PROVISIONS OF 10 CFR PART 110 REGULATIONS AND STATEMENT OF CONSIDERATIONS CONCERNING THE IMPORT OR EXPORT OF RADIOACTIVE WASTE

§110.2 Definitions

"Incidental radioactive material" *means any radioactive material not otherwise subject to specific licensing under this part that is contained in or a contaminant of any non-radioactive material that:*

(1) For purposes unrelated to the regulations in this part, is exported or imported for recycling or resource recovery of the non-radioactive component; and

(2) Will not be processed for separation of the radioactive component before the recycling or resource recovery occurs or as part of the resource recovery process.

This term does not include material that contains or is contaminated with "hazardous waste" as defined in section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. 6903(5).

"Radioactive waste" *means any waste that contains or is contaminated with source, byproduct, or special nuclear material, including any such waste that contains or is contaminated with "hazardous waste" as defined in section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. 6903(5), but does not include radioactive material that is:*

(1) Contained in a sealed source, or device containing a sealed source, that is being returned to any manufacturer qualified to receive and possess the sealed source or the device containing a sealed source;

(2) A contaminant 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; or

(3) Generated or used in a United States Government waste research and development testing program under international arrangements.

§110.31 Application for a specific license.

(d) A license application should be filed on NRC Form 7, except that an import license application and a production or utilization facility export license application should be filed by letter.

§110.32 Information required in an application for a specific licenseINRC Form 7.

(a) Name and address of applicant.

(b) Name and address of supplier of equipment or material.

(c) Country of origin of equipment or material, and any other countries that have processed the material prior to its import into the U.S.[1]

(d) Names and addresses of all intermediate and ultimate consignees, other than intermediate consignees performing shipping services only.

(e) Dates of proposed first and last shipments.

(f) Description of the equipment or material including, as appropriate, the following:

(1) Maximum quantity of material in grams or kilograms (curies for byproduct material) and its chemical and physical form.

(2) For enriched uranium, the maximum weight percentage of enrichment and maximum weight of contained U-235.

(3) For nuclear equipment, total dollar value.

(4) For nuclear reactors, the name of the facility and its design power level.

(5) For proposed exports or imports of radioactive waste, and for proposed exports of incidental radioactive material -- the volume, classification (as defined in §61.55 of this chapter), physical and chemical characteristics, route of transit of shipment, and ultimate disposition (including forms of management) of the waste.

(6) For proposed imports of radioactive waste -- the industrial or other process responsible for generation of the waste, and the status of the arrangements for disposition, e.g., any agreement by a low-level waste compact or State to accept the material for management purposes or disposal.

(7) Description of end use by all consignees in sufficient detail to permit accurate evaluation of the justification for the proposed export or import, including the need for shipment by the dates specified.

<u>§110.42 Export Licensing Criteria</u>

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*(**Note**: This is meant to include all obligations attached to the material, according to the definition of obligations in §110.2. Licensees must keep records of obligations attached to material which they own or is in their possession.)*

(d) *The review of license applications for the export of radioactive waste requiring a specific license under this part is governed by the following criteria:*

(1) The proposed export is not inimical to the common defense and security.

(2) The receiving country, after being advised of the information required by §110.32(f)(5), finds that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste and consents to the receipt of the radioactive waste. In the case of radioactive waste containing a nuclear material to which paragraph (a) or (b) of this section is applicable, the criteria in this paragraph (d) shall be in addition to the criteria provided in paragraph (a) or (b) of this section.

§110.43 Import licensing criteria

The review of license applications for imports requiring a specific license under this part is governed by the following criteria:

(a) The proposed import is not inimical to the common defense and security.

(b) The proposed import does not constitute an unreasonable risk to the public health and safety.

(c) Any applicable requirements of subpart A of part 51 of this chapter are satisfied.

(d) With respect to the import of radioactive waste, an appropriate facility has agreed to accept the waste for management or disposal.

§110.45 Issuance or denial of licenses.

(a) The Commission will issue an export license if it has been notified by the State Department that it is the judgment of the Executive Branch that the proposed export will not be inimical to the common defense and security; and:

(1) Finds, based upon a reasonable judgment of the assurances provided and other information available to the Federal government, that the applicable criteria in §110.42, or their equivalent, are met. (If an Executive Order provides an exemption pursuant to section 126a of the Atomic Energy Act, proposed exports to EURATOM countries are not required to meet the criteria in §110.42(a) (4) and (5)); or

(2) Finds that there are no material changed circumstances associated with an export license application (except for byproduct material applications) from

those existing at the time of issuance of a prior license to export to the same country, if the prior license was issued under the provisions of paragraph (a)(1) of this section.

(b) The Commission will issue an import license if it finds that:

(1) The proposed import will not be inimical to the common defense and security;

(2) The proposed import will not constitute an unreasonable risk to the public health and safety;

(3) The requirements of subpart A of part 51 of this chapter (to the extent applicable to the proposed import) have been satisfied; and

(4) With respect to a proposed import of radioactive waste, an appropriate facility has agreed to accept the waste for management or disposal.

(c) If, after receiving the Executive Branch judgement that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under the Atomic Energy Act, the Commission will publicly issue a decision to that effect and will submit the license application to the President. The Commission's decision will include an explanation of the basis for the decision and any dissenting or separate views. The provisions in this paragraph do not apply to Commission decisions regarding license applications for the export of byproduct material or radioactive waste requiring a specific license.

(d) The Commission will deny: (1) Any export license application for which the Executive Branch judgment does not recommend approval; (2) any byproduct material export license application for which the Commission is unable to make the finding in paragraph (a)(1) of this section; or (3) any import license application for which the Commission is unable to make the finding in paragraph (b) of this section. The applicant will be notified in writing of the reason for denial.

§110.70 Public notice of receipt of an application.

(a) The Commission will notice the receipt of each license application for an export or import for which a specific license is required by making a copy available at the NRC Web site, http://www.nrc.gov.

*(b) The Commission will also publish in the **Federal Register** a notice of receipt of an application for a license to export the following:*

(4) Radioactive waste.

*(c) The Commission will also publish in the **Federal Register** a notice of receipt of a license application for an import of radioactive waste for which a specific license is required.*

§110.82 Hearing Request or intervention petition

(a) A person may request a hearing or petition for leave to intervene on a license application for an import or export requiring a specific license.

(c) Hearing requests and intervention petitions will be considered timely only if filed not later than:

*(1) 30 days after notice of receipt in the **Federal Register**, for those applications filed in the **Federal Register**;*

(2) 30 days after notice of receipt in the Public Document, for all applications; or

(3) Such other time as may be provided by the Commission.

Additional Criteria

From the Statement of Considerations in the Federal Register notice dated July 21, 1995 published the Final Rule Amending 10 CFR Part 110 to Address the Import and Export of Radioactive Waste (60 FR 37556):

The NRC will consult with EPA regarding Part 110 license applications relating to movements of mixed waste.

NRC will publish a notice in the FR of receipt of an application for import or export of radioactive waste. Commission will exchange information with interested compacts. NRC will take other reasonable steps to inform States and compacts of pending requests.

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 compact 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.

From NRC's letter of January 11, 1996, to Ed Ford, Chairman, Central Midwest LLW Compact Commission:

". . . we will . . . as a matter of practice and policy, consult with affected States and compacts on requests for export of waste from their jurisdiction to other countries.

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