

NNSA POLICY LETTER

NAP 476.123

Approved: 12-13-12
Admin Change 1: 2-9-15

**ATOMIC ENERGY ACT
CONTROL OF IMPORT AND EXPORT
ACTIVITIES**



**NATIONAL NUCLEAR SECURITY ADMINISTRATION
Office of Defense Programs**

CONTROLLED DOCUMENT
AVAILABLE ON-LINE AT:
<http://nnsa.energy.gov>

OFFICE OF PRIMARY INTEREST (OPI):
Office of Defense Programs

printed copies are uncontrolled

THIS PAGE INTENTIONALLY LEFT BLANK

ATOMIC ENERGY ACT CONTROL OF IMPORT AND EXPORT ACTIVITIES

1. PURPOSE. To establish NNSA policy and procedures for nuclear weapon-related import and export activities under the Atomic Energy Act.
2. CANCELLATION. None.
3. APPLICABILITY.
 - a. Federal. This NNSA Policy (NAP) applies to federal and aligned military personnel implementing nuclear weapon-related mission activities governed by the Atomic Energy Act.
 - b. Contractors. The Contractor Requirements Document (CRD) sets forth requirements of this NAP that will apply to contracts that include the CRD. The CRD must be included in contracts that involve nuclear weapon-related mission activities governed by the Atomic Energy Act.
 - c. Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
 - d. Exceptions. Requests for exceptions to this NAP, requests to otherwise utilize Atomic Energy Act import or export authority, or interagency jurisdiction requests are initiated by submitting a request to the cognizant NNSA federal program office including information as needed to articulate the precise nature of the issue to be decided or the information or item to be imported or exported, per Defense Programs instructions.
4. BACKGROUND.
 - a. The Atomic Energy Act of 1954, as amended (AEA), provides the Department of Energy (DOE) unique authority to perform a broad range of activities related to nuclear weapons. The AEA Section 11.y defines Restricted Data (RD) to mean all information (including items and services) concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy. Formerly Restricted Data (FRD) relates primarily to the military utilization of atomic weapons which DOE and the Department of Defense jointly determine can be adequately safeguarded as defense information. In addition, certain unclassified information is also controlled by the AEA: Section 148.a authorizes the DOE to prohibit the dissemination of unclassified information to the extent that its release could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly

increasing the likelihood of (A) illegal production of nuclear weapons, or (B) theft, diversion, or sabotage of nuclear materials, equipment, or facilities

- b. The DOE/NNSA performs this mission with the assistance of the Department of Defense, other agencies, and contractors. Federal, military, and contractor workforces may perform these activities at the direction and under the control of the DOE/NNSA. This NAP delineates and explains the allowed import and export of nuclear weapon-related AEA-controlled information and supersedes all prior instructions.

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 weapons. Therefore for the purpose of this NAP, “AEA-controlled information” 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 basic principles) through demonstrating system 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.

AEA-controlled information is managed in a graded manner:

Tier 1: Tier 1 implements AEA Section 11.y (Restricted Data) and Section 144 (conditions under which it may be communicated to other nations). Tier 1 contains everything which involves Restricted Data or Formerly Restricted Data.

Tier 2: Tier 2 implements AEA Sections 91.c (restricts the release of non-nuclear parts of atomic weapons or the utilization of facilities whose disclosure would contribute significantly to another nation’s atomic weapon capability) and 148 (prohibition against the dissemination of certain unclassified information). Tier 2 contains everything neither RD nor FRD, either classified or unclassified, but which reveals a specific nuclear weapon function (e.g. arming or fusing) or reveals special capabilities necessary to design, develop, produce or evaluate nuclear weapons or nuclear weapon tests or any other nuclear explosions. Information and items which, if used for other purposes would be identified by the lists of nuclear of nuclear equipment and material listed in 10 CFR 110, the Dual-Use List (Commerce Control List), the U.S. Munitions List (22 CFR 121), Unclassified Controlled Nuclear Information (DOE Order 241.1B), or DOE Official Use Only, is considered Tier 2 when incorporated in, modified for, or manufactured for nuclear weapon-related activities.

Tier 3: Tier 3 contains all information and items used in nuclear weapon-related activities which are neither Tier 1 nor Tier 2.

- b. It is prohibited to provide AEA-controlled information to a person (company, organization, group, or individual) found on the Department of Commerce Bureau of Industry and Security Denied Persons List, Entities List, or Unverified List; the Department of State Directorate of Defense Trade Controls List of Statutorily Debarred Parties; the Department of Treasury Office of Foreign Assets Controls Specially Designated Nationals List; the Department of State Bureau of International Security and Nonproliferation Nonproliferation Sanctions List; or the General Services Administration Excluded Parties List, unless authorized by the NNSA and the appropriate U.S. Government agency.
- c. U.S.-United Kingdom and U.S.-France Agreements for Cooperation on the Uses of Atomic Energy for Mutual Defense (MDA) Import and Export Activities.
 - (1) General Guidance: MDAs enable the exchange of AEA-controlled information to foreign governments and their contractors. MDA imports and exports are the statutory responsibility of the DOE/NNSA.
 - (a) Marking and handling requirements may be specified per Defense Programs instructions.
 - (b) Federal, military, and contractor workforces may import or export under the authority of the AEA and MDAs, utilizing Defense Programs instructions.
 - (2) Tier 1:
 - (a) The DOE/NNSA is the importer and exporter of record for all Tier 1 information, items, and services.
 - (b) Federal, military, and contractor organizations provide all Tier 1 information proposed to be exported to the DOE/NNSA for shipment through governmental channels per Defense Programs instructions.
 - (c) “Nuclear parts” and “Classified exports” may be further limited by the specific MDA.
 - (3) Tier 2 and Tier 3: Federal, military, and contractor workforces may choose among several processes to import and export Tier 2 and Tier 3 information, items, and services. These are:
 - (a) Transfer from/to the DOE/NNSA for government import/export, following the methodology described for Tier 1 above.

- (b) Directly import/export to the MDA foreign government or its contractors using commercial conveyance.
 - 1 The originating contractor, military, or Federal entity is the importer/exporter of record for Tier 2 and 3 information, items and services.
 - 2 All such exports are authorized and performed per Defense Programs instructions.
- d. Procurement and disposition of items or systems to be used for, in, or with U.S. nuclear weapons requiring the release of Tier 1 or Tier 2 AEA-controlled information.
 - (1) Procurement Scope: All nuclear weapon acquisition activities to procure items or systems, or the ability to manufacture such items or systems, which requires the release of Tier 1 or Tier 2 AEA-controlled information.
 - (a) Federal, military, and contractor workforces may procure these items or systems.
 - (b) AEA-controlled information may only be released to suppliers who are approved to handle and protect the security level of information and items.
 - (2) Disposition:
 - (a) Federal, military, and contractor workforces may disposition these information and items utilizing Defense Programs instructions.
 - (b) Nuclear weapons-related information and items are dispositioned in accordance with DOE Order 580.1A.
- e. Procurement and disposition of items or systems to be used for, in, or with U.S. nuclear weapons not requiring the release of Tier 1 or Tier 2 AEA-controlled information.
 - (1) Procurement Scope: All nuclear weapon acquisition activities to procure items, or the ability to manufacture such items, which does not require the release of Tier 1 or Tier 2 AEA-controlled information.
 - (a) Federal, military, and contractor workforces may procure these items.
 - (b) These procurements are controlled by regulations other than the AEA. Contact the appropriate U.S. Government agency and follow their instructions for these acquisition activities.

- (2) Disposition: Nuclear weapons related information and items are dispositioned in accordance with DOE Order 580.1A.
- f. Release of technical data subject to Atomic Energy Act jurisdiction.
- (1) Any release of AEA-controlled information is governed by DOE regulations and directives.
 - (2) Federal, military, and contractor workforces may release information subject to the following requirements:
 - (a) Tier 2 –Tier 2 information may not be publicly released until it has been reduced in sensitivity to Tier 3.
 - (b) Tier 3 – Export Administration Regulations and site-specific authorization requirements apply to the public release of technical data. US-UK MDA Tier 3 information public release requires federal MDA Program Office approval.
 - (c) The publication of basic research in science and engineering where the resulting information is ordinarily published and shared broadly with the scientific community [unclassified, no restrictions (UCNI, Export Controlled Information, or OOU), and non-proprietary] is addressed in 15 CFR 734.8(c).

6. RESPONSIBILITIES.

- a. The Deputy Administrator for Defense Programs (NA-10) will:
- (1) Establish procedures and instructions to implement this NAP.
 - (2) Identify DOE/NNSA Program Offices for the U.S.-United Kingdom and U.S.-France Agreements for Cooperation on the Uses of Atomic Energy for Mutual Defense, and document their roles and responsibilities.
 - (3) Review and approve/disapprove, following consultation with an advisory panel including the Offices of Defense Nuclear Nonproliferation (NA-20), Emergency Operations (NA-40), Defense Nuclear Security (NA-70), Counterterrorism and Counterproliferation (NA-80), and DOE Intelligence and Counterintelligence (DOE-IN):
 - (a) All requests for exception from this policy.
 - (b) Any non-governmental requests to import or export under the AEA.
 - (4) Resolve, in consultation with other agencies, any import or export jurisdiction issues related to this NAP.

- (5) Provide and maintain guidance for determining the Tier of Atomic Energy Act-controlled information.
- b. The Assistant Deputy Administrator for Nonproliferation and International Security (NA-24) will review all voluntary self-disclosures of potential violations to this NAP, requests for exception to this NAP, non-governmental requests to import or export under the AEA, and requests for interagency jurisdiction resolution, and will provide decision recommendations in consultation with the advisory panel referenced in Section 6.a. (3) of this NAP, per Defense Programs instructions.
- c. The cognizant Federal Program Office will approve or disapprove all Tier 2 publication and export requests.


7. REFERENCES.

- a. Atomic Energy Act of 1954, as amended, Sections 11, 91, 123, 144 and 148.
- b. [10 CFR 1017](#), Identification and Protection of Unclassified Controlled Nuclear Information
- c. DOE O 471.1B, *Identification and Protection of Unclassified Controlled Nuclear Information*
- d. National Security Decision Directive 189, “National Policy on the Transfer of Scientific, Technical, and Engineering Information”
- e. DOE Order 471.3, *Identifying and Protecting Official Use Only Information*
- f. DOE Order 580.1A, *Department of Energy Personal Property Management Program*
- g. DOE Acquisition Guide, Chapter 3.3, Export Controls
- h. NNSA Defense Programs Requirements Modernization and Integration (RMI) R024 “Defense Programs Instructions for Atomic Energy Act Export, Import, and Disposition Activities”

8. CONTACT.

- a. NA-10: Defense Programs, 202-586-3561
- b. NA-24: Office of Nonproliferation and International Security, 202-586- 0589

BY ORDER OF THE ADMINISTRATOR:



Frank G. Klotz
Administrator

THIS PAGE INTENTIONALLY LEFT BLANK

CONTRACTOR REQUIREMENTS DOCUMENT
NAP ~~476.123~~, *ATOMIC ENERGY ACT CONTROL OF IMPORT AND EXPORT*
ACTIVITIES

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any level to the extent necessary to ensure the contractor's compliance with the requirements.

1. U.S.-United Kingdom and U.S.-France Agreements for Cooperation on the Uses of Atomic Energy for Mutual Defense (MDA) Import and Export Activities.
 - a. Contractor workforces must follow Defense Programs instructions for all MDA exports.
 - b. Classified (Restricted Data and Formerly Restricted Data) imports and exports:
 - (1) Contractor organizations must provide all classified items proposed to be exported to the DOE/NNSA for shipment through governmental channels.
 - (2) Classified information exchanges must be performed pursuant to Defense Programs instructions.
 - c. Unclassified imports and exports: Contractor workforces must choose among several processes to import and export unclassified information, items and services under the AEA and MDAs. These are:
 - (1) Utilization of the DOE/NNSA processes for government import/export process following the methodology described in section 1(b) above.
 - (2) Directly import and export to the MDA foreign government or its contractors using commercial conveyance.
 - (a) The originating contractor is the importer/exporter of record for these unclassified information, items and services.
 - (b) All such imports/exports are authorized and performed per Defense Programs instructions.
2. Procurement and disposition of items or systems to be used for, in, or with U.S. nuclear weapons requiring the release of Tier 1 or Tier 2 AEA-controlled information.
 - a. Contractor workforces must procure and disposition these items utilizing Defense Programs instructions.
 - b. Procurements are only allowed through suppliers who are approved to handle and protect the security level of information and items.

- c. Disposition is performed utilizing Defense Programs instructions in accordance with DOE Order 580.1A.
3. Procurement and disposition of items to be used for, in, or with U.S. nuclear weapons not requiring the release of Tier 1 or Tier 2 AEA-controlled information.
 - a. Contractor workforces must procure and disposition these items utilizing Defense Programs instructions.
 - b. These procurements are controlled by regulations other than the AEA. Contact the appropriate U.S. Government agency and follow their instructions for these acquisition activities.
 - c. Disposition is performed utilizing Defense Programs instructions in accordance with DOE Order 580.1A.
4. Release of technical data subject to Atomic Energy Act jurisdiction.
 - a. Any release of AEA-controlled information, items, or services is governed by DOE regulations and directives.
 - b. Contractor workforces may release information subject to the following requirements:
 - (1) Tier 2 –Tier 2 information must not be publicly released until it has been reduced in sensitivity to Tier 3.
 - (2) Tier 3 – Export Administration Regulations and site-specific authorization requirements apply to the public release of technical data. US-UK MDA Tier 3 information public release requires federal MDA Program Office approval.
 - (3) The publication of basic research in science and engineering where the resulting information is ordinarily published and shared broadly with the scientific community (unclassified, no restrictions, and non-proprietary) is addressed in 15 CFR 734.8(c).