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Publishing Staff
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Editorial Office

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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 631.291.5541.

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U.S. Agencies Update Nuclear-Related Export Controls—Including for China

Barbara D. Linney, Melissa B. Mannino, Lana Muranovic, and James K. Perry*

In this article, the authors examine recent actions by the U.S. Department of Commerce's Bureau of Industry and Security and the Nuclear Regulatory Commission to tighten controls on certain nuclear-related items destined for China (including Hong Kong) and Macau.

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) expanded[1] its unilateral nuclear nonproliferation column 2 (NP2) controls by imposing a license requirement for exports, reexports (foreign country to China or Macau), and in-country transfers on eight export control classification numbers (ECCNs) when destined for China or Macau. The NP2-controlled items now subject to a license requirement for China (including Hong Kong) and Macau are:

- *ECCN 1A290*—Depleted uranium (any uranium containing less than 0.711 percent of the isotope U-235) in shipments of more than 1,000 kg in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.
- *ECCN 1C298*—Graphite and deuterium that is intended for use other than in a nuclear reactor.
- *ECCN 2A290*—Generators and other equipment "specially designed," prepared, or intended for use with nuclear plants.
- *ECCN 2A291*—Equipment related to nuclear material handling and processing and to nuclear reactors and "parts," "components," and "accessories" thereof.
- *ECCN 2D290*—"Software" "specially designed" or modified for the "development," "production," or "use" of items controlled by ECCNs 2A290 or 2A291.

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- *ECCN 2E001*—"Technology" for the "development" of equipment controlled under ECCNs 2A290 and 2A291 and "software" controlled under ECCN 2D290.
- *ECCN 2E002*—"Technology" for the "production" of equipment controlled by ECCNs 2A290 and 2A291.
- *ECCN 2E290*—"Technology" for the "use" of equipment controlled by ECCNs 2A290 or 2A291.

The new controls are intended to "allow the U.S. government to monitor the export of these items to assure that they are only being used in peaceful activities, such as commercial nuclear power generation, medical developments, production of or use in medicine, and non-military related industries."[2]

The Nuclear Regulatory Commission (NRC) also took action to impose new restrictions. The NRC has issued an order[3] suspending certain general licenses in 10 C.F.R. Part 110 and, as a result, these general licenses for exports of special nuclear material,[4] source material,[5] and deuterium[6] when destined for China are no longer available.[7] Materials and supplies captured by this new rule include specific grades of plutonium, uranium, and deuterium or heavy water for nuclear end uses. The rule is intended to improve oversight and control on nuclear materials for end uses in China, as there are growing concerns that access to these materials and supplies is furthering China's nuclear capabilities, which are perceived as detrimental to U.S. national security interests.

Export Administration Regulations' Commerce Control List Updated to Implement Nuclear Suppliers Group Changes for Select ECCNS

Effective August 18, 2023, BIS amended[8] five ECCNs controlled for NP1 reasons to implement commitments agreed to during the Nuclear Suppliers Group's (NSG) 2019 and 2022 plenary meetings.[9] The ECCNs that were amended are:

- *ECCN 1B229*—Entry was removed. The entry previously controlled water hydrogen sulfide exchange tray columns and internal contactors.

- *ECCN 1B231*—Tritium facilities or plants and equipment. The entry was amended to include "hydrogen isotope" before purification. This is intended to ensure that only hydrogen isotope purification systems fall within the scope of the ECCN.
- *ECCN 2B209*—Flow-forming machines, spin-forming machines, and mandrels. The entry was revised to expand control criteria to include control rotor-forming mandrels with internal diameters between 75 mm and 650 mm. Previously, the maximum diameter covered was 400 mm.
- *ECCN 2B228*—Rotor-fabrication and rotor-assembly equipment, rotor-straightening equipment, bellows-forming mandrels, and dies. The entry was expanded to control bellows with inside diameters between 75 mm and 650 mm. Previously, the maximum diameter covered was 400 mm.
- *ECCN 3A233*—Mass spectrometers capable of measuring ions of 230 u or greater, having better than two parts in 230 and ion sources thereof. A technical edit was made to use the unit "u" or "Dalton" instead of the outdated atomic mass unit.

Items controlled for NP1 reasons require a license to all countries, including China, except for NSG member countries listed in Country Group A:4.[10] Parties engaging in exports of nuclear-related items should carefully review the amended ECCNs to ensure there are no licensing requirements imposed by these changes.

Conclusion

The new controls highlight the U.S. government's focus on limiting China's access to U.S. materials and supplies due to China's civil-military fusion strategy and the BIS's participation in multilateral export control regimes. As a result of the new China-related controls, all ECCNs with an NP reason for control are subject to a BIS license requirement when destined for China (including Hong Kong) or Macau and NRC-regulated items require a specific license to go to China. The NSG-related Commerce Control List amendments are to ensure that the Export Administration Regulations' Commerce Control List NP controls are in alignment with those of the NSG participating nations.

Notes

* The authors, attorneys with Baker & Hostetler LLP, may be contacted at blinney@bakerlaw.com, mmannino@bakerlaw.com, lmuranovic@bakerlaw.com, and jperry@bakerlaw.com, respectively.

1. https://www.federalregister.gov/documents/2023/08/14/2023-17243/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau; https://www.federalregister.gov/documents/2023/08/29/C1-2023-18047/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau-correction.

2. *See* "Expansion of Nuclear Nonproliferation Controls on the People's Republic of China and Macau," 88 Fed. Reg. 54875, 54876 (Aug. 14, 2023), https://www.federalregister.gov/documents/2023/08/14/2023-17243/expansion-of-nuclear-nonproliferation-controls-on-the-peoples-republic-of-china-and-macau.

3. https://www.govinfo.gov/content/pkg/FR-2023-08-14/pdf/2023-17394.pdf.

4. *See* 10 C.F.R. § 110.21.

5. *See* 10 C.F.R. § 110.22.

6. *See* 10 C.F.R. § 110.24.

7. The NRC previously issued an order in October 2021 that suspended exports of all radioactive materials under a general license to China General Nuclear and its subsidiaries or related entities, https://www.federalregister.gov/documents/2021/10/01/2021-21342/order-suspending-general-license-authority-to-export-radioactive-material-and-deuterium-to-china.

8. https://www.federalregister.gov/documents/2023/08/18/2023-16750/commerce-control-list-updates-based-on-the-latest-nuclear-suppliers-group-nsg-plenary-meetings.

9. The NSG is a multilateral international organization of nuclear supplier countries that seek to contribute to the nonproliferation of nuclear weapons by issuing regulatory guidance for nuclear export controls.

10. https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-740#Supplement-No.-1-to-Part-740.