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(6) 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 and Japan for enrichment up to 5 percent in the isotope uranium-235, and those categories of exports approved in advance by the Executive Branch as constituting permitted incidental assistance.

(7) The initial export of nuclear material or equipment to a foreign reactor.

(8) An export involving radioactive waste.

(9) An export to any country listed in § 110.28 or § 110.29.

(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).

(b) The Executive Branch will be requested to:

(1) Provide its judgment as to whether the proposed export would be inimical to the common defense and security, along with supporting rationale and information.

(2) Where applicable, confirm that the proposed export would be under the terms of an agreement for cooperation; and

(3) Address the extent to which the export criteria in § 110.42 are met, if applicable, and the extent to which the recipient country or group of countries has adhered to the provisions of any applicable agreement for cooperation.

(c) The Commission may request the Executive Branch to address specific concerns and provide additional data and recommendations as necessary.

[43 FR 21641, May 19, 1978, as amended at 49 FR 47200, Dec. 3, 1984; 58 FR 13004, Mar. 9, 1993; 60 FR 37564, July 21, 1995; 61 FR 35602, July 8, 1996; 70 FR 41939, July 21, 2005; 70 FR 37992, July 1, 2005; 70 FR 46066, August 9, 2005; 75 FR 44090, July 28, 2010]

§ 110.42 Export licensing criteria.

(a) The review of license applications for export for peaceful nuclear uses of

production or utilization facilities¹ or for export for peaceful nuclear uses of special nuclear or source material requiring a specific license under this part is governed by the following criteria:

(1) IAEA safeguards as required by Article III (2) of the NPT will be applied with respect to any such facilities or material proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material or facilities proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such material or facilities, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in § 110.44.

(4) No such material or facilities proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other country or group of countries unless the prior approval of the United States is obtained for such retransfer.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such

¹Exports of nuclear reactors, reactor pressure vessels, reactor primary coolant pumps, “on-line” reactor fuel charging and discharging machines, and complete reactor control rod systems, as specified in paragraphs (1) through (4) of appendix A to this part, are subject to the export licensing criteria in § 110.42(a). Exports of nuclear reactor components, as specified in paragraphs (5) through (9) of appendix A to this part, when exported separately from the items described in paragraphs (1) through (4) of appendix A of this part, are subject to the export licensing criteria in § 110.42(b).

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material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor will be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) With respect to exports of such material or facilities to nonnuclear weapon states, IAEA safeguards will be maintained with respect to all peaceful activities in, under the jurisdiction of, or carried out under the control of such state at the time of export. This criterion will not be applied if the Commission has been notified by the President in writing that failure to approve 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) Except as provided in paragraph (a)(9)(ii) of this section, 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 nu-

clear reactor fuel or target that can be used in that reactor.

(ii) With regard to a Recipient Country, the Commission may issue a license authorizing the export of high-enriched uranium for medical isotope production, including shipment to and use at intermediate and ultimate consignees, if the Commission determines that:

(A) The Recipient Country that supplies an assurance letter to the United States Government in connection with the consideration by the Commission of the export license application has informed the United States Government that any intermediate consignees and the ultimate consignee specified in the export license application are required to use the high-enriched uranium solely for the production of medical isotopes; and

(B) The high-enriched uranium will be irradiated only in a reactor in the Recipient Country that—

(1) Uses an alternative nuclear fuel; or

(2) Is the subject of an agreement with the United States Government to convert to an alternative nuclear reactor fuel when alternative nuclear reactor fuel can be used in the reactor.

(iii) 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 for nuclear end use, 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.

(e) In making its findings under paragraphs (a)(8) and (c) of this section for proposed exports of radioactive material listed in Appendix P to this part, the NRC shall consider:

(1) Whether the foreign recipient is authorized based on the authorization or confirmation required by §110.32(h) to receive and possess the material under the laws and regulations of the importing country;

(2) Whether the importing country has the appropriate technical and administrative capability, resources and regulatory structure to manage the material in a safe and secure manner;

(3) For proposed exports of Category 1 amounts of radioactive material listed in Table 1 of Appendix P to this part, whether the government of the

importing country provides consent to the United States Government for the import of the material;

(4) In cases where the importing country does not have the technical and administrative capability described in paragraph (e)(2) of this section, and in cases where there is insufficient evidence of the recipient's authorization to receive and possess the material to be exported, described in paragraph (e)(1) of this section, whether exceptional circumstances exist, and if so, whether the export should be licensed in light of those exceptional circumstances and the risks, if any, to the common defense and security of the proposed export;

(5) For proposed exports under exceptional circumstances of Category 1 or Category 2 amounts of radioactive material listed in Table 1 of Appendix P to this part, whether the government of the importing country provides consent to the United States Government for the import of the material;

(6) For proposed exports of radioactive material listed in Table 1 of Appendix P to this part under the exceptional circumstance in which there is a considerable health or medical need as acknowledged by the U.S. Government and the importing country, whether the United States and the importing country have, to the extent practicable, made arrangements for the safe and secure management of the radioactive sources during and at the end of their useful life;

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

(8) Based upon available information, whether an import or export authorization for radioactive material listed in Table 1 of Appendix P to this part has been denied to the recipient or importing country, or whether the recipient or importing country has diverted any import or export of radioactive material previously authorized; and

(9) Based upon available information, whether there is a risk of diversion or malicious acts involving radioactive

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material in Table 1 of Appendix P to this part.

[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; 70 FR 37992, July 1, 2005; 70 FR 41939, July 21, 2005; 70 FR 46066, August 9, 2005; 71 FR 20339, Apr. 20, 2006; 71 FR 40003, July 14, 2006]

§ 110.43 Import licensing criteria.

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

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

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

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

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

[60 FR 37565, July 21, 1995, as amended at 70 FR 37992, July 1, 2005; 75 FR 44090, July 28, 2010]

§ 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 in-

spection at the NRC library, 11545 Rockville Pike, Rockville, Maryland 20852-2738, telephone, (301-415-4737 or 800-397-4209) between 8:30 a.m. and 4:15 p.m. 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.

[75 FR 44090, July 28, 2010]

§ 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.

(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: