

13. Nuclear Non-Proliferation (Section 744.2)

Export Control Program Description and Licensing Policy

To further its nuclear non-proliferation policy, the United States maintains controls on exports under the provisions of the Nuclear Non-Proliferation Act of 1978. While these controls are not foreign policy-based in the same sense as other controls included in this report, they have been included in this report because they are usually grouped with the other non-proliferation controls referenced to elsewhere. The format of this chapter does not follow that of previous chapters; instead, it addresses the requirements of the legal authority for these controls.

A. A validated license is required for exports of the following commodities and related technology and software:

1. Commodities or related technology or software that could be of significance for nuclear explosive purposes (i.e., the Nuclear Referral List included in the Commerce Control List); and

2. Any commodity or related technology or software 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 research on, designing, developing, manufacturing, maintaining or testing nuclear weapons or nuclear explosive devices; or

b. unsafeguarded nuclear activities including the research, design, development, manufacture, construction, operation, or maintenance 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 fuel cycle activities including research on, 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 because there is an unacceptable risk of use in or diversion to such activities.

4. In addition, on February 3, 1997, Commerce published the "Entity List," a roster of foreign end-users who pose an unacceptable risk of diversion to nuclear and missile proliferation

activities (see 15 CFR 744 Supplement No. 4, and Appendix III to this report). Commerce published additions and revisions to the list in May, June and October. With the publication of this list, Commerce requires a license for the export or reexport of otherwise uncontrolled items subject to the Export Administration Regulations (EAR) (also known as "EAR99" items) to some end-users on the list, and for specified controlled items to others. The Entity List is one part of the Enhanced Proliferation Control Initiative, designed to stem the spread of weapons of mass destruction.

- B. 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 non-proliferation assurances or guarantees given in a particular case; and
 - o the non-proliferation credentials of the recipient country.

A major change in the Commerce Control List occurred this year with the liberalization of controls on oscilloscope exports. Used in the development of the nuclear weapons programs of the 1950s and 1960s, oscilloscopes are now a key testing device for consumer products. After three years of multilateral and unilateral consultations, agreement was reached in the Nuclear Suppliers Group (discussed below), of which the United States is a member, to decontrol most oscilloscopes to all but the most sensitive destinations, effective August 6, 1997.

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 (Latvia became a member in 1997 and Brazil and Ukraine became members in 1996), sets forth guidelines on the export control of a list of nuclear-related dual-use items. (See Appendix II for complete list of regime members.) The United States is also a member of the Zangger Committee, a multilateral group established in the early 1970s to establish guidelines for the export control provisions of the Nuclear Non-Proliferation Treaty. In 1997, China joined Zangger and pledged to implement its own nuclear export controls.

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.

ENDNOTES

1. *The analysis required by law differs for nuclear non-proliferation 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.*