



[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**[EA-16-167; Docket Nos. 11006088 and NRC-2017-0114]**

**License No. XMAT427**

**In the Matter of Airgas Specialty Gases, Inc.;**

**Order Approving Direct and Indirect Transfers of Control of License**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an Order approving a request, submitted by Shipping International, Inc. (SII), working under a power of attorney signed by Airgas USA, LLC, seeking the NRC's consent to the direct and indirect transfers of control of Export License XMAT427. In addition, SII requested approval of a conforming license amendment to reflect the new name of the holder of the license from Airgas Specialty Gases, Inc., to Airgas USA, LLC.

**DATES:** The Order was issued on April 26, 2017.

**ADDRESSES:** Please refer to **NRC-2017-0114** when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2017-0114**. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For questions about the Order contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System:**

You may obtain publicly-available documents online in the Agencywide Documents Access and Management System (ADAMS) Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Andrea R. Jones, Office of International Programs, telephone: 301-287-9072, e-mail: [Andrea.Jones2@nrc.gov](mailto:Andrea.Jones2@nrc.gov); U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:** The text of the Order is attached.

Dated: May 8, 2017.

FOR THE NUCLEAR REGULATORY COMMISSION.

David L. Skeen, Acting Director,  
Office of Internal Programs.

**UNITED STATES OF AMERICA**  
**U.S. NUCLEAR REGULATORY COMMISSION**

**In the Matter of Airgas Specialty Gases, Inc.;**

**EA-16-167; Docket No. 11006088;**

**License No. XMAT427**

**ORDER APPROVING DIRECT AND INDIRECT TRANSFERS OF CONTROL OF EXPORT  
LICENSE**

**I.**

As of April 1, 2016, Airgas Specialty Gases, Inc. (“ASG”), a Texas corporation and holder of one U.S. Nuclear Regulatory Commission (NRC) export license (XMAT427), was merged into Airgas USA, LLC, a Delaware limited liability company, with Airgas USA, LLC, being the surviving entity and ASG not existing as a separate legal entity after the merger. Prior to this restructuring, both ASG and Airgas USA, LLC, were subsidiaries of Airgas, Inc. On May 23, 2016, Airgas, Inc. was acquired by L’Air Liquide, S.A. (“Air Liquide”), a public company in France. American Air Liquide Holdings, Inc. and Air Liquide International S.A., which were subsidiaries of Air Liquide before the May 23, 2016, acquisition, continued to exist. Following the May 23, 2016, acquisition, Airgas USA, LLC, remained a wholly-owned subsidiary of Airgas, Inc., but Airgas, Inc. became a wholly-owned subsidiary of American Air Liquide Holdings, Inc. American Air Liquide Holdings, Inc. is owned by American Air Liquide, Inc. (97.33033% ownership) and Carba Holdings, AG (2.66967% ownership), both of which are owned by Air Liquide International S.A. Air Liquide International S.A. is a direct subsidiary of Air Liquide (the ultimate parent company).

## II.

On December 5, 2016, after a review of records associated with ASG's indirect and direct transfers of control and records associated with the export of nuclear material to China on May 9, 2016, the NRC issued a Notice of Violation (NOV) to ASG (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16245A279). The NRC determined that three violations of NRC requirements occurred. The violations involved: (1) the direct transfer of control of XMAT427 without Commission approval as required by Title 10 of the *Code of Federal Regulations* (10 CFR), Section 110.50(d), and Section 184 of the Atomic Energy Act (AEA) of 1954, as amended (42 U.S.C. § 2234); (2) the indirect transfer of control of XMAT427 without written Commission consent as required by Section 184 of the AEA; and (3) the export of nuclear material without obtaining a specific license as required by 10 CFR 110.5. Specifically, 10 CFR 110.50(d) states that a "specific license may be transferred, disposed of or assigned to another person only with the approval of the Commission by license amendment." Section 184 of the AEA states, in part, that no NRC license shall be transferred, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing. And 10 CFR 110.5 states, in part, that no person may export any nuclear material listed in 10 CFR 110.9 unless authorized by a general or specific license issued under 10 CFR Part 110. Because ASG did not receive Commission approval, the NRC did not have the opportunity to review the planned transfers of control to ensure that the transferee possessed the appropriate authority over the license being directly or indirectly acquired and controlled. The violations associated with the indirect and direct transfers of control of XMAT427, without Commission approval, were categorized collectively, in accordance with the NRC Enforcement Policy, as a Severity Level IV problem because of the low radiological or programmatic significance associated with the particular circumstances of the

case. Because the activities conducted under XMAT427 do not involve the actual storage of licensed material, the NRC determined that little or no radiological or programmatic safety significance resulted from these violations.

### III.

On January 3, 2017, Shipping International, Inc. (SII), working under a power of attorney signed by Airgas USA, LLC, responded to the NOV, and included (1) the reason for the violation; (2) the corrective actions taken; and (3) the date when full compliance will be achieved (ADAMS Accession No. ML17006A026). The corrective actions included:

1. No exports under XMAT427, until written approval has been received from the Commission.
2. Submission of a new application requesting approval for the transfers of control and an amendment to reflect the new name of the licensee, from ASG to Airgas USA, LLC.

On January 26, 2017, the NRC responded to SII's January 3, 2017, response to the NOV and concluded that the completed and proposed actions met the requirements of 10 CFR 2.201 (ADAMS Accession No. ML17019A026).

### IV.

By letter dated January 31, 2017, (ADAMS Accession Nos. ML17034A058 and ML17034A075), as supplemented by information provided via electronic communication, draft application, and the attachment dated January 4, 2017 (ADAMS Accession No. ML17059D006); electronic communication and the attachment dated December 12, 2016 (ADAMS Accession No. ML17059D011); electronic communication and the attachments dated November 30, 2016 (ADAMS Accession Nos. ML17111A620, ML17033A277, and ML17033A281); electronic communication, draft application, and the attachment dated September 6, 2016 (ADAMS Accession No. ML17059D013); electronic communication and the attachment dated August 26,

2016 (ADAMS Accession No. ML17059D012); and electronic communication and draft application dated July 29, 2016 (ADAMS Accession No. ML17081A278), SII requested approval of the indirect and direct transfers of control of XMAT427. In addition, SII requested approval of a conforming amendment to reflect the new name of the licensee, from ASG to Airgas USA, LLC. SII's request for the NRC's consent to the transfers of control was submitted pursuant to Section 184 of the AEA and 10 CFR 110.50(d).

The letter from SII requesting NRC approval of the transfers and an amendment to export license XMAT427 was made publicly available on the NRC's public website on February 3, 2017. No requests for a hearing or comments were received.

As previously stated, pursuant to Section 184 of the AEA, no license granted under 10 CFR Part 110 shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the AEA, and gives its consent in writing. Pursuant to 10 CFR 110.50(d), a specific license may be transferred, disposed of, or assigned to another person only with the approval of the Commission by license amendment. Pursuant to 10 CFR 110.51(a)(1), an application requesting amendment of a specific license shall be filed on NRC Form 7, "*Application for NRC Export or Import License, Amendment, Renewal, or Consent Request(s)*," in accordance with 10 CFR 110.31 and 110.32, and must specify the grounds for the requested amendment.

The Commission will approve an application for direct and indirect transfers of control of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfers are otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. SII, acting on behalf of Airgas USA, LLC, has represented that with respect to XMAT427, (1) there will be no change in personnel, facilities, equipment, or procedures; (2) all records will be kept in the same facilities; and (3) the transferee will abide by all constraints, conditions, and requirements of the licensed

program and will abide by the regulations in 10 CFR 110.53. After review of the information in SII's request dated January 31, 2017, and relying on SII's statements and representations contained in its electronic communications and supplemental information, the NRC staff has determined that the proposed transferee is qualified to hold the license and that the direct and indirect transfers of control are consistent with the applicable provisions of the AEA, regulations, and orders issued by the Commission. The NRC staff has further determined that the request for the proposed conforming license amendment complies with the standards and requirements of the AEA, and the NRC's regulations set forth in 10 CFR Part 110. The transfers of control of the license and issuance of the conforming license amendment will not be inimical to the common defense and security, or to the health and safety of the public, and all applicable requirements have been satisfied.

#### V.

Accordingly, pursuant to Section 184 of the AEA and 10 CFR 110.50(d), IT IS HEREBY ORDERED that SII's application regarding the transfers of control of the license, as described herein, be approved.

IT IS FURTHER ORDERED that the conforming license amendment regarding the license transfer shall be issued.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 31, 2017 (which can be found using ADAMS Accession Numbers ML17034A058 and ML17034A075) and SII's supplemental communications dated January 4, 2017, December 12, 2016, November 30, 2016, September 6, 2016, August 26, 2016, and July 29, 2016. These documents are available for public inspection at the Commission Public Document Room (PDR), located at One White Flint North, Room O1-F21, 11555 Rockville Pike (first floor), Rockville, MD 20852, and available online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading->

rm/adams.html. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland this 26<sup>th</sup> day of April 2017.

FOR THE NUCLEAR REGULATORY COMMISSION.

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Nader L. Mamish, Director,  
Office of International Programs.

[FR Doc. 2017-09985 Filed: 5/16/2017 8:45 am; Publication Date: 5/17/2017]