

US Expands Nuclear Export Controls on China

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In a rule effective August 11, 2023, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) expanded nuclear nonproliferation controls on China, as part of the U.S. government's latest efforts to address China's military modernization efforts, civil-military fusion and expanding nuclear forces.

Pursuant to the new rule, those items on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the Export Administration Regulations (EAR)) controlled under nuclear nonproliferation column 2 (NP2) on the Commerce Country Chart (supplement no. 1 to EAR Part 738) now require a license for export, reexport or transfer (in-country) to China.

Export Control Classification Numbers (ECCNs) currently subject to NP2 controls are 1A290, 1C298, 2A290, 2A291, 2D290, 2E001, 2E002 and 2E290, which include such items as depleted uranium, graphite and deuterium for nonnuclear end use, and generators and other equipment for nuclear plants.

Prior to the regulatory change, China was already subject to a number of nuclear nonproliferation controls in the EAR, including:

- The controls established pursuant to the guidelines of the multinational Nuclear Suppliers Group under nuclear nonproliferation column 1 (NP1).
- Specified end-user restrictions of EAR Part 744.

In addition, numerous Chinese entities have been added to the Entity List maintained by BIS because of nuclear nonproliferation concerns. The Nuclear Regulatory Commission (NRC), which maintains a complementary export control regime for nuclear material, facilities and equipment, published a parallel order effective August 8, 2023, imposing a licensing requirement on additional nuclear-related exports to China regulated by the NRC.

The U.S. government has regularly voiced its concern over China's growing nuclear ambitions. For example, in announcing an aggressive expansion of export controls related to China in October 2022, BIS cited "the most rapid expansion and platform diversification of [China's] nuclear arsenal in its history. ..." Building on past regulatory action, BIS' latest action appears targeted to address this perceived threat by enhancing the U.S. government's efforts to monitor the export and end use of NP2 items to China.

The new rule covers China, including Hong Kong — which lost its separate destination status in 2020 — and Macau, still considered a special administrative region of China. Under a Savings Clause, the rule permits the shipment of authorized exports, reexports or transfers that were en route aboard a carrier on August 11, 2023, pursuant to actual orders, so long as such shipments are completed no later than September 11, 2023.

The published rule was authorized under the Export Control Reform Act of 2018 and is final.