

facility-specific cost estimate (including a discussion of the fate of the sealed sources) is warranted. NRC believes that an upper limit based on activity is considerably easier to implement than one that would account for additional or alternative factors.

B. Comments on Waste Broker Definition

Commenters raised three issues regarding NRC's proposed definition of "waste broker." The proposed definition stated that waste broker means any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or storage.

1. Applicability to Storage and Radioactive Materials

Comment: Two commenters stated that the proposed definition of waste broker should be reconsidered, particularly its applicability to storage activities and to radioactive material (as opposed to radioactive waste). Otherwise, these commenters stated, NRC's waste broker requirements will inadvertently subject some licensees that are not waste brokers to NRC's waste broker requirements, including the following:

- Manufacturers (who receive radioactive material from a supplier for storage and future use);
- Distributors (who receive radioactive material from a supplier for storage and distribution);
- Service companies (who are authorized to receive sources from a supplier to be used for source exchanges);
- Contractors (who receive radioactive material in generally-licensed devices as part of a turnkey job, then place them in storage until they are turned over to the user); and
- Carriers (who, as general licensees, store radioactive material or waste prior to delivery, or who deliver material or waste prior to storage by the recipient).

Response: The NRC agrees that the proposed definition is problematic as suggested by these commenters. The final rule does not establish a definition of waste broker, but instead uses the existing definitions of waste processor and waste collector in 10 CFR part 20, appendix G. § 30.35 (c)(5) now requires waste collectors and waste processors to have financial assurance and base the amount of financial assurance on a site-specific decommissioning cost estimate.

2. Collectors vs. Processors

Comment: One commenter stated that the proposed rule's definition of waste

broker appropriately covers waste processors and should, but does not, include waste collectors. There are certain licensees that have as their principal purpose to collect and consolidate packaged radioactive waste from others and transfer it to waste processors or disposal facilities. Facilities for interim storage of waste should have adequate financial assurance to cover decommissioning whether the licensee is a collector or processor.

Response: NRC agrees that the waste "collectors" described in the comment should be subject to the waste broker requirements. A change has been made to Section 30.35 (c)(5) to place requirements on waste collectors and waste processors as defined in 10 CFR part 20, appendix G.

3. Need to Define Radioactive "Waste"

Comment: One commenter stated that the proposed term "waste broker" cannot be defined when there is no clear standard definition of "waste" anywhere in NRC regulation or statute. The commenter stated that, historically, the term "waste" has been generally applied to sealed sources at the end of intended use regardless of whether they can be reused by someone else or their contents recovered as feedstock or reworked to extend the useful life of the sources. The commenter noted that there are differing definitions in 10 CFR 63.2 and 10 CFR 110.2, with the latter specifically exempting sealed sources being returned to any qualified manufacturer from the waste import and export regulations. In other contexts, there is no meaningful definition of radioactive "waste" as it applies to sealed sources or other radioactive materials. The commenter asserted that regardless of the lack of a clear definition of radioactive "waste," there is also a conflict in NRC policy and regulation as, on one hand, some sealed sources are exempted from the definition of "waste" while, on the other hand, sources are included in the scope of licensed material subject to decommissioning financial assurance.

Response: The NRC has decided not to define "waste" or "waste broker" in this rule. Although "waste" is not defined in NRC regulations, it is used in other NRC regulations and guidance in various contexts; therefore, defining the term for this rulemaking could result in unintended consequences. The apparent conflict in NRC policy and regulations that was raised by one commenter regarding the inconsistency of the use of this term as applied to sealed sources, is easily resolved by placing in context the exemption the commenter cited in

10 CFR 110.2 (vs. the inclusion of sealed sources in the scope of licensed material subject to the decommissioning financial assurance in this rule). As the Statements of Consideration for the exemption explain (60 FR 37556, published on 7/21/95), the exemption refers to sealed sources that are being returned to the United States or another country for reconditioning, recycling, or reprocessing. These types of transfers help to ensure that the materials are handled responsibly and not left in dispersed and perhaps unregulated locations around the world. Therefore, the NRC determined that they should not be subject to specific licensing, in this context, if the radioactive material involved would not be otherwise subject to such licensing. The disposition of sealed sources in this context differs radically from the disposition of sealed sources addressed by the rule.

As noted in the Statement of Considerations accompanying the proposed rule, the waste broker provisions of the rule are intended to be applied to licensees that (1) are likely to have fluctuating amounts of radioactive waste generated by other licensees, and (2) have a financial interest in maximizing the amount of radioactive waste they handle (*i.e.*, because their revenue is directly correlated to the amount of waste accepted). However, the existing definitions of "waste processor" and "waste collector" in 10 CFR part 20, appendix G, "Requirements for Transfers of Low-level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifest," encompass the activities of the licensees the proposed term "waste broker" sought to address. These activities, which are well understood by the regulated community, make such licensees stand out among other NRC licensees from a financial assurance perspective and support the inclusion of these licensees in this rule.

C. Comments on Requirements for Decommissioning Cost Updates

1. Three vs. Five Year Updates

Comment: Several commenters stated that the 3-year time frame for periodic decommissioning cost estimate updates is too frequent and that every 5 years would be more reasonable. One of the three stated that cost estimates should be reassessed every 5 years in order to coincide with the license renewal process. This commenter stated that, for irradiators, decommissioning does not involve disposal of materials as radioactive waste and, therefore, that the stated impetus for the 3-year period