

Export Control Reform and Impacts to Nonproliferation

Background

- Export Control Regulations
 - International Traffic in Arms Regulations (ITAR)
 - Export Administration Act (EAA)
 - Atomic Energy Act (AEA)
- Intent of export control provisions
 - Enhance the economic interests of the United States
 - Enhance the national security foreign policy

Import/Export Control Reform

- Import and export control of nuclear weapon related items and information, with the exception of certain modeling and simulation tools, were removed from ITAR Category XVI and put under the AEA.
- NNSA Administrative Policy (NAP 23) implements these changes throughout the DOE nuclear weapon complex.

5. REQUIREMENTS.

- a. The Atomic Energy Act covers a broad range of atomic energy activities. This NAP and implement weapons. Therefore includes all classified or unclassified policies, practices, information, technical data, items, materials, facilities, equipment, software, technologies or services used to design, assess, detect, develop, fabricate, qualify, maintain, transport, render safe, or dispose of devices implementing a military application of atomic energy. These span the range of Technology Readiness Levels from basic research (the observation of phenomena) to mission performance at mission parameters; and manufacturing readiness levels from expanding scientific principles that may have manufacturing implications through production. Evidence of AEA-control may include information which is developed utilizing nuclear weapon program funding. AEA-controlled "information" and "items" are used synonymously in this document.



NAP 23 Controls

- All nuclear weapon determinations are based on Tiers
 - Tier 1: Classified – Restricted Data or Formerly Restricted Data per the classification guides.
 - Tier 2: Highly Controlled – Sensitive items that “reveal a nuclear weapon function or special capabilities necessary to design, develop, produce or evaluate nuclear weapons.”
 - Tier 3: Low Export Sensitivity – information/items used in nuclear weapon-related activities that are not Tier 1 or Tier 2. This is the equivalent of EAR99 and can be freely sent anywhere other than embargoed countries.

Potential Implementation Gaps – Tier 2

- **Inconsistency** of Tier determinations across the nuclear weapon complex
- **Potential to overlook** other areas which could “reveal a nuclear weapon function or special capabilities necessary to design, develop, produce or evaluate nuclear weapons”.
 - Render safe
 - Training

Inconsistency Tier determinations

- Each site within the DOE complex was required to implement NAP 23, individually
- Two potential impacts if there is inconsistency of tier determinations across the complex:
 - Some sites could export items or information that reveals a nuclear weapon function or special capabilities necessary to design, develop, produce or evaluate nuclear weapons to a country of concern
 - Inability to export items that should could be exported for economic reasons

Lack of Tier Determinations

- Potential for overlooking other items and information that should be regulated

5. REQUIREMENTS.

- a. The Atomic Energy Act covers a broad range of atomic energy activities. This NAP and implementing documents only address those activities related to nuclear weapon. This includes all classified or unclassified policies, practices, information, technical data, items, materials, facilities, equipment, software, technologies, develop, fabricate, qualify, maintain, render safe, or dispose of devices implementing a military application of atomic energy. These span the range of Technology Readiness Levels from basic research to production. Evidence of AEA-control may include information which is developed utilizing nuclear weapon program funding. AEA-controlled "information" and "items" are used synonymously in this document.

Conclusions

- Export control determinations have always had the potential of inconsistent determinations.
- NAP-23 implementation is limited in scope to the nuclear weapons complex and should be reviewed for consistent determinations.
- Services should be reviewed with regarding to tier determinations to make correct determinations.