

UAV Policy Update

What does the July 24, 2020, Presidential announcement on UAS policy mean?

Prior to the announcement, export license applications involving UAVs with a range of at least 300 km and a payload capability of at least 500 kg were subject to a review policy of a strong presumption of denial consistent with the Missile Technology Control Regime Guidelines. In accordance with the announcement of the update to the policy, applications involving a subset of UAVs – those with a range of at least 300 km and a payload capability of at least 500 kg and a maximum speed of less than 800 km/hr – will be reviewed on a case-by-case basis, rather than under a policy of denial. BIS has amended the Export Administration Regulations, 15 C.F.R. Parts 730-774 (EAR), to reflect this updated license application review policy. See 86 Fed. Reg. 2252 (Jan. 12, 2021).

Note: While the July 24, 2020 Presidential announcement refers to the term Unmanned Aerial System (UAS), the MTCR and the EAR use the term Unmanned Aerial Vehicle (UAV).

How does this affect the ECCN and license requirement for these UAVs under the EAR?

There is no change to the ECCN or the license requirement for this subset of UAVs. As before, they are subject to a Missile Technology (MT) control and require a license to all destinations other than Canada. The change is only in how the license applications for UAVs that fall within the specified parameters and certain related MT-controlled items (as detailed below) will be reviewed.

Where is this change codified in the Export Administration Regulations?

This policy can be found in Section 742.5(b), which covers the licensing policy for MT-controlled items. BIS will review export and reexport license applications involving this subset of UAVs, as well as MT-controlled items for the design, development, production, or use in this subset of UAVs, on a case-by-case review to determine whether the export or reexport will be used in support of WMD activities or military activities contrary to U.S. national security, or whether there is a risk of diversion to support such activities.

Does this change in the treatment of this subset of UAVs apply only to U.S.-origin UAVs?

No. As described in Section 742.5(b) of the EAR, applications involving UAVs (regardless of origin) that meet the specified range, payload, and speed parameters will be subject to the new review policy, along with applications involving MT-controlled items intended for export in support of the design, development, production, or use of such UAVs.