

§ 110.43

10 CFR Ch. I (1-1-05 Edition)

an export because this criterion has not been met would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security, in which case the provisions of section 128 of the Atomic Energy Act regarding Congressional review will apply.

(7) The proposed export of a facility or of more than 0.003 effective kilograms of special nuclear material, other than plutonium containing 80 percent or more by weight of plutonium-238, would be under the terms of an agreement for cooperation.

(8) The proposed export is not inimical to the common defense and security and, in the case of facility exports, does not constitute an unreasonable risk to the public health and safety in the United States.

(9)(i) With respect to exports of high-enriched uranium to be used as a fuel or target in a nuclear research or test reactor, the Commission determines that:

(A) There is no alternative nuclear reactor fuel or target enriched to less than 20 percent in the isotope U-235 that can be used in that reactor;

(B) The proposed recipient of the uranium has provided assurances that, whenever an alternative nuclear reactor fuel or target can be used in that reactor, it will use that alternative fuel or target in lieu of highly-enriched uranium; and

(C) The United States Government is actively developing an alternative nuclear reactor fuel or target that can be used in that reactor.

(ii) A fuel or target "can be used" in a nuclear research or test reactor if—

(A) The fuel or target has been qualified by the Reduced Enrichment Research and Test Reactor Program of the Department of Energy; and

(B) Use of the fuel or target will permit the large majority of ongoing and planned experiments and isotope production to be conducted in the reactor without a large percentage increase in the total cost of operating the reactor.

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium and nuclear

grade graphite, is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to such equipment or material.

(2) No such equipment or material will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) No such equipment or material will be retransferred to the jurisdiction of any other country or group of countries without the prior consent of the United States.

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

(c) Except where paragraph (d) is applicable, the review of license applications for export of byproduct material or for export of source material for non-nuclear end uses requiring a specific license under this part is governed by the criterion that the proposed export is not inimical to the common defense and security.

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

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

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

[49 FR 47200, Dec. 3, 1984, as amended at 55 FR 34519, Aug. 23, 1990; 58 FR 13004, Mar. 9, 1993; 58 FR 57964, Oct. 28, 1993; 60 FR 37564, July 21, 1995]

§ 110.43 Import licensing criteria.

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

## Nuclear Regulatory Commission

## § 110.45

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

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

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

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

[60 FR 37565, July 21, 1995]

### § 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 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/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

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

(1) Receipt of written assurances from recipient countries 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.

[58 FR 13004, Mar. 9, 1993, as amended at 59 FR 48998, Sept. 26, 1994; 59 FR 50689, Oct. 5, 1994. Redesignated at 60 FR 37565, July 21, 1995, as amended at 61 FR 35602, July 8, 1996; 65 FR 70291, Nov. 22, 2000; 69 FR 18803, Apr. 9, 2004]

### § 110.45 Issuance or denial of licenses.

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

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

(2) Finds that there are no material changed circumstances associated with an export license application (except for byproduct material applications) from those existing at the time of issuance of a prior license to export to the same country, if the prior license was issued under the provisions of paragraph (a)(1) of this section.

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

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

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

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

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

(c) If, after receiving the Executive Branch judgement that the issuance of a proposed export license will not be