

a contract with the Department of Energy or a license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b of the AEA.

(f) In making its findings under paragraphs (a) and (b) of this section for proposed imports of radioactive material listed in Appendix P to this part, the NRC shall consider:

(1) Based upon available information, whether the applicant has been engaged in clandestine or illegal procurement of radioactive material listed in Table 1 of Appendix P to this part;

(2) Based upon available information, whether an import or export authorization for radioactive material has been denied to the applicant or whether the applicant has diverted any import or export of radioactive material previously authorized; and

(3) Based upon available information, whether a risk of diversion or malicious acts involving the radioactive material listed in Table 1 of Appendix P to this part.

[60 FR 37565, July 21, 1995, as amended at 70 FR 37992, July 1, 2005]

§ 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://](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)

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(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: