regarding implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal. Nevertheless, as indicated in the notice for the proposed rule, the NRC does not contemplate any circumstances in which a license would be issued to export radioactive waste to a country without a regulated waste disposal program. Moreover, the Commission would obtain the views of the Executive Branch before approving an application for export of radioactive waste.

Note that this rule does not address on a generic basis the applicability of the National Environmental Policy Act to Part 110 specific licensing actions. Such applicability (if any) will be determined on a case-by-case basis. Note also that export licenses and (with limited exceptions not relevant here) actions related to nuclear activities are exempt from the requirements of Executive Order 12114 (44 FR 1957;

January 4, 1979), Environmental Effects Abroad of Major Federal Actions.

NRC has exclusive jurisdiction, vis-à-vis the States, for granting or denying all import licenses. However, in the case of a proposed import, the NRC recognizes the authority of LLW compacts to decide whether or not to accept an import of LLW for disposal in the compact region. The NRC will consult with interested States and LLW compacts prior to issuing an import license for LLW. The NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by a disposal facility, host State, and compact (where applicable). This will be part of the determination regarding the appropriateness of the facility that has agreed to accept the waste for management or disposal.

The NRC will consult with the Department of State and other cognizant Federal agencies regarding proposed exports of radioactive waste. In addition, in all proposed export and import cases, the NRC will ask the Department of State to consult with transit countries, as the Department of State deems appropriate, to obtain any necessary approvals pursuant to the IAEA Code of Practice.

Following review by the NRC staff, a determination will be made whether to approve or deny the application for a specific license for the import or export of radioactive waste. An import or export license issued by the NRC only authorizes the radioactive waste covered by the license to enter or exit the United States. This license alone does not authorize possession of the waste material or guarantee access to a waste management facility or a disposal site in the United States or another country.

This rule requires specific licenses for exports and imports of mixed waste. Mixed waste is waste that consists of both hazardous waste and radioactive waste. In addition to meeting NRC requirements, mixed waste must also meet Environmental Protection Agency requirements applicable to the hazardous component of the waste. The exporter or importer is responsible for ensuring compliance with those requirements.

The rule does not cover the export or import of naturally-occurring radioactive material (other than source material and byproduct material under section 11 e.(2) of the Atomic Energy Act) and accelerator-produced radioactive material. Naturally-occurring radioactive material and accelerator-produced radioactive material lie outside NRC's regulatory authority and are subject to health and