[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150-AI16

[NRC-2008-0567]

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

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The United States Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern the export and import of nuclear equipment and material. In addition to updating, clarifying and correcting several provisions, this proposed rule would allow Category 1 and 2 quantities of materials listed in 10 CFR Part 110, Appendix P to be imported under a general license. The proposed rule would also revise the definition of "radioactive waste" and remove the definition of "incidental radioactive material" in 10 CFR Part 110.

**DATES:** The comment period for this proposed rule ends on [INSERT DATE THAT IS 75 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration for comments received on or before this date. Submit comments specific to the information collection aspects of this rule by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the number **RIN 3150-AI16** in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

**Federal e-Rulemaking Portal:** Go to http://www.regulations.gov and search for documents filed under Docket ID [NRC-2008-0567]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail Carol.Gallagher@nrc.gov.

**Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

**E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

**Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1677)

**Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at

http://www.nrc.gov/reading-rm/adams.html. From this site, 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 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-04E21, Washington, DC 20555-0001; telephone: (301) 415-2347; e-mail: brooke.smith@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Discussion

The NRC is proposing to amend its regulations for the export and import of nuclear equipment and material in 10 CFR Part 110, Export and Import of Nuclear Equipment and Material. The proposed rule would update, clarify, and correct several provisions in 10 CFR Part 110 to improve NRC's regulatory framework for the export and import of nuclear equipment, material, and radioactive waste. It would also clarify and correct the regulations addressing the general license for the export of byproduct material. In addition, changes are proposed to the regulations governing the export and import of Category 1 and Category 2 quantities of radioactive materials listed in Appendix P to 10 CFR Part 110 and the definition of "radioactive waste" in 10 CFR 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.

On July 1, 2005, the NRC published a final rule that amended 10 CFR Part 110 to take into account provisions of the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct), and the supplemental IAEA Guidance on the Import and Export of Radioactive Sources. The amendments provided for enhanced security for the export and import of Category 1 and Category 2 quantities of radioactive materials listed in a new Appendix P to 10 CFR Part 110 including new specific export and import licensing requirements, advance notification procedures prior to shipment, verification of the recipient facility's licensing status, and review of the adequacy of the receiving country's controls on radioactive sources.

These requirements became effective on December 28, 2005. Since these new requirements have been implemented, the NRC has 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 proposing to amend 10 CFR Part 110 to allow imports of Category 1 and 2 quantities of materials listed in Appendix P under a general license. The proposed change would also align the NRC's regulations with the practices of other countries and is responsive to the comments the NRC has received from U.S. licensees.

The most significant enhancement pertinent to these materials is the establishment of the National Source Tracking System (NSTS) that will track from "cradle to grave" transactions involving Category 1 and 2 radioactive sources (71 FR 65686; November 8, 2006). Licensees will be 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 will be required to report the information to the NSTS by the close of the next business day after receipt of the imported source. The effective date for this proposed change to allow imports of Category 1 and 2 material under a general license would be delayed until the NSTS is fully operational; however, it is expected that the NSTS would be fully operational well before this proposed change is promulgated as a final rule. The current estimate for the launch of the NSTS (tracking of Category 1 and 2 sources) is January 31, 2009. With the NSTS in place, there will be much more information about imported sources available to the staff, reducing the need for a specific license.

Specifically, § 110.27(f) would be revised by removing the specific license requirement for imports of radioactive material listed in Table 1 of Appendix P to 10 CFR Part 110. Conforming changes are proposed to §§ 110.32, 110.43, and 110.50. Imports of radioactive material into the United States would 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 would still be subject to the notification requirements prior to shipment as required by § 110.50. The advance notifications of imports of Category 1 and 2 quantities of material, § 110.50 (c) would be revised to require the exporting facility name, location, address, contact name and telephone number as part of the pre-shipment notification.

Additionally, § 110.50 (c) would be revised to require advance notifications of imports to be submitted seven days in advance of shipment. This change would permit NRC staff adequate time to verify the information provided in the advance notification.

Currently, at the time of the license application, for both Category 1 and Category 2 exports, the applicant for the export license is required to provide the NRC with pertinent documentation demonstrating that the recipient of the radioactive material has

the necessary authorization under the laws and regulations of the importing country to receive and possess the material. For Category 2 exports, the NRC has waived this requirement for a number of licensees to allow the exporter to provide this authorization at the time of notification of shipment instead of at the time of the application. This waiver is consistent with the Code of Conduct and supplemental Guidance, under which the authorization from the importing country can be verified by the exporter of Category 2 material if permitted by the licensing agency.

The proposed rule would amend § 110.32 to allow the export licensee (for Category 2 material only) to verify the authorization from the importing country at the time of shipping instead of at the time of the license application. The regulations would continue to require licensees to send copies of the authorizations to the NRC.

B. Import and Export of Radioactive Waste

In 1995, the NRC promulgated a final rule requiring specific licenses for exports and imports of radioactive waste (60 FR 37555; July 21, 1995). Since that time, based on the Commission's extensive experience in implementing the rule, it became clear that the rule warrants revision. Specifically, the definition of radioactive waste in 10 CFR Part 110 is confusing and inconsistent with how the term is used domestically. Likewise, the term "incidental radioactive material" (IRM), as defined in 10 CFR Part 110, is unclear with regard to its scope, applicability, and relationship to radioactive waste. In particular, the meaning of the phrase "recycling or resource recovery" in the definition of IRM is unclear and difficult to apply because the concept of IRM is limited to 10 CFR Part 110. Consequently, the Commission is proposing changes to the definition of radioactive waste in § 110.2 to address these concerns. Among the proposed changes is the deletion of the definition of IRM from § 110.2 and incorporation of aspects of it in the

revised definition of radioactive waste. These proposed changes to 10 CFR Part 110 will facilitate the licensing process for exports and imports of radioactive waste and improve the efficiency and consistency of licensing actions.

A specific license would be required for the export and import of radioactive waste if a specific radioactive material license is required to possess the material domestically in accordance with NRC's regulations in 10 CFR Chapter 1 (e.g., Parts 30, 40, and 70). This revision would link the specific license requirement for the export and import of radioactive waste to those materials (in the form of waste) that require a specific license in accordance with NRC's domestic regulations. This would eliminate the need for a specific license to export or import materials that do not require a specific license to possess under NRC's regulations in 10 CFR Chapter 1. In addition, this proposed change would improve consistency and eliminate some of the differences between the domestic licensing requirements for possession and the licensing requirements for export and import.

The proposed changes would require a specific export or import license for any material that requires a specific NRC license to possess domestically, in accordance with the requirements in 10 CFR Chapter 1, that is exported or imported for the purposes of (1) disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, or an equivalent facility; or (2) recycling, waste treatment or other waste management process that generates radioactive material for disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, or an equivalent facility. This change would simplify the regulatory framework by clearly stating 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) would require a specific export or import license.

This proposed rule would also delete the definition of “incidental radioactive material” from 10 CFR Part 110. The purpose of this proposed change would be to clarify the scope of “radioactive waste” and to address confusion created by the current definition of IRM. While the proposed rule would delete the definition of IRM, the rule does incorporate aspects of IRM into the revised definition of radioactive waste and the exclusions from that definition. For example, the current 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) would be expanded and broadened to include some of the material that currently falls under the definition of IRM such as launderable protective clothing.

There are three exclusions from the current definition of “radioactive waste.” Under the proposed rule, the three exclusions would be retained, with some modifications, and two new exclusions are proposed. The five proposed exclusions are set forth below:

1. Radioactive material in sealed sources or devices containing sealed sources being returned to any manufacturer, distributor or other entity which is authorized to receive and possess them. Under the current exclusion, the scope is limited to sources or devices being returned to a manufacturer. The proposed change would allow the return of sources or devices to distributors and other appropriately authorized entities. Licensing and notification requirements for Category 1 and Category 2 quantities of material listed in Table 1 of Appendix P would apply where applicable.

2. A contaminate on any non-radioactive material used in nuclear facilities, if the item is being shipped for recovery and beneficial use of the non-radioactive component

in a nuclear facility and not solely for waste management purposes or disposal. The current 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) would be expanded and broadened to include some of the material that currently falls under the definition of IRM such as launderable protective clothing.

3. Materials exempted from regulation by the Nuclear Regulatory Commission or equivalent Agreement State regulations. This proposed 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 would eliminate some 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. No changes are proposed to this exclusion.

5. Materials being returned by or for the U.S. Government or military to a facility that is authorized to possess the material. This proposed 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.

C. General License for the Export of Byproduct Material

The NRC staff regularly receives questions from the regulated community regarding the application of § 110.23, General license for the export of byproduct material. Our experience has demonstrated the need to revise several requirements for

the export of byproduct material in order to clarify the requirements and to address inconsistencies inadvertently resulting from prior changes made to the section in 1994 (September 26, 1994; 59 FR 48994) and 2000 (November 22, 2000; 65 FR 70287).

Prior to 1994, a general license was issued to any person to export any byproduct material, except for tritium, polonium-210, neptunium-237, and americium-241, to any country not listed in § 110.28 (embargoed destinations). In 1994, the NRC revoked the general license for Nuclear Supplier Group (NSG)-controlled alpha-emitters and International Atomic Energy List of the Coordinating Committee on Multilateral Export Controls (COCOM)-controlled transuranic isotopes. The NRC established a new general license to permit the export of the specified alpha-emitting radionuclides to countries which are members of the NSG and to permit the export of the specified alpha-emitting radionuclides to most other countries when in a device, or in a source for use in a device, containing less than $3.7 \times 10^{-3}$ terabequerels (TBq) (100 millicuries (mCi)) of alpha activity per device or source. (10 CFR Part 71, Appendix A, provides specific activities in terabequerels per gram and in curies per gram.) The alpha-emitting radionuclides added to § 110.23 (a)(2) in 1994 were:

Actinium-225
Actinium-227
Californium-248
Californium-250
Californium-252
Curium-240
Curium-241
Curium-242
Curium-243
Curium-244
Einsteinium-252
Einsteinium-253
Einsteinium-254
Einsteinium-255
Fermium-257
Gadolinium-148
Mendelevium-258
Polonium-208
Polonium-209

Polonium-210
Radium-223

The NRC also revoked the general license for americium-242m, californium-249, californium-251, curium-245, and curium-247 (transuranic isotopes) to conform NRC's regulations with the COCOM control list.

At the final rule stage, curium-246 was added to § 110.23(a)(1) (1994) which had the effect of restricting the general license for curium-246 to a specified activity level. It appears that this restriction was in error. Curium-246 is not on the NSG-control list or the COCOM-control list. Further, there is no discussion in the final rule (or the proposed rule) in 1994 of restricting the general license for curium-246 at a specified activity level. Therefore, this proposed rule would remove the limitation on the general license for export. Curium-246, at any activity level, could be exported under a general license to any country not listed in § 110.28 (embargoed destination).

As a result of the 2000 amendments, the NSG-controlled and COCOM-controlled radionuclides were merged into § 110.23(a)(2) (2000). Americium-241 and neptunium-237 were included in this section even though they were not NSG- or COCOM-controlled. All of the radioisotopes listed in that section could be exported under a general license up to $3.7 \times 10^{-3}$ TBq (100 millicuries).

In the proposed rule, new § 110.23(a)(2) would contain the requirements for COCOM-controlled radionuclides and new § 110.23(a)(4) would contain the general license for the NSG-controlled alpha-emitting radionuclides.

The general license for americium-241 would also be revised. In 2000, when § 110.23 was clarified for ease of reading, americium-241 (and neptunium-237) were included in the "merged" list of NSG- and COCOM-controlled radionuclides even though they were not NSG- or COCOM-controlled (*see* § 110.23(a)(2) (2000)). The effect of the 2000 amendments was to restrict the general license for exports of americium-241 to 3.7

x $10^{-3}$ TBq (100 mCi). Prior to the changes in 2000, there were no activity restrictions on exports to countries not listed in §§ 110.29 (restricted destinations) and 110.28 (embargoed destinations). Americium-241 exports under a general license could not exceed 3.7 x $10^{-2}$ TBq (one curie) per year or 3.7 TBq (100 curies) per year to any one country listed in § 110.29. For exports to § 110.29 countries that exceeded the limit above, the americium-241 must be contained in petroleum exploration or industrial process control equipment in quantities not exceeding 0.74 TBq (20 curies) per device or 7.4 TBq (200 curies) per year to any one restricted country.

In 2005, the Commission published a final rule that conformed NRC's export and import regulations to the provisions of the IAEA Code of Conduct and supplemental Guidance (July 5, 2005; 70 FR 37985). The specific radioactive material and quantities added by this rule are listed in Table 1 of Appendix P to 10 CFR Part 110. Americium-241 is one of the materials listed in this table. As a result of the 2005 rule, an NRC specific license was required to export (and import) these radioactive materials at Category 2 and above quantities. For americium-241, the Category 2 threshold limit was set at 0.6 TBq (16 Ci). As part of the 2005 rulemaking, changes were made to the general license for americium-241 in an effort to conform it to the threshold for americium-241 in Table 1 of Appendix P. The staff is now proposing to remove americium-241 from § 110.23 (a)(2) which currently controls it at 3.7 x $10^{-3}$ TBq (100 mCi) and rewrite the general license for americium-241 in proposed § 110.23(a)(5) to address the inconsistencies inadvertently resulting from prior changes to the section and to take into account the Appendix P thresholds for americium-241.

Likewise, the general license for the export of neptunium-237 would be revised to address inconsistencies resulting from prior rule changes. Under this proposed rule the general license for the export of neptunium-237 would cover shipments that do not exceed one gram for individual shipment and do not exceed a cumulative total of 10

grams per year to any one country. The general license would be found in § 110.23(a)(6) of this proposed rule.

We also reexamined the general license to export tritium. Several editorial changes are proposed for the general license in an effort to make it more readable. Over the years, the various restrictions applying to the general license to export tritium had been merged into a single subparagraph – currently, § 110.23 (a)(6). In this proposed rule, the general license for tritium has been divided into four sections, § 110.23(a)(8)(i) through (a)(8)(iv), for clarity.

## II. Section-by-Section Analysis

*Subpart A – General Provisions*

*Section 110.1, Purpose and scope.* The proposed rule would remove paragraph (b)(2). None of the items controlled by the Department of State pursuant to 22 CFR Parts 120 through 130, "International Traffic in Arms Regulations" (ITAR) are within the scope of the NRC's regulations. Also, the citations in (b)(3) and (b)(4) would be corrected.

*Section 110.2, Definitions*. The proposed rule would revise the definitions for *Agreement for cooperation*, *Atomic Energy Act*, *Classified Information*, *Conversion facility*, *Depleted uranium*, *Effective kilograms of special nuclear material*, *Embargoed*, *Executive Branch*, *General license*, *Heels*, *Medical isotope*, *Natural uranium*, *Non-Nuclear Weapons State*, *NRC Public Document Room*, *Obligations*, *Physical security*, *Radioactive waste*, *Radiopharmaceutical*, *Recipient Country*, *Restricted destinations*, and *Specific license* to make editorial changes. The proposed revision to the definition of *radioactive waste* is discussed in detail in Section 1.B of this document. The definitions for *Bulk material*, *Low-level waste compact*, and *Nuclear Suppliers Group*

would be added for clarification purposes. In addition, the proposed rule would remove the definition of *Incidental radioactive material* as discussed in Section 1.B of this document.

*Section 110.4, Communications.* Changes would be made to update a reference to an NRC Website URL.

*Section 110.6, Retransfers*. The proposed rule would add language to clarify the scope of the provisions to be consistent with the requirements of the Atomic Energy Act. Paragraph (b) would be amended to update the address for the Department of Energy.

*Section 110.7, Information collection requirements: OMB approval.* Changes would restructure the section for clarification and would make a minor editorial change.

*Section 110.7a, Completeness and accuracy information.* The proposed rule would make an editorial change to paragraph (b).

*Subpart B – Exemptions*

*Section 110.10, General.* The proposed rule would amend paragraph (c) to clarify that an exemption does not relieve any person from complying with the regulations of other U.S. Federal and/or State Government agencies.

*Section 110.11, Export of IAEA safeguards samples*. Editorial changes are proposed to the text.

*Subpart C – Licenses*

*Section 110.19, Types of licenses.* The proposed rule would amend paragraph (a) by removing the last sentence regarding compliance with other applicable regulations. The requirement that general and specific licensees are subject to other applicable laws or regulations is already addressed in § 110.50(a). This proposed rule would also remove paragraph (b) which relates to exports of incidental radioactive material.

*Section 110.20, General license information.* The proposed rule would remove references to “incidental radioactive material” and correct citations in paragraph (a). Paragraph (d) would be amended to preclude use of generally licensed material in any illegal or inappropriate activity such as use in a radiological dispersion device, diversion of material or equipment, and other malicious acts.

*Section 110.21, General license for the export of special nuclear material.* The proposed rule would remove the general license provision related to the export of incidental radioactive material in paragraph (e) and make editorial changes to paragraphs (a), (b), and (c).

*Section 110.22, General license for the export of source material.* The proposed rule would make editorial changes, correct internal reference errors in paragraphs (a), (b), (c), (d), (e), and (f), and would add a reference to paragraph (e) to the text of paragraph (f). The amendment would remove the general license provision related to the export of incidental radioactive material in paragraph (g).

*Section 110.23, General license for the export of byproduct material.* The proposed rule would make editorial and organizational changes to clarify requirements. No new substantive requirements are proposed. These changes are discussed in detail in Section I.C of this document.

*Section 110.24, General license for the export of deuterium.* Proposed editorial changes would clarify the text to improve readability.

The proposed rule would amend 10 CFR Part 110, by adding and reserving § 110.25. This change is made to clarify that there is not a printing error in 10 CFR Part 110 and reserve this section for possible future changes to the regulations.

*Section 110.26, General license for the export of nuclear reactor components.* The proposed rule would amend § 110.26 by restructuring paragraph (a) to clarify that the general license covers components solely of U.S. origin. Paragraph (a)(1) would be

removed, and the text incorporated into paragraph (a). Paragraphs (a)(2) and (a)(3) would be redesignated as (a)(1) and (a)(2), respectively. New paragraph (a)(2) would be amended to allow a component to be returned to the United States after final fabrication or repair or to be used in a nuclear power or research reactor in one of the destinations listed in the section. This would allow, for example, a component that was sent to Japan for final fabrication or repair to be sent to Spain for use in a nuclear power or research reactor in that country. The list of destinations in paragraph (a) would be moved to new paragraph (b). The subsequent paragraphs would be renumbered accordingly.

New paragraph (b) would be revised to include additional destinations to which exports may be sent under a general license. These destinations are Cyprus, Estonia, Hungary, Malta, Poland, Slovak Republic, and Slovenia. The United States has received broad generic assurances from EURATOM which would also apply to these new EURATOM member countries for purposes of section 109b. of the Atomic Energy Act.

*Section 110.27, General license for imports.* The proposed rule would amend § 110.27 by removing paragraphs (a)(1) and (a)(2). NRC's import regulations do not apply to the Department of Energy for activities authorized by sections 54, 64, 82, and 91 of the Atomic Energy Act. This includes activities conducted under a contract with the Department of Energy. We are proposing to remove paragraph (a)(2) because a general license should not be required for the import of byproduct, source, or special nuclear material when that same material is exempt from NRC domestic licensing requirements. The current inconsistency between NRC's import licensing requirements and NRC's domestic licensing requirements is a source of confusion. This change would clarify that material that is exempt or else not subject to domestic licensing

requirements (e.g., § 31.18 and § 40.13) would not require a general or specific import license unless otherwise mandated in 10 CFR Part 110.

Paragraph (b) would be revised to clarify that the 100 kilograms per shipment limit only applies to the material and does not include the weight of the container. As revised, this paragraph would state that the general license in paragraph (a) does not authorize the import of source or special nuclear material in the form of irradiated fuel if the total weight of the material exceeds 100 kilograms per shipment.

Section 110.27 would be revised at paragraph (f) by removing the specific license requirement for imports of radioactive material listed in Table 1 of Appendix P to 10 CFR Part 110. As discussed in detail in Section I.A of this document, this proposed rule would allow Category 1 and Category 2 quantities of radioactive materials to be imported under a general license.

*Section 110.30, Members of the Nuclear Suppliers Group.* The proposed rule would update the list of Nuclear Suppliers Group members by adding "China," "Croatia," "Estonia," "Kazakhstan," "Lithuania," and "Malta."

*Section 110.31, Application for a specific license.* The proposed rule would amend this section to require requests for an exemption from a licensing requirement to be filed on NRC Form 7. This is consistent with NRC regulations that require all licensing requests (i.e., exports, imports, combined export/import, amendment, and renewal applications) to be made using NRC Form 7. *See* 71 FR 19102; April 13, 2006.

Section 110.31 would be changed to require a request for an exemption from a licensing requirement to be accompanied by the appropriate fee in accordance with the fee schedule in § 170.21 and § 170.31. This change is consistent with the Fiscal Year 2007 NRC Fee Rule which established a flat fee for requests for exemptions from NRC's export and import licensing requirements. *See* 72 FR 31402; June 6, 2007. This

change would update 10 CFR Part 110 to reflect recent changes to the fee schedule in 10 CFR Part 170.

Additionally, the proposed rule would add a signature requirement to § 110.31 that each application submitted on NRC Form 7 must be signed by the applicant or licensee or a person duly authorized to act for and on behalf of the applicant or licensee. This proposed change is consistent with requirements related to applications for specific licenses in other parts of NRC's regulations. It would also clarify that a signature is required to certify the veracity of information submitted to the agency on the NRC Form 7.

Finally, the order of paragraphs (b) and (c) would be reversed so that § 110.31 flows in a more logical manner where the requirement for an application for a specific license to export or import or a request for an exemption from a licensing requirement precedes the requirement that such an application or request be accompanied by the appropriate license fee. In paragraph (b), as revised, "combined export/import" would be removed to be consistent with the proposal to allow imports of Category 1 and 2 materials listed in Table 1 of Appendix P of 10 CFR Part 110 under general license.

*Section 110.32, Information required on an application for a specific license/NRC Form 7.* The proposed rule change to paragraph (b) would clarify that the name and address of any other party, including the supplier of the equipment or material, if different from the applicant, must be provided on the application. Paragraphs (f)(1) and (f)(2) would be amended for consistency purposes. Specifically, for the export of nuclear equipment to a foreign reactor, a license application would include the name of the facility so the NRC would know whether Executive Branch review is required, per §110.41(a)(7).

This section would also be amended to clarify that applicants for the import of radioactive waste must provide the classification of that waste as defined in 10 CFR

61.55 when the waste is being imported for direct disposal. If the waste is being imported for treatment or management at an NRC or Agreement State licensed waste processor, classification, as defined in 10 CFR 61.55, is not required. Rather, a detailed characterization (physical and chemical characteristics) of the waste being imported for treatment or management must be provided in the application.

Paragraph (g) would be deleted to conform this section with the proposed change which would allow Category 1 and Category 2 quantities of radioactive materials to be imported under a general license. This proposed change is discussed in more detail in Section I.A of this document and in the section-by-section analysis for § 110.27.

Paragraph (h) would be redesignated as new paragraph (g) and would allow 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. These changes are discussed in Section I.A of this document. 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 would remain unchanged.

*Subpart D – Review of License Applications*

*Section 110.40, Commission review.* The proposed rule would amend this section to reduce the number of export license applications that require Commission review and would, instead, focus 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 would no longer be required unless the export raises an important policy issue. The proposed change also would increase 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 would mandate Commission review of import license applications that raise significant policy issues. By focusing on policy issues, this proposed change would increase efficiency and reduce fees on routine NRC export applications. Any export that is subject to special limitations as determined by the staff or the Executive Branch would be considered one that raises an important policy issue and would continue to require Commission review. This proposed rule would add a requirement for Commission review of export applications of material listed in Table 1 of Appendix P to 10 CFR 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 proposed rule would amend § 110.41 to make a minor editorial change and to require Executive Branch review of exports raising significant policy issues, including exports of radioactive material listed in Table 1 of Appendix P to 10 CFR Part 110 involving exceptional circumstances as defined in § 110.42. Also, the export of radioactive material listed Table 1 of Appendix P to any country listed in §§ 110.28 or 110.29 would require the review of the Executive Branch in accordance with § 110.41(a)(9).

*Section 110.43, Import licensing criteria.* The proposed rule would amend § 110.43 to clarify that, with respect to the import of radioactive waste, the NRC consults 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. Commission policy, as noted in the 1995 final rule on the export and import of radioactive waste, states that:

> 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.

*See* Final Rule, Import and Export of Radioactive Waste, 60 FR 27556 (July 21, 1995). This proposed change would address the questions that the NRC receives on the scope of the host State and low-level waste compact commission's (if applicable) role regarding the NRC's review of import applications for radioactive waste.

Additionally, the proposed rule would amend § 110.43 to remove the import licensing criteria related to the imports of radioactive material listed in Appendix P. This change conforms § 110.43 with the proposed 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 Section I.A to this document and in the section-by-section analysis for § 110.27.

*Section 110.44, Physical security standards.* The proposed rule would correct the Website reference for the National Archives and Records Administration. Changes are proposed to § 110.44(b)(1) that would clarify that the Commission determinations on the adequacy of physical security measures are based on receipt by the appropriate U.S. Executive Branch agency of written assurances from the relevant recipient country governments that physical security measures for providing protection at least comparable to the recommendations set forth in INFCIRC/225/Rev. 4 (corrected).

*Section 110.45, Issuance or denial of license.* The proposed rule would amend this section to remove the parenthetical text in paragraph (a) that states "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)". This is no longer needed because the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy Between the European Energy Community

(EURATOM) and the United States of America that went into effect in 1995 obviates the need for a presidential exemption.

The proposed rule would make conforming changes to paragraph (b)(4), which would be consistent with the proposed changes to § 110.43(d), regarding the issuance of an import license of radioactive waste. Paragraph (b)(5) would be removed to eliminate the criteria related to the imports of radioactive material listed in Appendix P to 10 CFR Part 110. This change would conform § 110.45 with the proposed 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 Section I.A to this document and in the section-by-section analysis for § 110.27. Additionally, § 110.45(d) would be amended to clarify that the provisions in this paragraph do not apply to Commission decisions regarding license applications for specific licenses to export radioactive material listed in Table 1 of Appendix P to 10 CFR Part 110.

*Subpart E – License Terms and Related Provisions*

*Section 110.50, Terms.* The proposed rule would make several editorial, clarifying, and conforming changes to this section. In paragraph (a)(1), proposed changes would clarify that each license is subject to all applicable provisions of the Atomic Energy Act or other applicable law. Paragraph (a)(4) would be rewritten and renumbered (a)(5) to make clear that each license issued by the NRC for the export or import of nuclear material authorizes only the export or import of that nuclear material and accompanying packaging, fuel element, hardware, or other associated devices or products. Paragraph (b)(5) would be revised to remove reference to 10 CFR Parts 40, 70, 71, and 73 and renumbered as paragraph (a)(3). This license term applies to both general and specific licenses and should be found in paragraph (a).

In paragraph (b)(2), proposed changes would clarify that a licensee may export or import only for the purpose(s) and/or end-use(s) stated in the specific export or import

license issued by the NRC. Paragraph (b)(3) would be amended by adding a new paragraph (b)(3)(i) and renumbering current paragraphs (b)(3)(i) and (b)(3)(ii) as (b)(3)(ii) and (b)(3)(iii), respectively. New paragraph (b)(3)(i) would clarify that prior to shipment of certain nuclear material or equipment that has associated with it export controls imposed by other countries (foreign-obligated material or equipment), a license amendment may be required to authorize the shipment. Alternatively, the licensee could give the NRC 40 days advance notice of the intended shipment.

Paragraph (b)(4) would be redesignated as new paragraph (c) and would include the requirements for advanced notifications related to the export or import of radioactive material listed in Table 1 of Appendix P to 10 CFR Part 110. Proposed changes to the advance notification requirements would conform this section with the proposed 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 Section I.A of this document and in the section-by-section analysis for § 110.27. Additionally, editorial changes are proposed to update the Website information for the Office of International Programs and to provide specific details on where to send the information required for export and import notifications.

*Section 110.51, Amendment and renewal of licenses*. The proposed rule would amend § 110.51 to separate the requirements for license amendments and renewals into separate paragraphs. This proposed change would clarify the differences in requirements between amendment and renewal requests and improve readability of the section. No substantive changes are proposed.

*Section 110.53, United States address, records, and inspections.* The proposed rule would clarify that both general and specific licensees are required to have an office in the United States where papers may be served and where records required by the Commission will be maintained. Also, it is proposed to add similar clarifying language to

paragraph (b) of this section that license applicants and both general and specific licenses shall maintain records concerning its exports and imports. Clarifying language would also be added that byproduct material records must be retained for three years after the date of each export or import shipment.

*Subpart F – Violations and Enforcement*

*Sections 110.60, Violations, 110.66, Enforcement hearing, and 110.67, Criminal penalties.* Proposed changes would make non-substantive changes for purposes of consistency and clarification.

*Subpart G – Public Notification and Availability of Documents and Records*

*Section 110.70, Public notice of receipt of an application.* The proposed rule would amend this section to clarify that the Commission will publish in the *Federal Register* a notice of receipt for applications for amendment or renewal for the export of the nuclear equipment and material listed in § 110.70(b)(1) through (b)(5) and for applications for amendment or renewal for the import of radioactive waste. Once a notice has been published, the Commission would not publish in the *Federal Register* proposed minor amendments to the application or license. Proposed amendments would be posted on NRC's Website.

*Subpart H – Public Participation Procedures Concerning License Applications*

*Section 110.80, Basis for hearings*. The proposed rule would amend this section to correct the omission of the word import from the section. This change would clarify that the procedures in 10 CFR Part 110 constitute the exclusive basis for hearings on export and import license applications.

*Section 110.81, Written comments.* Proposed changes would clarify that 30 days after public notice of receipt of the application means 30 days after the application is posted on the NRC Website at http://www.nrc.gov or in the *Federal Register* for those applications required to be published in the *Federal Register*.

*Section 110.82, Hearing request or intervention petition.* This section would be amended to add language stating that hearing requests and intervention petitions are considered timely when filed no later than 30 days after publication of notice on the NRC Website. This change would be consistent with § 110.70, which states that the Commission will notice the receipt of each specific license application for an export or import by making a copy available at the NRC Website, http://www.nrc.gov. Paragraphs (c)(2) and (c)(3) would be renumbered accordingly.

*Subpart I – Hearings*

*Section 110.112, Reporter and transcript for an oral hearing.* The proposed rule would clarify the scope of information that will be made available at the NRC Website or Public Document Room. Any portions of the transcript for an oral hearing containing classified information, Restricted Data, Safeguards information, proprietary information, or other sensitive unclassified information will not be made available to the public.

*Appendix L to Part 110 – Illustrative list of byproduct material under NRC export/import licensing authority*.

Appendix L would be amended by revising the list of byproduct material to include several radionuclides that are now classified as byproduct material as a result of the Energy Policy Act of 2005, which expanded the definition of byproduct material in Section 11e. of the Atomic Energy Act.

## Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The

NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

## Plain Language

The Presidential Memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the "ADDRESSES" heading.

## Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal Agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This action does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

## Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

## Paperwork Reduction Act Statement

This proposed rule decreases the information collection burden on licensees to update, clarify, and correct several provisions. The public burden for this information collection is estimated to be a reduction of 6 hours, which is insignificant. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) approval of the proposed rule is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0036.

Abstract:

The NRC is proposing to amend its regulations that govern the export and import of nuclear equipment and material. In addition to updating, clarifying, and correcting several provisions, the propose rule would allow Category 1 and 2 quantities of material to be imported and a general license.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the NRC Form 670, "Information Required for Making an Insignificant Burden Determination To Support a Decision That OMB Clearance Is Not Required," may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The NRC Form 670 and rule are available at the NRC worldwide Web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by (INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER) to the Records and FOIA/Privacy Services Branch (T-5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS.RESOURCE@NRC.GOV and to Nathan J. Frey, the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0036), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to NathanJFrey@omb.eop.gov or comment by telephone at (202) 395-7345.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## Regulatory Analysis

The NRC is proposing to amend its regulations at 10 CFR Part 110 to update, clarify, and correct several provisions in an effort to improve NRC's regulatory framework for the export and import of nuclear equipment, material, and radioactive waste. Most of these changes are administrative in nature and would result in no changes to the information collection burden or costs to the public. In addition to updating, clarifying and correcting several provisions of 10 CFR Part 110, this proposed rule would allow imports of Category 1 and 2 quantities of material under a general license instead of a specific license. The proposed rule would also revise the definition of "radioactive waste." In addition, the Commission is proposing to delete the definition of "incidental radioactive material" and incorporate aspects of it in the revised definition of "radioactive waste." These proposed changes to 10 CFR Part 110 will facilitate the licensing process for exports and imports of radioactive waste and improve the efficiency and consistency of licensing actions. These changes are not expected to result in a significant increase to the information collection burden or costs to the public.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule would affect only companies exporting or importing nuclear equipment, material, and radioactive waste to and from the United States and do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

## Backfit Analysis

The NRC has determined that a backfit analysis is not required for this rule because these amendments would not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

## List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 110.

**PART 110–EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL**

1. The authority citation for Part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2201, 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Pub. L. 101-575, 104 Stat

2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005; Pub. L. 109-58, 119 Stat. 594 (2005).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102-496 (42 U.S.C. 2151 et seq.).

2. In § 110.1, paragraphs (b)(2), (b)(3), (b)(4) and (b)(5) are revised to read as follows:

**§ 110.1 Purpose and scope.**

* * * * *

(b) * * *

(2) Persons who export uranium depleted in the isotope-235 and incorporated in commodities solely to take advantage of high density or pyrophoric characteristics. These persons are subject to the controls of the Department of Commerce under the Export Administration Act, as continued in force under Executive Order 13222 (August 22, 2001), as extended;

(3) Persons who export nuclear referral list commodities such as bulk zirconium, rotor and bellows equipment, maraging steel, nuclear reactor related equipment, including

process control systems and simulators. These persons are subject to the licensing authority of the Department of Commerce pursuant to 15 CFR Part 730 et seq.;

(4) Persons who import deuterium, nuclear grade graphite, or nuclear equipment other than production or utilization facilities. A uranium enrichment facility is not a production facility for the purposes of import; and

(5) Shipments which are only passing through the U.S. (in bond shipments) do not require an NRC import or export license; however, they must comply with the Department of Transportation/ IAEA packaging, and state transportation requirements.

3. In § 110.2, the definition of “Incidental radioactive material” is removed, the definitions of “Agreement for cooperation”, “Atomic Energy Act”, “Classified Information”, “Conversion facility”, “Depleted uranium”, “Effective kilograms of special nuclear material”, “Embargoed”, “Executive Branch”, “General license”, “Heels”, “Medical isotope”, “Natural uranium”, “Non-Nuclear Weapons State”, “NRC Public Document Room”, “Obligations”, “Physical security”, “Radioactive waste”, “Radiopharmaceutical”, “Recipient Country”, “Restricted destinations”, and “Specific license” are revised, and the definitions of “Bulk material”, “Low-level waste compact”, and “Nuclear Suppliers Group” are added in alphabetical order to read as follows:

**§ 110.2 Definitions.**

* * * * *

*Agreement for cooperation* means any agreement with another nation or group of nations concluded under section 123 of the Atomic Energy Act.

*Atomic Energy Act* means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et. seq).

*Bulk Material* means any quantity of any one or more of the radionuclides listed in Table 1 of Appendix P to this Part in a form that is:

(1) Not a Category 1 radioactive source;

(2) Not a Category 2 radioactive source;

(3) Not plutonium-238; and

(4) Deemed to pose a risk similar to or greater than a Category 2 radioactive source.

*  *  *  *  *

*Classified Information* means Classified National Security Information under Executive Order 12958, as amended, or any successor Executive Order and Restricted Data under the Atomic Energy Act.

*  *  *  *  *

*Conversion facility* means any facility for the transformation from one uranium chemical species to another, including conversion of uranium ore concentrates to uranium trioxide (UO3), conversion of UO3 to uranium dioxide (UO2), conversion of uranium oxides to uranium tetrafluoride (UF4) or uranium hexafluoride (UF6), conversion of UF4 to UF6, conversion of UF6 to UF4, conversion of UF4 to uranium metal, and conversion of uranium fluorides to UO2.

*Depleted uranium* means uranium having a percentage of uranium-235 less than the naturally occurring distribution of uranium-235 found in natural uranium (less than 0.711 weight percent uranium-235). It is obtained from spent (used) fuel elements or as byproduct tails or residues from uranium isotope separation.

*  *  *  *  *

*Effective kilograms of special nuclear material* means:

(1) For plutonium and uranium-233, their weight in kilograms;

(2) For uranium enriched 1 percent or greater in the isotope uranium-235, its element weight in kilograms multiplied by the square of its enrichment expressed as a decimal weight fraction; and

(3) For uranium enriched below 1 percent in the isotope uranium-235, its element weight in kilograms multiplied by 0.0001.

*Embargoed* means that no nuclear material or equipment can be exported to certain countries under an NRC general license. Exports to embargoed countries must be pursuant to a specific license issued by the NRC and require Executive Branch review pursuant to § 110.41.

* * * * *

*Executive Branch* means the Departments of State, Energy, Defense and Commerce.

* * * * *

*General license* means an export or import license effective without the filing of a specific application with the Commission or the issuance of licensing documents to a particular person. A general license is a type of license issued through rulemaking by the NRC and is not an exemption from the requirements in this part. A general license does not relieve a person from complying with other applicable NRC, Federal, and State requirements.

*Heels* means small quantities of natural, depleted or low-enriched uranium (to a maximum of 20 percent), in the form of uranium hexaflouride (UF6) left in emptied transport cylinders being returned to suppliers after delivery of the product.

*  *  *  *  *

*Low-level waste compact*, as used in this Part, means a compact entered into by two or more States pursuant to the Low-Level Radioactive Waste Policy Amendments Act of 1985.

*  *  *  *  *

*Medical isotope*, for the purposes of § 110.42(a)(9), includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

*Natural uranium* means uranium as found in nature, containing about 0.711 percent of uranium-235, 99.283 percent of uranium-238, and a trace (0.006 percent) of uranium-234.

*  *  *  *  *

*Non-Nuclear Weapon State* means any State not a nuclear weapon State as defined in the Treaty on the Non-Proliferation of Nuclear Weapons. *Nuclear Weapon State* means any State which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967. (China, France, Russia, United Kingdom, United States)

*  *  *  *  *

*NRC Public Document Room* means the facility at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System,

commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Publicly Available Records System (PARS) component of ADAMS on the NRC Web site, http://www.nrc.gov, and where copies can be viewed or ordered for a fee as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209) between 8:30 a.m. and 4:15 p.m., or by e-mail (PDR.Resource@nrc.gov), facsimile (301-415-3548), or letter (NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852-2738).

* * * * *

*Nuclear Suppliers Group* (NSG) is a group of nuclear supplier countries which seeks to contribute to the non-proliferation of nuclear weapons through the implementation of Guidelines for nuclear exports and nuclear-related exports.

*Obligations* means the commitments undertaken by the U.S. Government under Atomic Energy Act section 123 agreements for cooperation in the peaceful uses of atomic energy. Imports and exports of material or equipment pursuant to such agreements are subject to these commitments, which in some cases involve an exchange of information on imports, exports, retransfers with foreign governments, peaceful end-use assurances, and other conditions placed on the transfer of the material or equipment. The U.S. Government informs the licensee of obligations attached to material or equipment being imported into the U.S. and approves changes to those obligations.

*  *  *  *  *

*Physical security* or *Physical protection* means measures to reasonably ensure that source or special nuclear material will only be used for authorized purposes and to prevent theft or sabotage.

*  *  *  *  *

*Radioactive waste*, for the purposes of this part, means any material that contains or is contaminated with source, byproduct, or special nuclear material that by its possession would require a specific radioactive material license in accordance with this Chapter and is imported or exported for the purposes of (1) disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, or an equivalent facility; or (2) recycling, waste treatment or other waste management process that generates radioactive material for disposal in a land disposal facility as defined in Part 61, a disposal area as defined in Appendix A to Part 40, or an equivalent facility. Radioactive waste does not include radioactive material that is—

(1) Contained in a sealed source, or device containing a sealed source, that is being returned to a manufacturer, distributor or other entity which is authorized to receive and possess the sealed source or the device containing a sealed source;

(2) A contaminant on any non-radioactive material used in a nuclear facility (including service tools and protective clothing), if the material is being shipped for recovery and beneficial use of the non-radioactive material in a nuclear facility and not solely for waste management purposes or disposal.

(3) Exempted from regulation by the Nuclear Regulatory Commission or equivalent Agreement State regulations.

(4) Generated or used in a U.S. Government waste research and development testing program under international arrangements; or

(5) Being returned by or for the U.S. Government or military to a facility that is authorized to possess the material.

*Radiopharmaceutical*, for the purposes of § 110.42(a)(9), means a radioactive isotope that contains byproduct material combined with chemical or biological material and is designed to accumulate temporarily in a part of the body for therapeutic purposes or for enabling the production of a useful image for use in a diagnosis of a medical condition.

*Recipient Country*, for the purposes of § 110.42(a)(9), means Canada, Belgium, France, Germany, and the Netherlands.

*Restricted destinations* means countries that are listed in 10 CFR 110.29 based on recommendations from the Executive Branch. These countries may receive exports of certain materials and quantities under a general license, but some exports to restricted destinations will require issuance of a specific license by the NRC including Executive Branch review pursuant to § 110.41.

* * * * *

*Specific license* means an export or import license document issued to a named person and authorizing the export or import of specified nuclear equipment or materials based upon the review and approval of an NRC Form 7 application filed pursuant to this part and other related submittals in support of the application.

* * * * *

4. Section 110.4 is revised to read as follows:

**§ 110.4 Communications.**

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Deputy Director of the NRC's Office of International Programs, either by telephone to (301) 415-2344; by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland 20852; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Website at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail to *EIE.Resource@nrc.gov*, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

5. Section 110.6 is revised to read as follows:

**§110.6 Retransfers.**

(a) Retransfer of any nuclear equipment listed in §§ 110.8, source material, or special nuclear material, including special nuclear material produced through the use of U.S.-obligated equipment, requires authorization by the Department of Energy, unless the export to the new destination is authorized by the NRC under a specific or general license or an exemption from licensing requirements. Under certain agreements for cooperation, Department of Energy authorization also is required for the retransfer of special nuclear material produced through the use of non-U.S.-supplied nuclear material in U.S.-supplied utilization facilities. Department of Energy authorization is also required for the retransfer of obligated nuclear equipment and material (see definition of "obligations" in § 110.2).

(b) Requests for authority to retransfer are processed by the Department of Energy, National Nuclear Security Administration, Office of International Regimes and Agreements, Washington, DC 20585.

6. In § 110.7, paragraph (c) is revised to read as follows:

**§ 110.7 Information collection requirements: OMB approval.**

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. The information collection requirements contained in §§ 110.19, 110.20, 110.21, 110.22, 110.23, 110.31, 110.32, and 110.51, and NRC Form 7 are approved under control number 3150-0027.

7. In § 110.7a, paragraph (b) is revised to read as follows:

**§ 110.7a Completeness and accuracy of information.**

* * * * *

(b) Each licensee or applicant for a license shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

8. In § 110.10, paragraph (c) is revised to read as follows:

**§ 110.10 General.**

* * * * *

(c) The granting of an exemption does not relieve any person from complying with the regulations of other U.S. Federal and/or State government agencies applicable to exports or imports under their authority.

9. Section 110.11 is revised to read as follows:

**§ 110.11 Export of IAEA safeguards samples.**

A person is exempt from the requirements for a license to export special nuclear material set forth in sections 53 and 54d. of the Atomic Energy Act and from the regulations in this Part to the extent that the person exports special nuclear material in IAEA safeguards samples, if the samples are exported in accordance with § 75.8 of this chapter, or a comparable Department of Energy order, and are in quantities not exceeding a combined total of 100 grams of contained plutonium, uranium-233 and uranium-235 per facility per year. This exemption does not relieve any person from complying with Parts 71 or 73 of this chapter or any Commission order under section 201(a) of the Energy Reorganization Act of 1974 (42 U.S.C. 5841(a)).

10. Section 110.19 is revised to read as follows:

**§ 110.19 Types of licenses.**

Licenses for the export and import of nuclear equipment and material in this part consist of general licenses and specific licenses. A general license is effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person. A specific license is issued to a named person and is effective upon approval by the Commission of an application filed pursuant to the regulations in this part and issuance of licensing documents to the applicant.

11. In § 110.20, paragraphs (a) and (d) are revised to read as follows:

**§ 110.20 General license information.**

(a) A person may use an NRC general license as authority to export or import nuclear equipment or material, if the nuclear equipment or material to be exported or imported is

covered by the NRC general licenses described in §§ 110.21 through 110.27. If an export or import is not covered by the NRC general licenses described in §§ 110.21 through 110.27, a person must file an application with the Commission for a specific license in accordance with §§ 110.31 through 110.32.

* * * * *

(d) A general license for export may not be used if the exporter knows, or has reason to believe, that the material will be used in any illegal activity or any activity related to isotope separation, chemical reprocessing, heavy water production or the fabrication of nuclear fuel containing plutonium, unless these activities are generically authorized under an appropriate agreement for cooperation.

* * * * *

12. In § 110.21 paragraph (e) is removed and paragrahs (a)(3), (a)(4), (b), and (c) are revised to read as follows:

**§ 110.21 General license for the export of special nuclear material.**

(a) * * *

(3) Special nuclear material, other than plutonium-236 and plutonium-238, in sensing components in instruments, if no more than 3 grams of enriched uranium or 0.1 gram of plutonium or uranium-233 are contained in each sensing component.

(4) Plutonium-236 and plutonium-238 when contained in a device, or a source for use in a device, in quantities of less than $3.7 \times 10^{-3}$ TBq (100 millicuries) of alpha activity (189 micrograms plutonium-236, 5.88 milligrams plutonium-238) per device or source.

(b) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28 or § 110.29:

(1) Special nuclear material, other than plutonium-236 and plutonium-238, in individual shipments of 0.001 effective kilogram or less (e.g., 1.0 gram of plutonium, uranium-233

or uranium-235, or 10 kilograms of 1 percent enriched uranium), not to exceed 0.1 effective kilogram per year to any one country.

(2) Special nuclear material in fuel elements as replacements for damaged or defective unirradiated fuel elements previously exported under a specific license, subject to the same terms as the original export license and the condition that the replaced fuel elements must be returned to the United States within a reasonable time period.

(3) Uranium, enriched to less than 20 percent in uranium-235, in the form of uranium hexafluoride (UF6) heels in cylinders being returned to suppliers in EURATOM.

(c) Except as provided in paragraph (d) of this section, a general license is issued to any person to export plutonium-236 or plutonium-238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

*  *  *  *  *

13. Section 110.22 is revised to read as follows:

**§ 110.22 General license for the export of source material.**

(a) Except as provided in paragraph (f) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

(1) Uranium or thorium, other than uranium-230, uranium-232, thorium-227, and thorium-228, in any substance in concentrations of less than 0.05 percent by weight.

(2) Thorium, other than thorium-227 and thorium-228, in incandescent gas mantles or in alloys in concentrations of 5 percent or less.

(3) Thorium-227, thorium-228, uranium-230, and uranium-232 when contained in a device, or a source for use in a device, in quantities of less than $3.7 \times 10^{-3}$ TBq (100 millicuries) of alpha activity (3.12 micrograms thorium-227, 122 micrograms thorium-228, 3.7 micrograms uranium-230, 4.7 milligrams uranium-232) per device or source.

(b) Except as provided in paragraph (f) of this section, a general license is issued to any person to export uranium or thorium, other than uranium-230, uranium-232, thorium-227, or thorium-228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is Canadian-obligated.

(c) A general license is issued to any person to export uranium, enriched to less than 20 percent in uranium-235, in the form of uranium hexafluoride ($UF_6$) heels in cylinders being returned to suppliers in EURATOM.

(d) Except as provided in paragraph (f) of this section, a general license is issued to any person to export uranium or thorium, other than uranium-230, uranium-232, thorium-227, or thorium-228, in individual shipments of 1 kilogram or less to any country listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(e) Except as provided in paragraph (f) of this section, a general license is issued to any person to export uranium-230, uranium-232, thorium-227, or thorium-228 in individual shipments of 10 kilograms or less to any country listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is Canadian-obligated.

(f) Paragraphs (a), (b), (c), (d), and (e) of this section do not authorize the export under general license of source material in radioactive waste.

14. Section 110.23 is revised to read as follows:

**§ 110.23 General license for the export of byproduct material.**

(a) A general license is issued to any person to export byproduct material (see appendix L to this part) to any country not listed in § 110.28 and subject to the following limitations:

(1) The general license in this section does not authorize the export of byproduct material in the form of radioactive waste.

(2) The general license in this section does not authorize the export of the following radionuclides:

| | |
|---|---|
| Americium-242m | Curium-245 |
| Californium-249 | Curium-247 |
| Californium-251 | |

(3) For byproduct materials listed in Table 1 of Appendix P to this part, individual shipments under a general license for export must be less than the terabequeral (TBq) values specified in Category 2 of Table 1 unless a more restrictive requirement applies.

(4) The general license is issued for exports of the following radionuclides when contained in a device, or a source for use in a device, in quantities of less than $3.7 \times 10^{-3}$ TBq (100 millicuries) of alpha activity per device or source, unless the export is to a country listed in § 110.30:

| | |
|---|---|
| Actinium-225 | Einsteinium-252 |
| Actinium-227 | Einsteinium-253 |
| Californium-248 | Einsteinium-254 |
| Californium-250 | Einsteinium-255 |
| Californium-252 | Fermium-257 |
| Californium-253 | Gadolinium-148 |
| Californium-254 | Mendelevium-258 |
| Curium-240 | Neptunium-235 |

| | |
|---|---|
| Curium-241 | Polonium-208 |
| Curium-242 | Polonium-209 |
| Curium-243 | Polonium-210 |
| Curium-244 | Radium-223 |

(5)(i) For americium-241, exports under the general license to a country listed in § 110.29 must not exceed 3.7 x $10^{-2}$ TBq (one curie) per shipment.

(ii) For americium-241, exports under the general license to a country listed in § 110.29 that exceed 3.7 x $10^{-2}$ TBq (one curie) per shipment, must be contained in industrial process control equipment or petroleum exploration equipment in quantities not exceeding 0.60 TBq (16 curies) per device and not exceeding 7.4 TBq/year (200 curies/year) to any one country.

(iii) All exports of americium are subject to the reporting requirements listed in paragraph (b) of this section.

(6) For neptunium-235 and -237, exports under the general license must not exceed one gram for individual shipment and must not exceed a cumulative total of 10 grams per year to any one country. All exports of neptunium are subject to the reporting requirements listed in paragraph (b) of this section.

(7) For polonium-210, exports under the general license, when contained in static eliminators, must not exceed 3.7 TBq (100 curies) per individual shipment.

(8) (i) For tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds), exports under the general license must not exceed 0.37 TBq (10 curies (1.03 milligrams)) per item, not to

exceed 37 TBq (1,000 curies (103 milligrams)) per shipment, or 370 TBq (10,000 curies (1.03 grams)) per year to any one country.

(ii) For tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds), exports under the general license to the countries listed in § 110.30 must not exceed the quantity of 1.48 TBq (40 curies (4.12 milligrams)) per item, not to exceed 37 TBq (1,000 curies (103 milligrams)) per shipment or 370 TBq (10,000 curies (1.03 grams)) per year to any one country.

(iii) For tritium in luminescent safety devices installed in an aircraft, exports under the general license must not exceed 1.48 TBq (40 curies (4.12 milligrams) per light source.

(iv) The general license in this section does not authorize the export of tritium for recovery or recycle purposes.

(b) Persons making exports under the general license established by paragraph (a) of this section or under a specific license shall submit by February 1 of each year one copy of a report of all americium and neptunium shipments during the previous calendar year. This report shall be submitted to the Deputy Director, Office of International Programs at the address provided in § 110.4. The report must include:

(1) A description of the material, including quantity in TBq and gram;

(2) Approximate shipment dates; and

(3) A list of recipient countries, end users, and intended use keyed to the items shipped.

15. Section 110.24 is revised to read as follows:

**§ 110.24 General license for the export of deuterium.**

(a) A general license is issued to any person to export to any country not listed in

§ 110.28 or § 110.29 deuterium in individual shipments of 10 kilograms or less (50 kilograms of heavy water). No person may export more than 200 kilograms (1000 kilograms of heavy water) per year to any one country.

(b) A general license is issued to any person to export to any country listed in § 110.29 deuterium in individual shipments of 1 kilogram or less (5 kilograms of heavy water). No person may export more than 5 kilograms (25 kilograms of heavy water) per year to any one country listed in § 110.29.

**§ 110.25 [Reserved]**

16. Section 110.25 is added and reserved.

17. Section 110.26 is revised to read as follows:

**§ 110.26 General license for the export of nuclear reactor components.**

(a) A general license is issued to any person to export to a destination listed in paragraph (b) of this section any nuclear reactor component of U.S. origin described in paragraphs (5) through (9) of Appendix A to this part if--

(1) The component can be used in a light or heavy water-moderated power or research reactor; or

(2) The component is in semifabricated form and will be undergoing final fabrication or repair in those countries for either subsequent return to the United States for use in a nuclear power or research reactor in the United States or in one of the destinations listed in paragraph (b) of this section.

(b) The export of nuclear reactor components under the general license established in paragraph (a) of this section are approved to the following destinations:

| | |
|---|---|
| Austria | Lithuania |
| Belgium | Luxembourg |
| Bulgaria | Malta |

Canada
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Indonesia
Ireland
Italy
Japan
Latvia
Netherlands
New Zealand
Philippines
Poland
Portugal
Republic of Korea
Romania
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
Taiwan
United Kingdom

(c) This general license does not authorize the export of components, in final or semi-fabricated form, for research reactors capable of continuous operation above 5 MW~~e~~ thermal.

(d) This general license does not authorize the export of essentially complete reactors through piecemeal exports of facility components. When individual exports of components would amount in the aggregate to export of an essentially complete nuclear reactor, a facility export license is required.

(e) Persons making exports under the general license established by paragraph (a) of this section shall submit by February 1 of each year one copy of a report of all components shipped during the previous calendar year. This report must include:

(1) A description of the components keyed to the categories listed in appendix A to this part.

(2) Approximate shipment dates.

(3) A list of recipient countries and end users keyed to the items shipped.

18. In §110.27, paragraphs (a), (b), and (f) are revised to read as follows:

**§ 110.27 General license for import.**

(a) Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under a general or specific NRC or Agreement State license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

(b) The general license in paragraph (a) of this section does not authorize the import of source or special nuclear material in the form of irradiated fuel if the total weight of the material exceeds 100 kilograms per shipment.

*  *  *  *  *

(f) Importers of radioactive material listed in Appendix P to this part must provide the notifications required by § 110.50.

**§ 110.30 [Amended]**

19. Section 110.30 is amended by adding “China”, “Croatia”, “Estonia”, “Kazakhstan”, “Lithuania”, and “Malta” in alphabetical order.

20. Section 110.31 is revised to read as follows:

**§ 110.31 Application for a specific license.**

(a) A person shall file an application for a specific license to export or import with the Deputy Director of the NRC's Office of International Programs, using an appropriate method listed in § 110.4.

(b) Applications for an export, import, combined export/import, amendment or renewal license~~s~~ or a request for an exemption from a licensing requirement under 10 CFR Part 110 shall be filed on NRC Form 7.

(c) An application for a specific license to export or import or a request for an exemption from a licensing requirement must be accompanied by the appropriate fee in accordance with the fee schedule in § 170.21 and § 170.31 of this chapter. A license application will not be processed unless the specified fee is received.

(d) Each application on NRC Form 7 shall be signed by the applicant or licensee or a person duly authorized to act for and on behalf of the applicant or licensee.

(e) Each person shall provide in the license application, as appropriate, the information specified in § 110.32. The Commission also may require the submission of additional information if necessary to complete its review.(f) An application may cover multiple shipments and destinations.(g) The applicant shall withdraw an application when it is no longer needed. The Commission's official files retain all documents related to a withdrawn application.

21. Section 110.32 is revised to read as follows:

**§ 110.32 Information required in an application for a specific license/NRC Form 7.**

(a) Name and address of applicant.

(b) Name and address of any other party, including the supplier of equipment or material, if different from the applicant.

(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.

(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) 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 (terabequerels or TBq for byproduct material) and its chemical and physical form.

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

(3) For nuclear equipment, the name of the facility and its total dollar value.

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

(5) For proposed exports or imports of radioactive waste, the volume, physical and chemical characteristics, route of transit of shipment, classification (as defined in § 61.55 of this chapter) if imported or exported for direct disposal, and ultimate disposition (including forms of management or treatment) 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 commission 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.

(g)(1) For proposed exports of Category 1 quantities of material listed in Table 1 of Appendix P to this part, 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.

(2) For proposed exports of Category 2 quantities of material listed in Table 1 of Appendix P to this part, 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. This documentation must be provided to the NRC at least 24 hours prior to the shipment.

(3) Pertinent documentation shall consist of a copy of the recipient's authorization to receive and possess the material to be exported or a confirmation from the government of the importing country that the recipient is so authorized. The recipient authorization shall include the following information:

(i) Name of the recipient;

(ii) Recipient location and legal address or principal place of business;

(iii) Relevant radionuclides and radioactivity being imported or that the recipient is authorized to receive and possess;

(iv) Uses, if appropriate; and

(v) The expiration date of the recipient's authorization (if any).

22. Section 110.40 is revised to read as follows:

**§ 110.40 Commission review.**

(a) Immediately after receipt of a license application for an export or import requiring a specific license under this part, the Commission will initiate its licensing review and, to the maximum extent feasible, will expeditiously process the application concurrently with any applicable review by the Executive Branch.

(b) The Commission shall review a license application for export of the following:

(1) A production or utilization facility.

(2) More than five effective kilograms of high-enriched uranium, plutonium or uranium-233.

(3) An export involving assistance to end uses related to isotope separation, chemical reprocessing, heavy water production, advanced reactors, or the fabrication of nuclear fuel containing plutonium, except for exports of source material or low-enriched uranium to EURATOM or Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports which the Commission has approved in advance as constituting permitted incidental assistance.

(4) The initial export to a country since March 10, 1978 of source or special nuclear material for nuclear end use.

(5) An initial export to any country listed in § 110.28 or § 110.29 involving over:

(i) 10 grams of plutonium, uranium-233 or high-enriched uranium;

(ii) 1 effective kilogram of low-enriched uranium;

(iii) 250 kilograms of source material or heavy water; or

(iv) 37 TBq (1,000 curies) of tritium.

(6) The export of radioactive material listed in Table 1 of Appendix P of this part involving:

(i) Exceptional circumstances in § 110.42(e); or

(ii) Category 1 quantities of material to any country listed in § 110.28.

(c) The Commission will review export and import license applications raising significant policy issues.

(d) If the Commission has not completed action on a license application within 60 days after receipt of the Executive Branch judgment, as provided for in § 110.41, or the

license application when an Executive Branch judgment is not required, it will inform the applicant in writing of the reason for delay and, as appropriate, provide follow-up reports.

23. In § 110.41, paragraphs (a)(2) and (a)(10) are revised to read as follows:

**§ 110.41 Executive Branch review.**

(a) * * *

(2) More than one effective kilogram of high-enriched uranium or 10 grams of plutonium or uranium-233.

* * * * *

(10) An export raising significant policy issues or subject to special limitations as determined by the Commission or the Executive Branch, including exports of radioactive material listed in Table 1 of Appendix P to this part involving exceptional circumstances in § 110.42(e).

* * * * *

24. In § 110.43, paragraphs (e) and (f) are removed and paragraph (d) is revised to read as follows:

**§ 110.43 Import licensing criteria.**

* * * * *

(d) With respect to the import of radioactive waste, an appropriate facility has agreed to accept and is authorized to possess the waste for management or disposal as confirmed by NRC consultations with the host State(s) and the applicable low-level waste compact commission(s).

25. Section 110.44 is revised to read as follows:

**§ 110.44 Physical security standards.**

(a) Physical security measures in recipient countries must provide protection at least comparable to the recommendations in the current version of IAEA publication INFCIRC/225/Rev. 4 (corrected), June 1999, “The Physical Protection of Nuclear Material and Nuclear Facilities,” and is incorporated by reference in this part. This incorporation by reference was approved by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Notice of any changes made to the material incorporated by reference will be published in the *Federal Register*. Copies of INFCIRC/225/Rev. 4 may be obtained from the Deputy Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and are available for inspection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852–2738. A copy is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/cfr/ibr-locations.html.

(b) Commission determinations on the adequacy of physical security measures are based on:

(1) Receipt by the appropriate U.S. Executive Branch Agency of written assurances from the relevant recipient country government that physical security measures providing protection at least comparable to the recommendations set forth in INFCIRC/225/Rev. 4 (corrected).

(2) Information obtained through country visits, information exchanges, or other sources. Determinations are made on a country-wide basis and are subject to continuing review. Appendix M to this part describes the different categories of nuclear material to which physical security measures are applied.

26. In § 110.45, paragraphs (a), (b) and (d) are revised to read as follows:

**§ 110.45 Issuance or denial of license.**

(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.

(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 and is authorized to posses the waste for management and disposal as confirmed by NRC consultations with the host State and, if necessary, the low-level waste compact commission.

*  *  *  *  *

(d) If, after receiving the Executive Branch judgment 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 applications for specific licenses to export byproduct material, including radioactive material listed in Table 1 of Appendix P to this part, or radioactive waste.

* * * * *

27. Section 110.50 is revised to read as follows:

**§ 110.50 Terms.**

(a) *General and specific licenses*.

(1) Each license is subject to all applicable provisions of the Atomic Energy Act or other applicable law and to all applicable rules, regulations, decisions and orders of the Commission.

(2) Each license is subject to amendment, suspension, revocation or incorporation of separate conditions when required by amendments of the Atomic Energy Act or other applicable law, or by other rules, regulations, decisions or orders issued in accordance with the terms of the Atomic Energy Act or other applicable law.

(3) A licensee authorized to export or import nuclear material is responsible for compliance with applicable requirements of this chapter, unless a domestic licensee of the Commission has assumed that responsibility and the Commission has been so notified.

(4) Each license authorizes export or import only and does not authorize any person to receive title to, acquire, receive, possess, deliver, use, transport or transfer any nuclear equipment or material subject to this part.

(5) Each license issued by the NRC for the export or import of nuclear material authorizes only the export or import of that nuclear material and accompanying packaging, fuel element, hardware, or other associated devices or products.

(6) No nuclear equipment license confers authority to export or import nuclear material.

(7) Each nuclear equipment export license authorizes the export of only those items required for use in the foreign nuclear installation for which the items are intended.

(8) A licensee shall not proceed to export or import and shall notify the Commission promptly if he knows or has reason to believe that the packaging requirements of part 71 of this chapter have not been met.

(b) *Specific licenses*.

(1) Each specific license will have an expiration date.

(2) A licensee may export or import only for the purpose(s) and/or end-use(s) stated in the specific export or import license issued by NRC.

(3) Unless a license specifically authorizes the export of certain foreign-obligated nuclear material or equipment, a licensee may not ship such material or equipment until:

(i) The licensee has requested and the Commission has issued an amendment to the license authorizing such shipment; or

(ii) The licensee has given at least 40 days advance notice of the intended shipment in writing to the Deputy Director, Office of International Programs (OIP); and

(iii) The Deputy Director, OIP has:

(A) Obtained confirmation, through either the Department of Energy or State, that the foreign government in question has given its consent to the intended shipment pursuant to its agreement for cooperation with the United States; and

(B) Communicated this in writing to the licensee.

(c) *Advanced notification.*

(1) A licensee authorized to export or import the radioactive material listed in Appendix P to this part is responsible for notifying NRC and, in cases of exports, the government of the importing country in advance of each shipment. A list of points of contact in importing countries is available at NRC's Office of International Programs Website, accessible on the NRC Public Website at http://www.nrc.gov.

(2) The NRC's office responsible for receiving advance notifications for all export and import shipments is the NRC Operations Center. Notifications are to be e-mailed to Hoo.Hoc@nrc.gov (preferred method) or faxed to (301) 816-5151. In the subject line of the e-mail or on the fax cover page include "10 CFR 110.50(c) Notification." To contact the NRC Operations Center, use the same e-mail address or call (301) 816-5100. Difficulties notifying the NRC Operations Center must be promptly reported to the Office of International Programs at (301) 415-2336.

(3) Notifications may be electronic or in writing on business stationary, and must contain or be accompanied by the information which follows.

(i) For export notifications:

(A) 10 CFR part 110 export license number and expiration date;

(B) Name of the individual and licensee making the notification, address, and telephone number;

(C) Foreign recipient name, address, and end use location(s) (if different than recipient's

address);

(D) Radionuclides and activity level in TBq, both for single and aggregate shipments;

(E) Make, model and serial number, for any Category 1 and 2 sealed sources, if available;

(F) End use in the importing country, if known;

(G) Shipment date;

(H) A copy of the foreign recipient's authorization or confirmation of that authorization from the government of the importing country as required by § 110.32(h) unless the authorization has already been provided to the NRC.

(ii) For import notifications:

(A) Name of individual and licensee making the notification, address, and telephone number;

(B) Recipient name, location, and address (if different than above);

(C) Name, location, address, contact name and telephone number for exporting facility;

(D) Radionuclides and activity level in TBq, both for single and aggregate shipments;

(E) Make, model and serial number, radionuclide, and activity level for any Category 1 and 2 sealed sources, if available;

(F) End use in the U.S.;

(G) Shipment date from exporting facility and estimated arrival date at the end use location;

(H) NRC or Agreement State license number to possess the import in the U.S. and expiration date.

(4) Export notifications must be received by the NRC at least 7 days in advance of each shipment, to the extent practical, but in no case less than 24 hours in advance of each shipment. Import notifications must be received by the NRC at least 7 days in advance of each shipment.

(5) Advance notifications containing the above information must be controlled, handled, and transmitted in accordance with § 2.390 of this chapter and other applicable NRC requirements governing protection of sensitive information.

(d) A specific license may be transferred, disposed of or assigned to another person only with the approval of the Commission by license amendment.

28. Section 110.51 is revised to read as follows:

**§ 110.51 Amendment and renewal of licenses.**

(a) *Amendments.*

(1) Applications for amendment of a specific license shall be filed on NRC Form 7 in accordance with §§ 110.31 and 110.32 and shall specify the respects in which the licensee desires the license to be amended and the grounds for such amendment.

(2) An amendment is not required for:

(i) Changes in monetary value (but not amount or quantity);

(ii) Changes in the names and/or mailing addresses within the same countries of the intermediate or ultimate consignees listed on the license; or

(iii) The addition of intermediate consignees in any of the importing countries specified in the license (for a nuclear equipment license only).

(b) *Renewals.*

(1) Applications for renewal of a specific license shall be filed on NRC Form 7 in accordance with §§ 110.31 and 110.32.

(2) If an application to renew a license is submitted 30 days or more before the license expires, the license remains valid until the Commission acts on the renewal application. An expired license is not renewable.

(c) *General.* In considering an application by a licensee to renew or amend a license, the Commission will apply, as appropriate, the same procedures and criteria it uses for initial license applications.

29. In § 110.53, paragraphs (a) and (b)(1) are revised to read as follows:

**§ 110.53 United States address, records, and inspections.**

(a) Each licensee (general or specific) shall have an office in the United States where papers may be served and where records required by the Commission will be maintained.

(b)(1) Each license applicant or licensee (general or specific) shall maintain records concerning his exports or imports. The licensee shall retain these records for five years after each export or import except that byproduct material records must be retained for three years after the date of each export or import shipment.

*  *  *  *  *

30. Section 110.60 is revised to read as follows:

**§ 110.60 Violations.**

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of--

(1) The Atomic Energy Act;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) A regulation or order pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of:

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

31. In § 110.66, paragraph (b) is revised to read as follows:

**§ 110.66 Enforcement hearing.**

*  *  *  *  *

(b) A hearing pursuant to this subpart will be conducted under the procedures in subpart G of part 2 of this chapter.

32. In § 110.67, paragraph (a) is revised to read as follows:

**§ 110.67 Criminal penalties.**

(a) Section 223 of the Atomic Energy Act provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b., 161i., or 161o. of the Atomic Energy Act. For purposes of section 223,

all the regulations in part 110 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

*  *  *  *  *

33. Section 110.70 is revised to read as follows:

**§ 110.70 Public notice of receipt of an application.**

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

(b) The Commission will also publish in the *Federal Register* a notice of receipt of each license application, including applications for amendment or renewal, to export the following:

(1) A production or utilization facility.

(2) Five effective kilograms or more of plutonium, high-enriched uranium or uranium-233.

(3) 10,000 kilograms or more of heavy water. (Note: Does not apply to exports of heavy water to Canada.)

(4) Nuclear grade graphite for nuclear end use.

(5) Radioactive waste.

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

34. Section 110.80 is revised to read as follows:

**§ 110.80 Basis for hearings.**

The procedures in this part will constitute the exclusive basis for hearings on export and import license applications.

35. In § 110.81, paragraph (b) is revised to read as follows:

**§ 110.81 Written comments.**

* * * * *

(b) These comments should be submitted within 30 days after public notice of receipt of the application on the NRC Website or in the *Federal Register* and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

* * * * *

36. In § 110.82, paragraph (c) is revised to read as follows:

**§ 110.82 Hearing request or intervention petition.**

* * * * *

(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 published in the *Federal Register*;

(2) 30 days after publication of notice on the NRC Web site at *www.nrc.gov*;

(3) 30 days after notice of receipt in the Public Document Room; or

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

37. In § 110.112, paragraph (b) is revised to read as follows:

**§ 110.112 Reporter and transcript for an oral hearing.**

* * * * *

(b) Except for any portions containing classified information, Restricted Data, Safeguards Information, proprietary information, or other sensitive unclassified information, transcripts will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

*  *  *  *  *

Appendix L – [Amended]

38. Appendix L to part 110 is amended by adding “Carbon 11 (C 11)”, “Cesium 129 (Cs 129)”, “Cobalt 57 (Co 57)”, “Gallium 67 (Ga 67)”, “Gold 195 (Au 195)”, “Indium 111 (In 111)”, “Iodine 123 (I 123)”, Iron 52 (Fe 52)”, “Nitrogen 13 (N 13)”, “Oxygen 15 (O 15)”, “Potassium 43 (K 43)”, “Rubidium 81 (Rb 81)”, “Yttrium 87 (Y 87)”, and “Yttrium 88 (Y 88)” in alphabetical order.

Dated at Rockville, Maryland, this_____day of_____, 2008.

For the Nuclear Regulatory Commission,

_____

Annette Vietti-Cook
Secretary of the Commission.

Appendix L – [Amended]

38. Appendix L to part 110 is amended by adding “Carbon 11 (C 11)”, “Cesium 129 (Cs 129)”, “Cobalt 57 (Co 57)”, “Gallium 67 (Ga 67)”, “Gold 195 (Au 195)”, “Indium 111 (In 111)”, “Iodine 123 (I 123)”, Iron 52 (Fe 52)”, “Nitrogen 13 (N 13)”, “Oxygen 15 (O 15)”, “Potassium 43 (K 43)”, “Rubidium 81 (Rb 81)”, “Yttrium 87 (Y 87)”, and “Yttrium 88 (Y 88)” in alphabetical order.

Dated at Rockville, Maryland, this_____day of_____, 2008.

For the Nuclear Regulatory Commission,

_____

Annette Vietti-Cook

Secretary of the Commission.

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