

12. Nuclear Nonproliferation [Sections 742.3 and 744.2]

Export Control Program Description and Licensing Policy

To further its nuclear nonproliferation policy, the United States maintains controls on exports of nuclear-related items under the authority of the Nuclear Nonproliferation Act of 1978. Although these are not Section 6 foreign policy-based export controls, they have been included in this report because they are usually grouped with the other nonproliferation controls referenced elsewhere.

The Department of Commerce requires a license for the export of the following items:

- A. Commodities or related technical data that could be of significance for nuclear explosive purposes (i.e., the Nuclear Referral List included in the CCL); and
- B. Any commodity or related technical data that the exporter knows, or has reason to know, will be used directly or indirectly in any of the following activities:
 - C nuclear explosive activities including designing, developing, manufacturing, or testing nuclear weapons or nuclear explosive devices; or
 - C unsafeguarded nuclear activities including the design, development, or manufacture of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency safeguards at the facility or installation, when it contains any source of special fissionable material, or where any such obligation is not met; or
 - C safeguarded and unsafeguarded nuclear activities including: designing, constructing, fabricating, or operating the following facilities, or components for such facilities: (i) facilities for the chemical processing of irradiated special nuclear or source materials; (ii) facilities for the production of heavy water; (iii) facilities for the separation of isotopes of source and special nuclear material; or (iv) facilities for the fabrication of nuclear reactor fuel containing plutonium.
- C. The Commerce Department may inform the exporter that a license is required for any item

subject to the Export Administration Regulations (EAR) because there is an unacceptable risk of use in or diversion to activities described above in subparagraph two.

Factors considered in reviewing applications for licenses include:

- o the stated end-use of the item;
- o the significance for nuclear purposes of the particular component and its availability elsewhere;
- o the types of nuclear nonproliferation assurances or guarantees given in a particular case; and
- o the nonproliferation credentials of the recipient country.

Analysis of Control as Required by Law¹

Section 17(d) of the Act and Section 309(c) of the Nuclear Nonproliferation Act of 1978 are interpreted to provide that:

A. Nuclear nonproliferation controls do not expire annually and determinations to extend them are thus not required; and

B. The criteria and other factors set forth in Sections 6(b) through 6(f) of the Act are not applicable to these controls.

The Congress is, therefore, notified that these controls continue in effect. These controls further significantly the nuclear nonproliferation policy of the United States, and have made it more difficult for nations to acquire sensitive nuclear technology or equipment.

These controls also meet U.S. international nuclear nonproliferation obligations. The United States maintains ongoing discussions with other countries to coordinate export controls for nuclear nonproliferation purposes and is a member of the multilateral Nuclear Suppliers Group (NSG). The NSG, composed of 35 members, sets forth guidelines on the export control of a list of nuclear-related dual-use items. (See Appendix II for a complete list of regime members.) The United States is also a member of the Zangger Committee, a multilateral group formed in the early 1970s to establish guidelines for the export control provisions of the Nuclear Nonproliferation Treaty.

The Departments of Commerce and Energy, in consultation with the Departments of State and Defense, and the Nuclear Regulatory Commission, regularly review and revise this list of U.S. dual-use items controlled for nuclear nonproliferation reasons. Referred to as the Nuclear Referral List (NRL), it also conforms with our international obligations under the NSG. The last

revision of the NRL was published in January 1996.

ENDNOTES

1. *The analysis required by law differs for nuclear nonproliferation controls. It is governed by the Nuclear Nonproliferation Act of 1978. Therefore, the headings under this section differ from the rest of the report.*