

Export Control Program Description and Licensing Policy

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

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

1. Items that could be of significance for nuclear explosive purposes (i.e., the Nuclear Referral List included in the CCL); and

2. Items that the exporter knows, or has reason to know, will be used directly or indirectly in any of the following activities:

a. nuclear explosive activities including designing, developing, manufacturing, or testing nuclear weapons or nuclear explosive devices; or

b. 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.

3. 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. .

B. Factors considered in reviewing applications for licenses include:

C the stated end-use of the item;

C the significance for nuclear purposes of the particular component and its availability elsewhere;

- C the types of nuclear non-proliferation assurances or guarantees given in a particular case; and
- C the non-proliferation credentials of the recipient country.

In January 1998, a major decontrol of nuclear items took effect with the liberalization of unilateral U.S. controls on exports of pipes, valves, cranes, and pipe fittings used in the non-nuclear, or “balance of plant” portion of civilian nuclear power plants. Prior to this liberalization, the turbines and generators in the non-nuclear portion of nuclear power plants did not require a license for export, but the export of the pipes, valves, and related equipment required to install them were subject to a license requirement. With this action, eighty to ninety percent of the items used in commercial, civilian nuclear power plants was released from control to most countries, but exports of critical nuclear power production components, such as reactor vessels, fuel rod equipment, and primary pumps, remain under export control under the authority of the Nuclear Regulatory Commission.

On March 18, 1998, the President certified that China had complied with the nuclear non-proliferation conditions required for implementation of the 1985 U.S.-China Agreement for Peaceful Nuclear Cooperation and for lifting the statutorily-required 1989 Tiananmen Square Sanctions on nuclear technology exports to China. The certification allows the United States to approve the export of items to China controlled by the Department under the EAR, technology controlled by the Department of Energy (DOE) under 10 CFR part 810, and equipment and materials controlled by the Nuclear Regulatory Commission (NRC) under 10 CFR part 110. Lifting the sanctions had no direct effect on the Department’s export control program as licensing requirements remain in effect. Items controlled for nuclear proliferation reasons still require a license and continue to be subject to interagency review by the Departments of Commerce, State, Energy, and Defense and the Arms Control and Disarmament Agency. The licensing process is the same as that accorded license applications for similar goods to other destinations.

Analysis of Control as Required by Law¹

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

- A. Nuclear non-proliferation 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 non-proliferation 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 non-proliferation obligations. The United States maintains on-going discussions with other countries to coordinate export controls for nuclear non-proliferation 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 Non-Proliferation Treaty.

The Departments of Commerce and Energy, in consultation with the Departments of State and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, regularly review and revise this list of U.S. dual-use items controlled for nuclear non-proliferation 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.

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ENDNOTES

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