

## **POLICY ISSUE INFORMATION**

October 29, 2010

SECY-10-0144

FOR: The Commissioners

FROM: Margaret M. Doane, Director  
Office of International Programs

SUBJECT: RECENT STAFF OUTREACH REGARDING SPECIFIC LICENSE  
REQUIREMENT FOR EXPORTS TO EMBARGOED DESTINATIONS

### PURPOSE:

To inform the Commission of the staff's efforts to consider the need to develop guidance and to engage in further stakeholder interaction to ensure that general licensees understand the regulatory restrictions for exporting materials to embargoed destinations. This paper is provided to the Commission in response to the Staff Requirements Memorandum (SRM) dated June 9, 2010, (M100609A) and does not address any new commitments or resource implications.

### DISCUSSION:

Over the past several months, the Office of International Programs (OIP) has engaged in numerous outreach efforts to address the specific license requirement for export to embargoed destinations listed in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 110.28. Prior to the issuance of the June 9, 2010 SRM, OIP staff made a presentation at the Annual Nuclear

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Material Management and Safeguards System (NMMSS) Meeting on the proposed changes to 10 CFR Part 110 and emphasized the specific license requirement for exports to an embargoed destination. Following the issuance of the SRM, OIP's licensing staff identified and increased outreach to existing and potential exporters of Nuclear Regulatory Commission (NRC)-controlled nuclear materials and equipment. Staff has used routine meetings with applicants, licensees, and industry representatives to discuss the specific license requirements for exports to embargoed destinations. In addition, OIP staff developed guidance with input from the Office of the General Counsel, on the regulatory requirement for inclusion on the OIP export/import web page (enclosed). This guidance provides a succinct summary of the regulatory requirement for easy reference. The OIP staff has since received numerous questions from various parties related to the specific license requirement for exports to an embargoed destination.

In addition to individual stakeholder outreach, OIP included a discussion of this issue at several recent meetings and workshops. Most significantly, the NRC presented at the Department of Commerce, Bureau of Industry and Security's Annual Conference on August 31, 2010. This event is widely attended by the export industry, including manufacturers, transporters, brokers, and legal/regulatory affairs representatives. OIP also attended the Organization of Agreement States Annual Meeting in August as part of its outreach effort related to the recent publication of the final rule amending 10 CFR Part 110. As part of the outreach, OIP took the opportunity to discuss with Agreement State representatives, representatives of industry (including several NRC export licensees), and the Nuclear Energy Institute, the specific license requirement. A handout, based on the information added to the OIP web site, was developed to support the outreach effort.

Currently, OIP is developing an Information Notice (IN) or Regulatory Information Summary (RIS) that will address the specific license requirement for exports to embargoed destinations, and provide information on NRC's planned actions on unauthorized exports to embargoed destinations. An IIN or RIS will be effective at reaching many potential exporters. Also, OIP has used an IN to communicate a generic 10 CFR Part 110 licensing issue in the past. OIP will work with the Office of Federal and State Materials and Environmental Management Program as it did on the final rule amending Part 110 to ensure that the IN or RIS is also provided to the Agreement States.

OIP continues to seek opportunities to communicate this requirement with interested stakeholders. On November 18, 2010, Margaret M. Doane, Director of OIP will be presenting at a conference on Export Controls and the Nuclear Renaissance in Washington, DC. Scott Moore, Deputy Director, and Jill Shepherd, Licensing Officer will be presenting on behalf of OIP at the widely attended American Conference Institute's Advance Summit on Complying with Nuclear Export Controls on November 30 and December 1, 2010, in Washington, DC. They will be participating on panels on "The Fundamentals of Nuclear Export Control Regulations" and

“Obtaining Required Nuclear Licenses and Authorizations and Complying with Special Reporting Requirements.” Both of these panels provide a forum to discuss the specific licensing requirement for exports to embargoed destinations. Finally, OIP staff requested that a summary of this regulatory requirement be included in the next NMMSS Newsletter.

CONCLUSION:

OIP will continue to engage in stakeholder interaction to ensure that general licensees understand the regulatory restrictions for exporting materials to embargoed destinations.

OIP will continue to emphasize that a specific license is required for all exports to embargoed destinations.

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Margaret M. Doane, Director  
Office of International Programs

Enclosure:  
As stated



# U.S. NRC

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## Export-Import

The commodities under NRC **export** licensing authority (10 CFR 110.8 and 110.9) include the following:

Recent Rules Changes Affecting Part 110 Export-Import Licensing

- nuclear reactors (10 CFR 110 Appendix A)
- uranium enrichment facilities (10 CFR 110 Appendices B-H)
- spent fuel reprocessing plants (10 CFR 110 Appendix I)
- uranium and plutonium conversion plants (10 CFR 110 Appendix J)
- heavy water or deuterium production plants (10 CFR 110 Appendix K)
- nuclear fuel fabrication plants (10 CFR 110 Appendix O)
- lithium isotope separation facilities (10 CFR 110 Appendix N)
- equipment, component parts, and assemblies that are especially designed or prepared for exclusive use in any of the aforementioned facilities
- special nuclear material (e.g., plutonium, enriched uranium, uranium-233)
- source material (e.g., natural and depleted uranium, thorium)
- byproduct material (10 CFR 110 Appendix L and Appendix P)
- deuterium (heavy water)
- nuclear grade graphite for nuclear end use (see 70 FR 41937, July 21, 2005)

The commodities under NRC **import** licensing authority (10 CFR 110.9a) include the following:

- nuclear production and utilization facilities
- special nuclear, source and byproduct material

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## Export-Import License Types

The regulations in 10 CFR 110 apply to all individuals in the United States who export and import nuclear equipment and material under NRC licensing authority. Unless the export or import transaction falls in one of the specific exception categories identified in 10 CFR 110.1(b)(1)-(6), it must be authorized by an appropriate NRC license. NRC issues two types of export

and import licenses: general and specific.

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## General Licenses

NRC **general licenses** (10 CFR 110.20) authorize selected exports or imports of nuclear material or equipment and are effective without the filing of a specific application with NRC or the issuance of a licensing document (piece of paper) by the NRC to a particular person. Nevertheless, although a piece of paper authorizing an export or import transaction may not be required, a general license is not equivalent to an exemption from NRC export-import regulations nor does it relieve a person (the general licensee) from complying with other domestic regulatory requirements that may apply. The regulations authorizing general licenses in §§ 110.21 – 110.26 specifically exclude exports to embargoed destinations listed in § 110.28.

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## General Export Licenses

NRC **general export licenses** authorize exports of nuclear material below specified quantities, in certain forms and/or as contained in consumer products, to any country not listed in 10 CFR 110.28 as an embargoed destination. For restricted destinations listed in 10 CFR 110.29 there are additional restrictions on the use of the general license for certain commodities. NRC general export licenses also authorize exports of certain minor nuclear reactor components to designated eligible recipient countries. Criteria for NRC general export license authorizations are provided for the following:

- Special nuclear material (10 CFR 110.21)
- Source material (10 CFR 110.22)
- Byproduct material (10 CFR 110.23)
- Deuterium (10 CFR 110.24)
- Reactor components (10 CFR 110.26)

**General Export License Reporting Requirements:** Individuals using the NRC general license authorizations for exports of americium and/or neptunium under 10 CFR 110.23, and/or for exports of reactor components under 10 CFR 110.26, are required to submit annual reports on all such transactions to the NRC. The information required in these annual reports and their due dates are specified in 10 CFR 110.54(b) and 10 CFR 110.54(c) respectively.

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## General Import Licenses

NRC **general import licenses** authorize imports of byproduct, source, or special nuclear material, as well as major components of a utilization facility if the U.S. consignee meets certain criteria (e.g., is appropriately authorized to either possess and/or use the commodity being imported [see 10 CFR 110.27].)

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## Specific Licenses

Exports or imports of nuclear commodities under the NRC licensing authority, which are not explicitly authorized under one of the aforementioned general export or general import license provisions, must first be approved by the NRC through the issuance of a **specific license**. To

obtain a specific license, an application must be filed with the NRC (10 CFR 110.31) using NRC Form 7 . Each application for an NRC-specific export or import license must provide certain details regarding the proposed export or import transaction (10 CFR 110.32). After receiving an application for a specific license, the NRC may also contact applicants and require the provision of additional information if deemed necessary to review the proposed transaction. Applications for specific licenses must be signed by an authorized representative of the company and will not be processed by the NRC unless and until accompanied with the appropriate the NRC application review and processing fee.

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## Specific License Requirement for ALL Exports to Embargoed Destinations

A specific NRC license is required to export any NRC-controlled commodity to an embargoed destination (Cuba, Iran, Iraq, North Korea, Syria, and Sudan). The regulations authorizing general licenses in §§ 110.21 through 110.26 specifically exclude exports to **embargoed destinations listed in §10 CFR 110.28**. Shipments to a distributor or to a "middle man" in a non-embargoed destination do not relieve the exporter of the requirement to obtain a specific license for NRC-controlled commodities being exported to end users in embargoed destinations. Exporters must determine who the consignee or end user is for exports of any NRC-controlled commodities. If the consignee or end user is in an embargoed destination, then the NRC regulations require the exporter to apply for and obtain a specific NRC license authorizing the export of a specific commodity to a named ultimate consignee for a particular end use in the embargoed destination.

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## Fees

The NRC charges a flat fee to review and process applications for specific export, import, amendment or renewal licenses and requests for exemptions from the licensing requirements in 10 CFR Part 110. The fee is derived from one of five flat fee categories (the same for both nuclear materials and equipment) and is commensurate with the average level of effort or number of hours spent by NRC staff to review and process a particular type application. The level of review required for the various types of specific license applications processed by NRC are based on the criteria set forth in 10 CFR 110.40. As of August 16, 2010, the flat fees range from \$720.00 for applications involving only minor amendments to \$16,900.00 for applications requiring Commission review. The actual fees charged by the NRC to review applications for a specific NRC export or import license are set forth in 10 CFR 170.21 for facilities and equipment and 170.31 for nuclear materials. For more information about fees, see our License Fees page.

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## License Terms

Under 10 CFR 110.50 (a), each general or specific license issued by the NRC

- Is subject to all applicable provisions of the Atomic Energy Act and to all applicable rules, regulations, decisions and orders of the Commission.
- Is subject to amendment, suspension, revocation or incorporation of separate conditions when required by amendments of the Atomic Energy Act or other applicable law, or by other rules, regulations decisions or orders issued in accordance the terms of the Atomic Energy Act or other applicable law.
- Authorizes export or import only and does not authorize any person to receive title to, acquire, receive, possess, deliver, use or transfer nuclear equipment or material.

- If for nuclear material, authorizes the export or import of only the nuclear material and accompanying packaging and fuel element hardware.
- If for nuclear equipment does not confer authority to export or import nuclear material.
- If for the export of nuclear equipment, authorizes the export of only those items required for use in the foreign nuclear installation for which the items are intended.
- Shall not be used to proceed with an export or import if the licensee knows or has reason to believe that the packaging requirements of Part 71 have not been met. In such case, the licensee shall notify the NRC promptly.

Each NRC license, whether specific or general may be revoked, suspended, or modified (10 CFR 110.52).

Each NRC licensee (using either a general or specific NRC export or import license) must have an office in the United States where papers may be served and where records required by NRC will be maintained and can be inspected (10 CFR 110.53).

Under 10 CFR 110.50 (b), each specific license issued by the NRC

- Will have an expiration date.
- Will be used by a licensee to export or import only for the purpose stated in the license application.
- May not be used by a licensee to ship foreign-obligated nuclear material or equipment, unless specifically authorized after the required communications with NRC have been made.
- Assigns responsibility to the licensee for compliance with applicable requirements of Parts 40, 70, and 73, unless another NRC domestic licensee has assumed that responsibility and NRC has been so notified.
- May be transferred, disposed of or assigned to another person only upon NRC approval of a license amendment.

NRC specific export and/or import licenses can be amended and/or renewed (10 CFR 110.51) with timely submission of an application for such action. Once a specific license has expired, it cannot be amended or renewed.

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## Public Involvement in Export-Import Licensing

Every application submitted to NRC for specific export or import license will be made available to the public in appropriate form via NRC's online document management system ( ADAMS). Applications for certain types of specific export or import licenses will also be noticed in the *Federal Register* (10 CFR 110.70). NRC welcomes public comments on all applications for specific export or import licenses and requests that, if possible, they be submitted within 30 days from either the release of the application on the Web site or from the publication of the *Federal Register* notice. To learn how stakeholders can participate in our licensing process, see 10 CFR 110.80 and Public Involvement in Licensing.

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