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§ 744.1 GENERAL PROVISIONS

(a)(1) Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end users and end uses as introduced under General Prohibitions Five (End use/End users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, and 744.4 prohibit exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological weapons proliferation activities. Section 744.5 prohibits exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses. Consistent with General Prohibition Seven (Support of Proliferation Activities and certain Military-Intelligence End Uses and End Users (“U.S. person” activities)), §744.6 prohibits specific activities by U.S. persons in support of certain nuclear, missile, chemical and biological weapons end uses, and whole plants for chemical weapons precursors, as well as certain military-intelligence end uses and military-intelligence end users. Section 744.7 prohibits exports and reexports of certain items for certain aircraft and vessels. Section 744.8 prohibits exports and reexports without authorization to certain parties who have been designated as proliferators of weapons of mass destruction or as supporters of such proliferators pursuant to Executive Order 13382. Section 744.9 sets forth restrictions on exports, reexports, and transfers (in-country) of certain cameras, systems, or related components. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in supplement no. 4 of this part. Section 744.11 imposes license requirements, to the extent specified in supplement no. 4 to this part on entities listed in supplement no. 4 to this part for

activities contrary to the national security or foreign policy interests of the United States. Sections 744.12, 744.13, and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 sets forth the conditions for exports, reexports, and transfers (in-country) to persons listed on the Unverified List (UVL) in supplement no. 6 to this part, the criteria for revising the UVL, as well as procedures for requesting removal or modification of a listing on the UVL. Section 744.16 sets forth the license requirements, policies and procedures for the Entity List. Section 744.17 sets forth restrictions on exports, reexports, and transfers (in-country) of microprocessors and associated “software” and “technology” for military end uses and to military end users. Section 744.18 sets forth restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315. Section 744.19 sets forth BIS’s licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in supplement no. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in supplement no. 4 to this part. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain transfers of items subject to the EAR to denied parties. Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of items on the CCL for a military end use or military end user in Burma, the People’s Republic of China (PRC or China), Russia, or Venezuela. Section 744.22 imposes restrictions on exports, reexports, and transfers (in-country) for a military-intelligence end use or military-intelligence end user in Burma, China, Russia, or

Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR). Section 744.23 sets forth restrictions on exports, reexports, and transfers (in-country) for certain “supercomputer” and semiconductor manufacturing end use.

(2) If controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections of part 744, and license applications will be reviewed under all applicable licensing policies.

(b) Steps

The following are steps you should follow in using the provisions of this part:

(1) **Review end-use and end-user prohibitions.** First, review each end-use and end-user prohibition described in this part to learn the scope of these prohibitions.

(2) **Determine applicability.** Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, shipment, transmission, transfer (in-country) or other activity. See supplement no. 1 to part 732 for guidance. For exports, reexports, shipments, transmissions, or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b), 744.6(c), 744.9(b), 744.11(c), 744.17(b), 744.21(b), or 744.22(b) of the EAR, you may not proceed any further with the transaction unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to apply for a license). The provisions of § 748.4(d)(2) of the EAR shall not apply to license applications submitted pursuant to a notification from BIS that occurs while an export, reexport, or transfer (in-country) is in transit.

§ 744.2 RESTRICTIONS ON CERTAIN NUCLEAR END-USES

(a) *General prohibition*

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) to any destination, other than countries in Supplement No. 3 to this part, an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know¹ that the item will be used directly or indirectly in any one or more of the following activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(1) Nuclear explosive activities. Nuclear explosive activities, including research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device, or components or subsystems of such a device.^{2 3}

(2) Unsafeguarded nuclear activities. Activities including research on, or development, design, manufacture, construction, operation, or maintenance of any nuclear reactor, critical facility, facility for the fabrication of nuclear fuel, facility for the conversion of nuclear material

¹ Part 772 of the EAR defines “knowledge” for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as “know” and “reason to know”, encompasses more than positive knowledge. Thus, the use of “know” in this section in place of the former wording “know or have reason to know” does not lessen or otherwise change the responsibilities of persons subject to the EAR.

² Nuclear explosive devices and any article, material, equipment, or device specifically designed or specially modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Directorate of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, items specifically

from one chemical form to another, or separate storage installation, where there is no obligation to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation when it contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

(3) Safeguarded and unsafeguarded nuclear activities. Safeguarded and unsafeguarded nuclear fuel cycle activities, including research on or development, design, manufacture, construction, operation or maintenance of any of the following facilities, or components for such facilities:⁴

(i) Facilities for the chemical processing of irradiated special nuclear or source material;

(ii) Facilities for the production of heavy water;

(iii) Facilities for the separation of isotopes of source and special nuclear material; or

(iv) Facilities for the fabrication of nuclear reactor fuel containing plutonium.

(b) *Additional prohibition on persons informed by BIS*

designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

³ Also see §§744.5 and 748.4 of the EAR for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

⁴ Such activities may also require a specific authorization from the Secretary of Energy pursuant to §57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy's regulations published in 10 CFR 810.

BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) Exceptions

Despite the prohibitions described in paragraph (a) and (b) of this section, you may export technology subject to the EAR under the *operation technology and software* or *sales technology and software* provisions of License Exception TSU (see §740.13(a) and (b)), but *only* to and for use in countries listed in Supplement No. 3 to part 744 of the EAR (Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)). Notwithstanding the provisions of part 740 of the EAR, the provisions of §740.13(a) and (b) will only overcome General Prohibition Five for countries listed in Supplement No. 3 to part 744 of the EAR.

(d) License review standards

The following factors are among those used by the United States to determine whether to grant or deny license applications required under this section:

(1) Whether the commodities, software, or technology to be transferred are appropriate for

the stated end-use and whether that stated end-use is appropriate for the end-user;

(2) The significance for nuclear purposes of the particular commodity, software, or technology;

(3) Whether the commodities, software, or technology to be exported are to be used in research on or for the development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;

(4) The types of assurances or guarantees given against use for nuclear explosive purposes or proliferation in the particular case;

(5) Whether the end-user has been engaged in clandestine or illegal procurement activities;

(6) Whether an application for a license to export to the end-user has previously been denied, or whether the end-use has previously diverted items received under a license, License Exception, or NLR to unauthorized activities;

(7) Whether the export would present an unacceptable risk of diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in §744.2(a) of the EAR;

(8) The nonproliferation credentials of the importing country, based on consideration of the following factors:

(i) Whether the importing country is a party to the Nuclear Non-Proliferation Treaty (NPT) or to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (see Supplement No. 2 to part 742 of the EAR), or to a similar international legally-binding nuclear nonproliferation agreement;

(ii) Whether the importing country has all of its nuclear activities, facilities or installations that are operational, being designed, or under construction, under International Atomic Energy

Agency (IAEA) safeguards or equivalent full scope safeguards;

(iii) Whether there is an agreement for cooperation in the civil uses of atomic energy between the U.S. and the importing country;

(iv) Whether the actions, statements, and policies of the government of the importing country are in support of nuclear nonproliferation and whether that government is in compliance with its international obligations in the field of nonproliferation;

(v) The degree to which the government of the importing country cooperates in nonproliferation policy generally (e.g., willingness to consult on international nonproliferation issues);

(vi) Intelligence data on the importing country's nuclear intentions and activities; and

(9) Whether the recipient state has sufficient national export controls (as described in paragraph 3 of United Nations Security Council Resolution 1540 (2004)) to prevent an unacceptable risk of retransfer or diversion to a nuclear explosive activity or unsafeguarded nuclear fuel-cycle activity described in § 744.2(a) of the EAR.

§ 744.3 RESTRICTIONS ON CERTAIN ROCKET SYSTEMS (INCLUDING BALLISTIC MISSILES, SPACE LAUNCH VEHICLES AND SOUNDING ROCKETS) AND UNMANNED AERIAL VEHICLES (INCLUDING CRUISE MISSILES, TARGET DRONES AND RECONNAISSANCE DRONES) END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject

to the EAR without a license if, at the time of the export, reexport or transfer (in-country) you know that the item:

(1) Will be used in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of rocket systems or unmanned aerial vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of supplement no. 1 to part 740 of the EAR.

(2) Will be used anywhere in the world except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of rocket systems or unmanned aerial vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of any rocket systems or unmanned aerial vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

(i) The characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned aerial vehicles, or

(ii) Whether the rocket systems or unmanned aerial vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.

NOTE TO PARAGRAPH (a) OF THIS SECTION: For the purposes of this section, “Rocket Systems” include, but are not limited to, ballistic missiles, space launch vehicles, and sounding rockets. Also, for the purposes of this section, “unmanned aerial vehicles” include, but

are not limited to, cruise missiles, target drones and reconnaissance drones.

(b) Additional prohibition on persons informed by BIS

BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport or transfer (in-country) or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

(c) Exceptions

No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) License Review Standards

(1) Applications to export, reexport or transfer (in-country) the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer (in-country) would make a material contribution to the proliferation of certain rocket systems, or unmanned aerial vehicles. When an export, reexport or transfer (in-country) is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action

should be taken on an application required by this section:

(i) The specific nature of the end use;

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of certain rocket systems or unmanned aerial vehicles;

(iii) The capabilities and objectives of the rocket systems or unmanned aerial vehicles of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing for certain rocket system or unmanned aerial vehicle delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

§ 744.4 RESTRICTIONS ON CERTAIN CHEMICAL AND BIOLOGICAL WEAPONS END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know that the item will be used in the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or

destination, worldwide; or in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a whole plant to make chemical weapons precursors specified in ECCN 1C350 in or by countries other than those listed in Country Group A:3 (Australia Group) (see supplement no. 1 to part 740 of the EAR).

(b) Additional prohibition on persons informed by BIS

BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to the activities specified in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) Exceptions

No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) License review standards

(1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer (incountry) would make a material contribution to the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair,

overhaul, or refurbishing of chemical or biological weapons. When an export, reexport, or transfer (in-country) is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

(i) The specific nature of the end-use;

(ii) The significance of the export, reexport, or transfer in terms of its contribution to the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country or the country in which the transfer would take place;

(iv) The types of assurances or guarantees against the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons; and

(v) The existence of a pre-existing contract. See Supplement No. 1 to Part 742 of the EAR for relevant contract sanctity dates.

§ 744.5 RESTRICTIONS ON CERTAIN MARITIME NUCLEAR PROPULSION END-USES

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) certain technology subject to the EAR without a license if at the time of the export, reexport or transfer

(in-country) you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) Exceptions

The exceptions provided in part 740 of the EAR do not apply to the prohibitions described in paragraph (a) of this section.

(c) License review standards

It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with §123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

§ 744.6 RESTRICTIONS ON SPECIFIC ACTIVITIES OF “U.S. PERSONS”

(a) Scope

The general prohibitions in this section apply only to the extent that the underlying activities are not subject to a license requirement or general prohibition administered by another federal department or agency, see, for example, Assistance to Foreign Atomic Energy Activities regulations (10 CFR part 810), administered by the Department of Energy; International Traffic

in Arms Regulations (ITAR) (22 CFR parts 120 through 130), administered by the Department of State; and certain sanctions regulations (to include, but not limited to, 31 CFR parts 500 through 599), administered by the Department of the Treasury. Accordingly, “U.S. persons” are required to seek a license from BIS only for the activities described in this section that are not subject to a license requirement or general prohibition administered by the Department of Energy, Department of State, Department of the Treasury, or other federal department or agency. The issuance of a license by BIS, or any other federal department or agency, does not authorize “U.S. persons” to engage in any activity that is otherwise prohibited by law, including criminal statutes.

(b) General Prohibitions

No “U.S. person” may, without a license from BIS, ‘support’:

(1) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of nuclear explosive devices in or by any country not listed in supplement no. 3 to this part;

(2) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of “missiles” in or by a country listed in Country Groups D:4 or E:2;

(3) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or destination worldwide;

(4) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, shipment, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350,

in or by countries other than those listed in Country Group A:3 (Australia Group); or

(5) A 'military-intelligence end use' or a 'military-intelligence end user,' as defined in § 744.22(f), in Belarus, Burma, Cambodia, the People's Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(6) 'Support' means:

(i) Shipping or transmitting from one foreign country to another foreign country any item not subject to the EAR you know will be used in or by any of the end uses or end users described in paragraphs (b)(1) through (5) of this section, including the sending or taking of such item to or from foreign countries in any manner;

(ii) Transferring (in-country) any item not subject to the EAR you know will be used in or by any of the end uses or end users described in paragraphs (b)(1) through (5) of this section;

(iii) Facilitating such shipment, transmission, or transfer (in-country); or

(iv) Performing any contract, service, or employment you know may assist or benefit any of the end uses or end users described in paragraphs (b)(1) through (5) of this section, including, but not limited to: Ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations in furtherance of.

(c) *Additional prohibitions on "U.S. persons" informed by BIS*

(1) BIS may inform "U.S. persons," either individually by specific notice, through amendment to the EAR published in the Federal Register, or through a separate notice published in the Federal Register, that a license is required because an activity could involve the types of 'support' (as defined in paragraph (b)(6) of this

section) to the end uses or end users described in paragraphs (b)(1) through (5) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the "U.S. person" from compliance with the license requirements of paragraph (b) of this section.

(2) Consistent with paragraph (c)(1) of this section, BIS is hereby informing "U.S. persons" that a license is required for the following activities, which could involve 'support' for the weapons of mass destruction-related end uses set forth in paragraph (b) of this section. Specifically, if you know your export, reexport, or transfer (in-country) meets any of the specified activities described in paragraphs (c)(2)(i) through (iii) of this section, then a license is required for shipping, transmitting, or transferring (in-country); facilitating the shipment, transmission, or transfer (in-country); or servicing (including installation) activities associated with any item, end use, or end user described in any of the following paragraphs:

(i) ***"Development" or "production" of "advanced-node ICs."*** To or within Macau or a destination specified in Country Group D:5, any item not subject to the EAR that you know will be used in the "development" or "production" of integrated circuits at a "facility" of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 where "production" of "advanced-node integrated circuits" occurs;

(ii) ***Category 3 items for "development" or "production" of "advanced-node ICs."*** To or within Macau or a destination specified in Country Group D:5, any item not subject to the EAR and meeting the parameters of any ECCN in Product Groups B, C, D, or E in Category 3 of the

CCL that you know will be used in the “development” or “production” of integrated circuits at a “facility” of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 where “production” of integrated circuits occurs, but you do not know whether “production” of “advanced-node integrated circuits” occurs at such “facility”;

(iii) *Semiconductor manufacturing equipment.* To or within either Macau or a destination specified in Country Group D:5, any item not subject to the EAR and meeting the parameters of ECCNs 3B001.a.4, c, d, f.1.b, k to p; 3B002.b and c; 3D001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c); 3D002 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c); or 3E001 (for 3B001.a.4, c, d, f.1.b, k to p, 3B002.b and c) regardless of end use or end user.

(3) Scope of activities of “U.S. persons” that require a license under paragraph (c)(2) of this section.

(i) Controlled activities. The U.S. persons controls in paragraphs (c)(2)(i) through (iii) of this section apply to persons who:

(A) Authorize the shipment, transmittal, or transfer (in-country) of items not subject to the EAR and described in paragraphs (c)(2)(i) through (iii) of this section;

(B) Conduct the delivery, by shipment, transmittal, or transfer (in-country), of items not subject to the EAR described in paragraphs (c)(2)(i) through (iii) of this section; *or*

(C) Service, including maintaining, repairing, overhauling, or refurbishing items not subject to the EAR described in paragraphs (c)(2)(i) through (iii) of this section.

(ii) *Due diligence.* Appropriate due diligence includes but is not limited to review of publicly available information, capability of items to be provided, proprietary market data, and end-use

statements. “U.S. persons” should conduct due diligence to assess whether the item is for the “development” or “production” of “advanced-node integrated circuits” at a “facility” of an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5, consistent with paragraphs (c)(2)(i) through (iii) of this section. As set forth in paragraph (c)(2)(ii), for items specified in Category 3B, 3C, 3D, or 3E ECCNs, license requirements may apply even when the “U.S. person” does not know whether the activity is for the “development” or “production” of “advanced-node integrated circuits.” In addition, some of the exclusions may require due diligence, such as those in paragraphs (d)(3) and (5) of this section. “U.S. persons” should follow the “Know Your Customer” guidance in supplement no. 3 to part 732 of the EAR. “U.S. persons” can also submit Advisory Opinion requests to BIS pursuant to § 748.3(c) of the EAR for guidance on specific fabrication facilities. To submit an Advisory Opinion request, email RPD2@bis.doc.gov.

(d) *Exceptions and exclusions*(1) Exclusion of certain administrative and clerical activities and information otherwise excluded.

(i) *Exclusion of certain administrative and clerical activities.* Given the policy objective of these controls, the “U.S. persons” criteria in paragraphs (c)(2)(i) through (iii) of this section do not extend to “U.S. persons” conducting administrative or clerical activities (*e.g.*, arranging for shipment or preparing financial documents) or otherwise implementing a decision to approve a restricted shipment, transmittal, or in-country transfer, or to activities of “U.S. persons” that are not directly related to the provision or servicing of specific items to the “development” or “production” of “advanced-node integrated circuits.”

(ii) *Exclusion of information otherwise excluded under the EAR under part 734.* The exclusion of certain activities specified in paragraph (c)(3) of this section only applies to

paragraph (c)(2) of this section, and does not, for example, limit the scope of paragraph (b) of this section or apply to other uses of the term facilitate or facilitation found elsewhere in the EAR. The scope of paragraph (c)(2) of this section does not include information or software that would otherwise be excluded from the EAR based on the exclusion criteria under part 734, e.g., under § 734.7 (entitled “Published”) and § 734.8 “Technology” or “software” that arises during, or results from, fundamental research.

(iii) Exclusion of law enforcement and intelligence operations of the U.S. Government.

Given the policy objective of these controls, the “U.S. persons” criteria in paragraphs (c)(2)(i) through (iii) of this section do not extend to “U.S. persons” conducting law enforcement and intelligence operations of the U.S. Government.

(2) Exclusion to paragraphs (b)(5) and (c)(2)(iii) of this section. Notwithstanding the prohibitions in paragraphs (b)(5) and (c)(2)(iii), “U.S. persons” who are employees of a department or agency of the U.S. Government may ‘support’ a ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as described in paragraphs (b)(5) and (c)(2)(iii), if the ‘support’ is provided in the performance of official duties in furtherance of a U.S. Government program that is authorized by law and subject to control by the President by other means. This paragraph (d)(2) does not authorize a department or agency of the U.S. Government to provide ‘support’ that is otherwise prohibited by other administrative provisions or by statute. ‘Contractor support personnel’ of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. ‘Contractor support personnel’ for the purposes of this paragraph (d)(2) has the same meaning given to that term in § 740.11(b)(2)(ii) of the EAR. This authorization is not available when a department or agency of the U.S. Government acts as an agent on behalf of a non-U.S. Government person.

(3) Exclusion to paragraphs (c)(2)(i) and (ii) of this section. The term “production” in paragraphs (c)(2)(i) and (ii) does not apply to back-end steps such as assembly, test, or packaging that do not alter the integrated circuit technology level. If there is a question at the time of export, reexport, or transfer (in-country) about whether a manufacturing stage is backend or whether a manufacturing stage is back-end or a back-end activity alters the technology level, you may submit an advisory opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(4) Exclusion to paragraphs (c)(2)(i) through (iii) of this section.

(i) Paragraphs (c)(2)(i) through (iii) do not apply to a natural “U.S. person,” as defined in paragraphs (a)(1) and (3) of the definition in § 772.1 of the EAR, employed or working on behalf of a company headquartered in the United States or a destination specified in Country Group A:5 or A:6 and not majority-owned by an entity that is headquartered in either Macau or a destination specified in Country Group D:5.

(ii) Any activities a natural “U.S. person,” as defined in paragraphs (a)(1) and (3) of that term’s definition in § 772.1 of the EAR, undertakes when employed or acting on behalf of a company not headquartered in the United States or a destination specified in Country Group A:5 or A:6 must comply with the requirements in this paragraph (d)(4) as applicable. For example, if a natural “U.S. person” is a freelancer who works or acts on behalf of a company headquartered in the United States or a destination specified in Country Group A:5 or A:6, those activities would not be prohibited under paragraphs (c)(2)(i) through (iii) of this section. However, if that same natural “U.S. person” was also working or acting on behalf of a company headquartered somewhere other than the United States or a destination specified in Country Group A:5 or A:6, the activities performed on behalf of such a company would not be excluded under paragraphs (c)(2)(i) through (iii) and a license

would be required.

(5) Exclusion to paragraph (c)(2)(iii) of this section. Paragraph (c)(2)(iii) does not apply to servicing (including installation) activities unless at a “facility” where “production” of “advanced-node integrated circuits” occurs, which would require a license under paragraph (c)(2)(i) of this section.

(e) License review standards

(1) Applications for a “U.S. person” to ‘support’ (as defined in paragraph (b)(6) of this section) any of the end uses or end users described in paragraphs (b)(1) through (4) of this section will be denied if such support would make a material contribution to the end uses and end users described in paragraphs (b)(1) through (4) of this section.

(2) Applications for a “U.S. person” to ‘support’ (as defined in paragraph (b)(6) of this section) a ‘military-intelligence end use’ or a ‘military-intelligence end user’ as described in paragraph (b)(5) of this section will be reviewed with a presumption of denial.

(3) Applications for licenses submitted pursuant to the notice of a license requirement set forth in paragraph (c)(2) of this section will be reviewed with a presumption of denial for Macau and destinations in Country Group D:5, except activities involving a foreign-made item that is not subject to the EAR and performs the same function as an item subject to the EAR, which will be reviewed with a presumption of approval. All other applications will be reviewed with a license review policy of case-by-case and consider factors, such as technology level, customers, and compliance plans.

§ 744.7 RESTRICTIONS ON CERTAIN EXPORTS TO AND FOR THE USE OF CERTAIN FOREIGN VESSELS OR AIRCRAFT

(a) General end-use prohibition

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

(1) To the country in which the vessel or aircraft is located, and

(2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and

(3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) Exception for U.S. and Canadian carriers

(1) Exception to General End-Use Prohibition. Notwithstanding the general end-use prohibition in paragraph (a) of this section, export, reexport, and transfer (in-country) may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Country Group D:1 (excluding the PRC), (see supplement no. 1 to part 740) provided that such commodities are all of the following:

(i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;

(ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;

(iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight; and

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use, see 15 CFR 30.37(o) of the FTR.

(2) Exports to U.S. or Canadian Airline's Installation or Agent. Exports, reexports, and transfers (in-country) of the commodities described in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's installation or agent in any foreign destination except Country Group D:1 (excluding the PRC), (see supplement no. 1 to part 740) provided such commodities are all of the following:

(i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;

(ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

(iii) In usual and reasonable kinds and quantities; and

(iv) Shipped as cargo for which Electronic Export Information (EEI) is filed to the

Automated Export System (AES) in accordance with the requirements of the Foreign Trade Regulations (FTR) (15 CFR Part 30), except EEI is not required to be filed when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations, see 15 CFR 30.37(o) of the FTR.

(3) Applicable commodities. This §744.7 applies to the commodities listed subject to the provisions in paragraph (b) of this section:

(i) Fuel, including crude oil, petroleum products other than crude oil that are of non-Naval Petroleum Reserves origin or derivation (see § 754.3 of the EAR), and blends of crude oil with such petroleum products;

(ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, provided that any petroleum products other than crude oil which are listed in Supplement No. 1 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (see § 754.3 of the EAR);

(iii) Medical and surgical supplies;

(iv) Food stores;

(v) Slop chest articles;

(vi) Saloon stores or supplies; and

(vii) Equipment and spare parts.

**§ 744.8 RESTRICTIONS ON EXPORTS
AND REEXPORTS TO PERSONS
DESIGNATED PURSUANT TO
EXECUTIVE ORDER 13382 –
BLOCKING PROPERTY OF
WEAPONS OF MASS DESTRUCTION
PROLIFERATORS AND THEIR
SUPPORTERS**

BIS maintains restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13382 of June 28, 2005 (Weapons of Mass Destruction Proliferators and their Supporters). Executive Order 13382 blocks the property and interests in property of persons named in or designated pursuant to Executive Order 13382 in the United States or that comes within the United States or within the possession or control of United States persons. The parties whose property or interests in property are blocked pursuant to Executive Order 13382 are identified by the Department of the Treasury, Office of Foreign Assets Control (OFAC) in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD]. This section imposes export and reexport license requirements for items subject to the EAR on those same parties to further the objectives of Executive Order 13382.

(a) License requirement(s) and authorization

(1) EAR license requirement. A license is required for the export or reexport of any item subject to the EAR to any party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD].

(2) BIS authorization.

(i) To avoid duplication, U.S. persons are not required to seek separate authorization from BIS for an export or reexport to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD] of an item subject to the EAR. If OFAC authorizes an export from the United States or an export or reexport by a U.S. person to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD], such authorization constitutes authorization for purposes of the EAR as well.

(ii) U.S. persons must seek authorization from BIS for the export or reexport to a party listed in Appendix A to 31 CFR Chapter V with the

bracketed suffix [NPWMD] of any item subject to the EAR that is not subject to OFAC's regulatory authority pursuant to Executive Order 13382.

(iii) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD] of any item subject to the EAR.

(iv) Any export or reexport to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD] of any item subject to the EAR and not authorized by OFAC is a violation of the EAR.

(v) Any export or reexport by a U.S. person to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD] of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to a party listed in Appendix A to 31 CFR Chapter V with the bracketed suffix [NPWMD] of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(3) Relation to other EAR license requirements. The license requirements in this section supplement any other requirements set forth elsewhere in the EAR.

(b) License exceptions

No license exceptions are available for the EAR license requirements imposed in this section.

(c) Licensing policy

Applications for EAR licenses required by this section generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

§ 744.9 RESTRICTIONS ON EXPORTS, REEXPORTS, AND TRANSFERS OF CERTAIN CAMERAS, SYSTEMS, OR RELATED COMPONENTS

(a) General prohibitions

(1) In addition to the applicable license requirements for national security, regional stability, anti-terrorism and United Nations embargo reasons in §§ 742.4, 742.6, 742.8, 746.1(b), and 746.3 of the EAR, a license is required to export, reexport, or transfer (in-country) to any destination other than Canada commodities described in ECCNs 0A504 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), or 8A002.d if at the time of export, reexport, or transfer, the exporter, reexporter, or transferor knows or is informed that the item will be or is intended to be:

(i) Used by a “military end user,” as defined in paragraph (d) of this section; or

(ii) Incorporated into a “military commodity” controlled by ECCN 0A919.

(2) The license requirement described in paragraph (a)(1) of this section does not apply to exports, reexports, or transfers (in-country) of items described in that paragraph when such items are being reexported or transferred as part of a military deployment by a unit of the government of a country in Country Group A:1 (see Supplement No. 1 to part 740).

(b) Additional prohibition on exporters, reexporters, or transferors informed by BIS

BIS may inform an exporter, reexporter, or transferor, either individually by specific notice or through amendment to the EAR, that a license is required for the export, reexport, or transfer of commodities described in ECCNs 0A504 (incorporating commodities controlled by ECCNs 6A002 or 6A003, or commodities controlled by 6A993.a that meet the criterion of Note 3.a to 6A003.b.4), 6A002, 6A003, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criteria of Note 3.a to 6A003.b.4), or 8A002.d to specified end users, because BIS has determined that there is an unacceptable risk of diversion to the users or unauthorized incorporation into the “military commodities” described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration.

(c) License review standard

Applications for licenses required by this section will be reviewed by applying the policies that would be applied under the International Traffic in Arms Regulations (22 CFR Part 120 - 130).

(d) Military end-user

In this section, the term “military end-user” means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support “military end-uses” as defined in § 744.17(d).

(e) Exception

Shipments subject to the prohibitions in paragraphs (a) and (b) of this section that are

consigned to and for the official use of the U.S. Government authorized pursuant to § 740.11(b)(2)(ii) of the EAR may be made under License Exception GOV. No other license exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

§ 744.10 RESTRICTIONS ON CERTAIN ENTITIES IN RUSSIA

(a) General prohibition

Certain entities in Russia are included in Supplement No. 4 to this part 744 (Entity List). (See also §744.1(c) of the EAR.) A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR to such entities.

(b) Exceptions

No License Exceptions apply to the prohibition described in paragraph (a) of this section.

(c) License review standard

Applications to export, reexport, or transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

§ 744.11 LICENSE REQUIREMENTS THAT APPLY TO ENTITIES ACTING OR AT SIGNIFICANT RISK OF ACTING CONTRARY TO THE NATIONAL SECURITY OR FOREIGN POLICY INTERESTS OF THE UNITED STATES.

BIS may impose foreign policy export, re-export, and transfer (in-country) license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License

requirements, limitations on use of license exceptions, and license application review policies will be imposed under this section by adding an entity to the Entity List (supplement no. 4 to this part) with a reference to this section and by stating on the Entity List the license requirements and license application review policies that apply to that entity, or by informing an exporter, re-exporter, or transferor pursuant to paragraph (c) of this section that a specific entity is subject to a license requirement, limitations on use of license exceptions and license application review policies as specified in a specific notice provided to an exporter, re-exporter, or transferor. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future, or if it is no longer at significant risk of acting contrary to the national security or foreign policy interests of the United States as described therein. BIS may modify the license exception limitations and license application review policies that apply to a particular entity to implement the policies of this section. BIS will implement the provisions of this section in accordance with the decisions of the End-User Review Committee or, if appropriate in a particular case, in accordance with the decisions of the body to which the End-User Review Committee decision is escalated. The End-User Review Committee will follow the procedures set forth in supplement no. 5 to this part.

(a) License requirement, availability of license exceptions, and license application review policy

A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section

will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

(1) Standards related activity. A license is not required for the release of “technology” or “software” designated EAR99 or controlled on the CCL for anti-terrorism reasons only, when such a release is for a “standards-related activity.” In addition, a license is not required for the release of the following ECCN “items” level paragraphs of “technology” or “software” specifically for the “development,” “production,” or “use” of cryptographic functionality when such a release is for a “standards-related activity:” “software” that is classified under ECCN 5D002.b or 5D002.c.1 (for equipment specified in ECCN 5A002.a and 5A002.c only); “technology” that is classified under ECCN 5E002 (for equipment specified in ECCN 5A002.a, .b and .c); and “technology” for software controlled under ECCN 5D002.b or .c.1 (for equipment specified in ECCN 5A002.a and .c only).

(2) Entity List Foreign-“Direct Product” (FDP) license requirements, review policy, and license exceptions.

(i) Footnote 1 entities. You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(1)(i) of the EAR when an entity designated with footnote 1 on the Entity List in supplement. no. 4 to this part is a party to the transaction. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in § 740.2 of this EAR do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the

“development” or “production” of telecom systems, equipment, and devices below the 5G level (e.g., 4G, 3G) will be reviewed on a case-by-case basis.

(ii) Footnote 4 entities. You may not, without a license, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to this part is a party to the transaction, or that will be used in the “development” or “production” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any such entity. See § 744.23 for additional license requirements that may apply to these entities. The license review policy for foreign-produced items subject to this license requirement is set forth in the entry in supplement no. 4 to this part for each entity with a footnote 4 designation.

(b) Criteria for revising the Entity List

Entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. An entity may pose a significant risk through certain circumstances that may be outside of its own control. Such circumstances that may place an entity at significant risk include situations involving a sustained lack of cooperation by a host government authority, for example, by preventing an end-use check from being conducted, that effectively prevents BIS from determining compliance with the EAR. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to § 744.8, § 744.12, § 744.13, § 744.14, or § 744.18. This section may not be used to place any U.S. person, as defined in § 772.1 of the EAR, on the Entity List.

Paragraphs (b)(1) through (5) of this section provide an illustrative list of activities that could be or represent a significant risk of being contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world.

- (1) Supporting persons engaged in acts of terror.
- (2) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.
- (3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity.
- (4) Prevention of the accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by:
 - (i) The entity precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check; providing false or misleading information; or engaging in dilatory or evasive conduct that effectively prevents the check from occurring or makes the check inaccurate or useless. A nexus between the conduct of the party to be listed and the failure to produce a complete, accurate and useful check is required, even though an express refusal by the party to be listed is not required; or
 - (ii) A sustained lack of cooperation by the host government to schedule and facilitate the completion of an end-use check of entities identified on the Unverified List pursuant to

§ 744.15, resulting in sufficient concern such that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the entity and the possible imposition of license conditions or license denial enhance BIS's ability to prevent violations of the EAR.

- (5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

(c) *Additional prohibition on persons informed by BIS*

BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for:

- (1) A specific export, reexport, or transfer (in-country) because there is an unacceptable risk that the export, reexport, or transfer (in-country) is intended to circumvent the license requirement imposed on an entity listed in supplement no. 4 to this part; or
- (2) The export, reexport, or transfer (in-country) of specified items to a certain party because there is an unacceptable risk that the party is acting as an agent, front, or shell company for an entity listed in supplement no. 4 to this part, or is otherwise assisting that listed entity in circumventing the license requirement set forth in that entity's entry in supplement no. 4 to this part; or
- (3) The export, reexport, or transfer (in-country) of specified items to a certain party because there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign

policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world, and those acting on behalf of such entity. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The specific notice will include the license requirement, limitations on use of license exceptions, and license application review policy with which that exporter, re-exporter, or transferor must comply pursuant to this paragraph (c)(3). The ERC may add such entities to the Entity List in supplement no. 4 to this part.

**§ 744.12 RESTRICTIONS ON
EXPORTS AND REEXPORTS TO
PERSONS DESIGNATED IN OR
PURSUANT TO EXECUTIVE ORDER
13224 (SPECIALLY DESIGNATED
GLOBAL TERRORIST) (SDGT)**

BIS maintains restrictions on exports and reexports to persons designated in or pursuant to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism). These persons include individuals and entities listed in the Annex to Executive Order 13224, as well as persons subsequently designated by the Secretary of State or Secretary of the Treasury pursuant to criteria set forth in the order. Pursuant to Executive Order 13224, the Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains 31 CFR part 594, the Global Terrorism Sanctions Regulations. OFAC announces the names of persons designated pursuant to Executive Order 13224 in the Federal Register and includes such persons in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. The Department of State also announces

the names of foreign persons designated pursuant to Executive Order 13224 in the Federal Register. All persons designated in or pursuant to Executive Order 13224 are identified in Appendix A to 31 CFR Chapter V by the bracketed initials [SDGT] and are also known as Specially Designated Global Terrorists (SDGTs).

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an SDGT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDGT of an item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224. Therefore, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR that is not subject to OFAC's Global Terrorism Sanctions Regulations in 31 CFR Part 594.

(4) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to an SDGT of any item subject to the EAR.

(5) Any export or reexport to an SDGT of any item subject to both the EAR and OFAC's regulatory authority pursuant to Executive Order 13224 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDGT of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDGT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization are available for any export or reexport to an SDGT of any item subject to the EAR.

(c) Licensing Policy

Applications for licenses for the export or reexport to an SDGT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract Sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE TO §744.12: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

§ 744.13 RESTRICTIONS ON EXPORTS AND REEXPORTS TO PERSONS DESIGNATED PURSUANT TO EXECUTIVE ORDER 12947 (SPECIALLY DESIGNATED TERRORISTS) (SDT)

Consistent with the purpose of Executive Order 12947 of January 23, 1995, BIS maintains restrictions on exports and reexports to Specially Designated Terrorists (SDTs). Executive Order 12947 prohibits transactions by U.S. persons with terrorists who threaten to disrupt the Middle East peace process. Pursuant to the Executive Order, the Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains 31 CFR part

595, the Terrorism Sanctions Regulations. In Appendix A to 31 CFR Chapter V, pursuant to 31 CFR part 595, these Specially Designated Terrorists are identified by the bracketed suffix initials [SDT]. The requirements set forth below further the objectives of Executive Order 12947.

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an SDT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDT of an item subject both to the EAR and to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595. Therefore, if OFAC authorizes an export or reexport of an item by a U.S. person to a SDT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDT of an item subject to the EAR but not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an SDT of any item subject to the EAR.

(5) Any export or reexport to an SDT by a U.S. person of any item subject both to the EAR and OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDT of any item subject to the EAR that is not subject to OFAC's Terrorism Sanctions Regulations in 31 CFR part 595 and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDT of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization are available for export or reexport to an SDT of any item subject to the EAR.

(c) Licensing policy

Applications for licenses for the export or reexport to an SDT of any item subject to the EAR generally will be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

NOTE TO §744.13: *This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.*

§ 744.14 RESTRICTIONS ON EXPORTS AND REEXPORTS TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS (FTOs)

Consistent with the objectives of section 219 of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1189), and section 303 of the Antiterrorism and Effective Death Penalty Act 1996, as amended (Anti-Terrorism Act) (18 U.S.C. 2339B) (Public Law 104-132. 110 Stat. 1214-1319), BIS maintains restrictions on exports and reexports to organizations designated as Foreign Terrorist Organizations (FTOs) pursuant to section 219 of the INA. The Department of the Treasury, Office of Foreign

Assets Control, maintains 31 CFR part 597, the Foreign Terrorist Organizations Sanctions Regulations, requiring U.S. financial institutions to block all financial transactions involving assets of designated FTOs within the possession or control of such U.S. financial institutions. Section 303 of the Anti-Terrorism Act prohibits persons within the United States or subject to U.S. jurisdiction from knowingly providing material support or resources to a designated FTO and makes violations punishable by criminal penalties under title 18, United States Code. These designated FTOs are listed in Appendix A to 31 CFR Chapter V and identified by the bracketed initials [FTO]. A designation of a foreign organization determined to meet the criteria of section 219 of the INA takes effect upon publication in the Federal Register by the Secretary of State, or the Secretary's designee.

(a) License requirement(s)

(1) A license requirement applies to the export or reexport to an FTO of any item subject to the EAR.

(2) U.S. persons must seek authorization from BIS for the export or reexport to an FTO of any item subject to the EAR.

(3) Non-U.S. persons must seek authorization from BIS for the export from abroad or reexport to an FTO of any item subject to the EAR.

(4) Any export or reexport to an FTO by any person of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(5) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorization for items described by paragraph (a) of this section are available for exports or reexports to FTOs.

(c) Licensing policy

Applications for exports and reexports to FTOs of all items identified by paragraph (a) of this section will generally be denied, to the extent they constitute material support or resources, as defined in 18 U.S.C. 2339A(b).

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

(e) FTOs also designated as SDTs or SDGTs

In cases in which an FTO is also an SDT, as described in §744.13, or an SDGT, as described in §744.12, the license requirements and licensing policy set forth in §744.13 or §744.12 will apply.

NOTE TO §744.14: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

**§ 744.15 RESTRICTIONS ON
EXPORTS, REEXPORTS AND
TRANSFERS (IN-COUNTRY) TO
PERSONS LISTED ON THE
UNVERIFIED LIST**

(a) General requirement

In addition to the requirements set forth elsewhere in the EAR, exports, reexports, or transfers (in-country) subject to the EAR involving parties to the transaction who are listed on the Unverified List (UVL) must be made in accordance with paragraph (b) of this section. The names and addresses of foreign persons subject to end-user controls based on the criteria

described in paragraph (c) of this section are identified in the Unverified List found in Supplement No. 6 to this part. Requirements found elsewhere in the EAR also apply, including but not limited to any license requirements, the record filing requirements pursuant to § 758.1(b)(8), and the restrictions on license exceptions described in § 740.2(a)(17) of the EAR.

(b) UVL statement

Before proceeding with any export, reexport, or transfer (in-country) subject to the EAR that is not subject to a license requirement, involving a person listed on the Unverified List as a party described in § 748.5 of the EAR, an exporter, reexporter, or transferor (in-country) must obtain a UVL statement from such person, according to the provisions set forth in this section. The statement must be retained in accordance with part 762 of the EAR.

(1) One UVL statement may be used for multiple exports, reexports, and transfers (in-country) of the same items between the same parties, so long as the party names, the description(s) of the items and the ECCNs are correct. If one UVL statement is used for multiple exports, reexports, and transfers (in-country), the exporter, reexporter, and transferor must maintain a log or other record that identifies each export, reexport, and transfer (in-country) made pursuant to this section and the specific UVL statement that is associated with each. The log or record must be retained in accordance with Part 762 of the EAR.

(2) The UVL statement must be in writing, signed and dated by an individual of sufficient authority to legally bind the UVL party, and state the following:

(i) Name of UVL party; complete physical address, to include shipping, corporate, and end user addresses, if different (simply listing a post office box is insufficient); telephone number; fax number; e-mail address; Web site (if available); and name and title of individual signing the UVL

statement.

(ii) Agrees not to use the item(s) for any use prohibited by the United States Export Administration Regulations (EAR), 15 C.F.R. Parts 730-772, and agrees not to reexport or transfer (in-country) the item(s) to any destination, use or user prohibited by the EAR.

(iii) Declares that the end use, end user, and country of ultimate destination of the item(s) subject to the EAR are as follows: [INSERT END USE, END USER, AND COUNTRY OF ULTIMATE DESTINATION].

(iv) Agrees to cooperate with end-use checks, including a Post-Shipment Verification, conducted by or on behalf of the Bureau of Industry and Security, U.S. Department of Commerce, for any item subject to the EAR in transactions to which they were a party in the last five years. This cooperation includes facilitating the timely conduct of the check and providing full and accurate information concerning the disposition of items subject to the EAR.

(v) Agrees to provide copies of this document and all other export, reexport or transfer (in-country) records required to be retained in part 762 of the EAR.

(vi) Certifies that the individual signing the UVL statement has sufficient authority to legally bind the party.

(c) Criteria for revising the Unverified List

(1) Foreign persons who are parties to an export, reexport, and transfer (in-country) subject to the EAR may be added to the Unverified List if BIS or federal officials acting on BIS's behalf cannot verify the *bona fides* (i.e., legitimacy and reliability relating to the end use and end user of items subject to the EAR) of such persons because an end-use check, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside of the U.S. Government's

control. Examples in paragraphs (c)(1)(i) through (iii) of this section provide an illustrative list of those circumstances.

(i) During the conduct of an end-use check, the subject of the check is unable to demonstrate the disposition of items subject to the EAR.

(ii) The existence or authenticity of the subject of an end-use check cannot be verified (e.g., the subject of the check cannot be located or contacted).

(iii) Lack of cooperation by the host government authority prevents an end-use check from being conducted.

(2) BIS will remove a person from the Unverified List when BIS is able to verify the *bona fides* of the listed person as an end user, consignee, or other party to exports, reexports, or transfers (in-country) involving items subject to the EAR by completing a PLC or PSV. In the limited circumstance involving a PLC or PSV that cannot be completed due to lack of host government cooperation, an alternative *bona fides* verification process may be determined by BIS to be sufficient. A determination to remove a person from the Unverified List based on the criteria in this paragraph is separate from any determination made by BIS pursuant to § 744.11(b) of the EAR, and must be requested through paragraph (d) of this section.

(d) Procedure for requesting removal of a person on the Unverified List

Any person listed on the Unverified List may request that its listing be amended or removed.

(1) All such requests, including reasons therefor and information that verifies the *bona fides*, i.e., legitimacy and reliability of the person listed on the Unverified List as an end user, consignee or other party to exports, reexports, and transfers (in-country) of items subject to the EAR, must be in writing and sent to: Director, Office of Enforcement Analysis, Bureau of Industry and

Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 4065, Washington, D.C. 20230, via fax to (202) 482-0971, or by e-mail to UVLRequest@bis.doc.gov.

(2) The Deputy Assistant Secretary for Export Enforcement will review such requests and will convey the decision on the request to the requester in writing based on an assessment of the listed person's *bona fides* as a party to exports, reexports, and transfers (in-country) subject to the EAR. That decision will be the final agency action on the request.

§ 744.16 ENTITY LIST

The Entity List (Supplement No. 4 to part 744) identifies persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The entities are added to the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR

(a) License requirements

In addition to the license requirements for items specified on the CCL, you may not, without a license from BIS, export, reexport, or transfer (in-country) any items included in the License Requirement column of an entity's entry on the Entity List (supplement no. 4 to this part) when that entity is a party to a transaction as described in § 748.5(c) through (f) of the EAR. The specific license requirement for each listed entity is identified in the license requirement column on the Entity List in supplement no. 4 to this part. A license is not required for the release of certain "technology" or "software" when such a release is for a "standards-related activity," as described in §744.11(a)(1) and §772.1 of the EAR.

(b) License exceptions

No license exceptions are available for exports, reexports or transfers (in-country) to listed entities of specified items, except license exceptions for items listed in §740.2(a)(5) of the EAR destined to listed Indian or Pakistani entities to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, and in the case of entities added to the Entity List pursuant to §744.20, to the extent specified on the Entity List.

(c) License review policy

(1) General review policy. The license review policy for each listed entity is identified in the License Review Policy column on the Entity List.

(d) The End-User Review Committee (ERC)

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, generally makes decisions regarding additions to, removals from, or other modifications to the Entity List.

(e) Removal or modification requests

Any entity listed on the Entity List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Room 3886, Washington, DC 20230.

(1) **Review.** The ERC will review such requests in accordance with the procedures set forth in Supplement No. 5 to this part.

(2) **BIS action.** The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

§ 744.17 RESTRICTIONS ON CERTAIN EXPORTS, REEXPORTS AND TRANSFERS (IN-COUNTRY) OF MICROPROCESSORS AND ASSOCIATED “SOFTWARE” AND “TECHNOLOGY” FOR ‘MILITARY END USES’ AND TO ‘MILITARY END USERS.’

(a) General prohibition

In addition to the license requirements set forth elsewhere in the EAR, you may not export, reexport or transfer (in-country) microprocessors (“microprocessor microcircuits,” “microcomputer microcircuits,” and microcontroller microcircuits having a processing speed of 5 GFLOPS or more and an arithmetic logic unit with an access width of 32 bit or more, including those incorporating “information security” functionality), or associated “software” and “technology” for the “production” or “development” of such microprocessors without a license if, at the time of the export, reexport or transfer (in-country), you know, have reason to know, or are informed by BIS that the item will be or is intended to be used for a ‘military end use,’ as defined in paragraph (d) of this section, in a destination listed in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR); or by a ‘military end user,’ as defined in paragraph (e) of this section, in a destination listed in Country Group D:1.

(b) Additional prohibition on exporters or reexporters informed by BIS

BIS may inform an exporter, reexporter or transferor, either individually by specific notice or through amendment to the EAR, that a license is required for export, reexport or transfer (in-country) of items described in paragraph (a) of this section to specified end users, because BIS has determined that there is an unacceptable risk of diversion to the end uses or end users described in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export

Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter, reexporter or transferor from compliance with the license requirements of paragraph (a) of this section.

(c) License review standards

There is a presumption of denial for applications to export, reexport or transfer (in-country) items subject to this section.

(d) ‘Military end-use’

In this section, the phrase ‘military end use’ means incorporation into: a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations) or the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement website at <http://www.wassenaar.org>); commodities classified under ECCNs ending in “A018” or under “600 series” ECCNs; or any commodity that is designed for the “use,” “development,” “production,” or deployment of military items described on the USML, the Wassenaar Arrangement Munitions List or classified under ECCNs ending in “A018” or under “600 series” ECCNs. Supplement No. 1 of this part lists examples of ‘military end use.’

(e) ‘Military end user’

In this section, the term ‘military end user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (d) of this section.

(f) Exceptions

The prohibitions described in paragraphs (a) and (b) of this section supersede any license exception or No License Required (NLR) designation that would otherwise apply to a transaction subject to the EAR, except that this license requirement does not apply to exports, reexports or transfers (in-country) of items for or on behalf of the official use by personnel and agencies of the U.S. Government or to agencies of a cooperating government authorized by License Exception GOV pursuant to § 740.11 of the EAR. See § 740.11(b)(1) of the EAR for the definition of ‘agency of the U.S. Government’ and §740.11(c)(1) for the definition of ‘agency of a cooperating government.’

**§ 744.18 RESTRICTIONS ON
EXPORTS, REEXPORTS AND
TRANSFERS TO PERSONS
DESIGNATED IN OR PURSUANT TO
EXECUTIVE ORDER 13315**

Consistent with Executive Order (E.O.) 13315 of August 28, 2003 (“Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions”), BIS maintains restrictions on exports, reexports, and transfers to persons designated in or pursuant to E.O. 13315. These persons include individuals and entities listed in the Annex to Executive Order 13315, as well as persons subsequently designated pursuant to criteria set forth in the order. OFAC includes the names of persons designated pursuant to E.O. 13315 in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. All persons designated in or pursuant to E.O. 13315 are identified in Appendix A by the bracketed initials [IRAQ2].

(a) License Requirements

(1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR to –

(i) Persons listed in the Annex to E.O. 13315 of August 28, 2003; or

(ii) Persons determined to be subject to E.O. 13315.

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) Exceptions

No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR.

(c) Licensing policy

Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) Contract sanctity

Contract sanctity provisions are not available for license applications reviewed under this section.

**§744.19 LICENSING POLICY
REGARDING PERSONS
SANCTIONED PURSUANT TO
SPECIFIED STATUTES**

Notwithstanding any other licensing policy elsewhere in the EAR, BIS will deny any export or reexport license application if any person who is a party to the transaction (*i.e.*, the applicant, other party authorized to receive a license, purchaser, intermediate consignee, ultimate consignee, or end-user) is subject to one or more of the sanctions described in paragraphs (a), (b), (c) and (e) of this section and will deny any export or reexport license application for an item listed on the Commerce Control List with a reason for control of MT if a person who is a party to the transaction is subject to a sanction described in paragraph (d) of this section.

(a) A sanction issued pursuant to the Iran-Iraq

Arms Nonproliferation Act of 1992 (50 U.S.C. 1701 note) that prohibits the issuance of any license to or by the sanctioned person.

(b) A sanction issued pursuant to the Iran, North Korea, and Syria Nonproliferation Act (50 U.S.C.1701 note) that prohibits the granting of a license and requires the suspension of an existing license for the transfer to foreign persons of items, the export of which is controlled under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420), or the Export Administration Regulations.

(c) A sanction issued pursuant to section 11B(b)(1)(B)(ii) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420), that prohibits the issuance of new licenses for exports to the sanctioned person of items controlled pursuant to the Export Administration Act of 1979, as amended.

(d) A sanction issued pursuant to section 11B(b)(1)(B)(i) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420), that prohibits the issuance of new licenses for exports to the sanctioned person of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979, as amended.

(e) A sanction issued pursuant to the Iran Sanctions Act of 1996 (50 U.S.C. 1701 note) that prohibits the issuance of a specific license or grant of any other specific permission or authority to export any goods or technology to a sanctioned person under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420).

**§ 744.20 LICENSE REQUIREMENTS
THAT APPLY TO CERTAIN
SANCTIONED ENTITIES**

BIS may impose, as foreign policy controls, export, reexport, and transfer (in-country) license requirements and set licensing policy with respect

to certain entities that have been sanctioned by the State Department. Such license requirements and policy are in addition to those imposed elsewhere in the EAR. License requirements and licensing policy may be imposed pursuant to this section even when the sanction and the legal authority under which the State Department imposed the sanction do not require or authorize the imposition of any license requirement or licensing policy. License requirements and licensing policy will be imposed pursuant to this section by adding an entity to the Entity List in accordance with paragraphs (a), (b), and (c) of this section.

(a) General requirement

Certain entities that have been sanctioned by the State Department are listed in Supplement No. 4 to this part (the Entity List) with a reference to this section. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item to such entities.

(b) License Exceptions

No license exception may be used to export, reexport, or transfer (in-country) to such entities unless specifically authorized on the Entity List.

(c) Licensing policy

Applications to export, reexport, or transfer (in-country) to such entities will be reviewed according to the licensing policy set forth on the Entity List.

**§ 744.21 RESTRICTIONS ON CERTAIN
'MILITARY END USES' OR
'MILITARY END USERS'**

(a) General prohibition.

In addition to the license requirements for items specified on the Commerce Control List (CCL)

(supplement no. 1 to part 774), you may not export, reexport, or transfer (in-country):

(1) Any item subject to the EAR listed in supplement no. 2 to this part without a license if, at the time of the export, reexport, or transfer (in-country), you have “knowledge,” as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a ‘military end use,’ as defined in paragraph (f) of this section, in Burma, Cambodia, the People’s Republic of China (China), or Venezuela, or a Burmese, Cambodian, Chinese, or Venezuelan ‘military end user,’ as defined in paragraph (g) of this section, wherever located. ‘Military end users’ located outside of Burma, Cambodia, China, or Venezuela are limited to entities identified on the ‘Military End-User’ (MEU) List under supplement no. 7 to this part.

(2) Any item subject to the EAR without a license if, at the time of the export, reexport, or transfer (in-country), you have “knowledge,” as defined in § 772.1 of the EAR that the item is intended, entirely or in part, for a ‘military end use,’ as defined in paragraph (f) of this section, in Belarus or Russia, or a Belarusian or Russian ‘military end user,’ as defined in paragraph (g) of this section, wherever located. Belarusian or Russian ‘military end users’ located outside of Belarus or Russia are limited to entities identified on the Entity List under supplement no. 4 to this part 744 with a footnote 3 designation.

Note 1 to paragraphs (a)(1) and (2):

An entity anywhere in the world, including in Burma, Cambodia, China, or Venezuela, may be listed on the Entity List as a Belarusian or Russian ‘military end user’ with a footnote 3 designation. If the entity is not a Belarusian or Russian ‘military end user,’ but has otherwise been identified by the End User Review Committee (ERC) as a ‘military end user,’ that entity may be identified under the ‘Military End-User’ (MEU) List under supplement no. 7 to this part. As noted in paragraph (a)(1) of this section, exporters, reexporters, and transferors, even in the absence of any such notification, are

not excused from compliance with the license requirements of this paragraph (a) for all entities in Burma, Cambodia, China, or Venezuela to determine whether the entity is a ‘military end user’ for purposes of paragraph (g) of this section because supplement no. 7 is not an exhaustive listing of ‘military end users’ in those countries. As noted in paragraph (a)(2) of this section, exporters, reexporters, and transferors, even in the absence of any such notification, are not excused from compliance with the license requirements of this paragraph (a) for all entities in Belarus or Russia to determine whether the entity is a ‘military end user’ for purposes of paragraph (g) of this section because supplement no. 4 under this part is not an exhaustive listing of ‘military end users’ in those countries.

(b) Additional prohibition on those informed by BIS

BIS may inform you either individually by specific notice, through amendment to the EAR published in the *Federal Register*, or through a separate notification published in the *Federal Register*, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a ‘military end use’ in Belarus, Burma, Cambodia, China, the Russian Federation, or Venezuela, or for a Belarusian, Burmese, Cambodian, Chinese, Russian, or Venezuelan ‘military end user,’ wherever located. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary’s designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) ‘Military End-User’ (MEU) List. BIS may inform and provide notice to the public that

certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a ‘military end user’ pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a ‘military end use’ in Belarus, Burma, Cambodia, China, the Russian Federation, or Venezuela, or for a Belarusian, Burmese, Cambodian, Chinese, Russian, or Venezuelan ‘military end user,’ wherever located. Such Burmese, Cambodian, Chinese, or Venezuelan ‘military end users’ may be added to supplement no. 7 to this part – ‘Military End-User’ (MEU) List. Such Belarusian or Russian ‘military end users’ may also be added to supplement no. 4 to this part – Entity List and will be listed with a footnote 3 designation. License requirements for listed MEU are described in paragraph (b)(1)(ii) of this section. The listing of entities under supplements no. 7 or 4 to this part is not an exhaustive listing of ‘military end users’ for purposes of this section, except for ‘military end users’ of a country identified in this section (Belarus, Burma, Cambodia, China, the Russian Federation, or Venezuela) not located in that same country. As specified in paragraphs (a)(1) and (2) of this section, ‘military end users’ of a country identified in this section not located in that same country are exhaustively listed on either the Entity List with a footnote 3 designation or on the Military End-User (MEU) List under supplement no. 7 this part. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement no. 7 or 4 to this part are subject to a license requirement under paragraph (a) of this section. The process in this paragraph (b)(1) for placing entities on the MEU List and Entity List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) End-User Review Committee (ERC). The End-User Review Committee (ERC), composed of representatives of the Departments of

Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the MEU List and Entity List. Decisions by the ERC for purposes of the MEU List and Entity List will be made following the procedures identified in this section and in supplement no. 5 to this part - Procedures for End-User Review Committee Entity List and ‘Military End User’ (MEU) List Decisions.

(ii) License requirement for parties to the transaction. Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to this part when an entity that is listed on the MEU List as a Burmese, Cambodian, Chinese, or Venezuelan ‘military end user’ is a party to the transaction as described in § 748.5(c) through (f) of the EAR. Consistent with paragraph (a) of this section, a license is required for the export, reexport, or transfer (in-country) of any item subject to the EAR when a Belarusian or Russian ‘military end user’ that is listed on the Entity List pursuant to this section is a party to the transaction as described in § 748.5(c) through (f) of the EAR.

(2) Requests for removal from or modification of ‘Military End User’ (MEU) List. Any entity listed on the MEU List or Entity List pursuant to this section may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Room 3886, Washington, DC 20230; or by email at ERC@bis.doc.gov. In order for an entity listed on the MEU List or the Entity List pursuant to this section to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a ‘military end user’ for purposes of this section.

(i) Review. The ERC will review such requests for removal or modification in accordance with the procedures set forth in supplement no. 5 to this part.

(ii) BIS action. The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

(c) License exception

Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in §740.11(b)(2)(i) and (ii) of the EAR.

(d) License application procedure

When submitting a license application pursuant to this section, you must state in the “additional information” block of the application that “this application is submitted because of the license requirement in this section (Restrictions on certain ‘military end uses’ or ‘military end users’).” In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the ‘military end use’ and ‘military end user(s)’ of the item(s). If you submit an attachment with your license application, you must reference the attachment in the “additional information” block of the application.

(e) License review standards

(1) Applications to export, reexport, or transfer (in-country) items described in paragraph (a)(1) of this section will be reviewed with a presumption of denial. Applications to export, reexport, or transfer (in-country) items described in paragraph (a)(2) of this section will be reviewed with a policy of denial except for food and medicine designated as EAR99, which will

be reviewed under a case-by-case review policy, unless otherwise stated in the license review policy column on the Entity List (supplement no. 4 to this part).

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for any reason that are destined for a ‘military end use’ in Belarus, Burma, Cambodia, China, the Russian Federation, or Venezuela or for a Belarusian, Burmese, Cambodian, Chinese, Russian, or Venezuelan ‘military end user,’ wherever located, also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use*

In this section, ‘military end use’ means: incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into items classified under Export Control Classification Numbers (ECCNs) ending in “A018” or under “600 series” ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the USML, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs.

(g) *Military end user*

In this section, the term ‘military end user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations (excluding those described in § 744.22(f)(2)), or any person or entity whose actions or functions are intended to support ‘military end uses’ as

defined in paragraph (f) of this section.

(h) *Effects on contracts*

Transactions involving the export, reexport, or transfer (in country) of items to or within Venezuela are not subject to the provisions of this section if the contracts for such transactions were signed prior to November 7, 2014.

§ 744.22 RESTRICTIONS ON EXPORTS, REEXPORTS, AND TRANSFERS (IN-COUNTRY) TO CERTAIN MILITARY-INTELLIGENCE END USES OR END USERS

(a) *General prohibition*

In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), you may not export, reexport, or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport, or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a ‘military-intelligence end use’ in Belarus, Burma, Cambodia, the People’s Republic of China (China), Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR), or for a Belarusian, Burmese, Cambodian, Chinese, Russian, or Venezuelan ‘military-intelligence end user’ or a ‘military-intelligence end user’ of a country listed in Country Group E:1 or E:2, wherever located. ‘Military intelligence end-users’ located outside of Belarus, Burma, Cambodia, the People’s Republic of China (China), Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2, are limited to entities identified under paragraph (f)(2) of this section.

(b) *Additional prohibition on those informed by BIS*

BIS may inform you either individually by specific notice, through amendment to the EAR published in the *Federal Register*, or through a separate notification published in the Federal Register, that a license is required for specific exports, reexports, or transfers (in-country) of any item subject to the EAR because there is an unacceptable risk of use in, or diversion to, a ‘military-intelligence end use’ in Belarus, Burma, Cambodia, China, Russia, or Venezuela; or a country listed in Country Group E:1 or E:2 (see supplement no. 1 to part 740 of the EAR), or for a Belarusian, Burmese, Cambodian, Chinese, Russian, or Venezuelan ‘military-intelligence end user’ or a ‘military-intelligence end user’ of a country listed in Country Group E:1 or E:2, wherever located.

(c) License exception

Notwithstanding the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provision of License Exception GOV set forth in § 740.11(b)(2)(ii) of the EAR.

(d) License application procedure

When submitting a license application pursuant to this section, you must state in the “additional information” block of the application that “this application is submitted because of the license requirement in § 744.22 of the EAR (Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users).” In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the military-intelligence end use(s) or end user(s) of the item(s). If you submit an attachment with your license application, you must reference the attachment in the “additional information” block of the application.

(e) License review policy

Applications to export, reexport, or transfer (in-country) items requiring a license pursuant to paragraph (a) or (b) of this section will be reviewed with a presumption of denial.

(f) Definitions

(1) ‘Military-intelligence end use’ means the “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, or incorporation into, items described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations), or classified under ECCNs ending in “A018” or under “600 series” ECCNs, which are intended to support the actions or functions of a ‘military-intelligence end user,’ as defined in this section.

(2) ‘Military-intelligence end user’ means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard. For license requirements applicable to other government intelligence or reconnaissance organizations of these countries, see § 744.21. ‘Military-intelligence end users’ subject to the license requirements set forth in this section located in Belarus, Burma, Cambodia, China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR) include, but are not limited to, the ‘military-intelligence end users’ identified in this paragraph (f)(2). For ‘military-intelligence end users’ located in all other countries this paragraph (f)(2) is an exhaustive listing.

(i) *Burma*. Office of Chief of Military Security Affairs (OCMSA) and the Directorate of Signal.

(ii) *Cambodia*. General Department of Research and Intelligence (GDRI).

(iii) *Cuba*. Directorate of Military Intelligence (DIM) and Directorate of Military Counterintelligence (CIM).

(iv) *China, People's Republic of.* Intelligence Bureau of the Joint Staff Department.

(v) *Iran.* Islamic Revolutionary Guard Corps Intelligence Organization (IRGC-IO) and Artesh Directorate for Intelligence (J2).

(vi) *Korea, North.* Reconnaissance General Bureau (RGB).

(vii) *Russia.* Main Intelligence Directorate (GRU).

(viii) *Syria.* Military Intelligence Service.

(ix) *Venezuela.* General Directorate of Military Counterintelligence (DGCIM).

(x) *Belarus.* The Main Intelligence Directorate of the General Staff of the Armed Forces of Belarus.

(xi) *Other countries.* Paragraph (f)(2)(ix) of this section identifies 'military-intelligence end users' located in all countries other than those identified in paragraph (f)(2)(i) to (x).

**§ 744.23 “SUPERCOMPUTER,”
“ADVANCED-NODE INTEGRATED
CIRCUITS,” AND SEMICONDUCTOR
MANUFACTURING EQUIPMENT END
USE CONTROLS**

(a) General prohibition

In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) without a license any item subject to the EAR described in paragraphs (a)(1) through (4) of this section when you have “knowledge” at the time of export, reexport, or transfer (in-country) that the item is destined for a destination, end use, or type of end user described in paragraphs (a)(1) through (4) of this section, unless excluded by paragraph (a)(5) of this section.

(1) “Supercomputers”.

(i) Item scope.

(A) An integrated circuit (IC) subject to the EAR and specified in ECCN 3A001, 3A991, 4A994, 5A002, 5A004, or 5A992; or

(B) A computer, “electronic assembly,” or “component” subject to the EAR and specified in ECCN 4A003, 4A004, 4A994, 5A002, 5A004, or 5A992.

(ii) Destination and end-use scope.

(A) The “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a “supercomputer” located in or destined to Macau or a destination specified in Country Group D:5 of supplement no. 1 to part 740 of the EAR; or

(B) The incorporation into, or the “development” or “production” of any “component” or “equipment” that will be used in a “supercomputer” located in or destined to Macau or a destination specified in Country Group D:5.

(2) “Advanced-node ICs”.

(i) Any item at a “production” “facility” of “advanced-node ICs.” Any items subject to the EAR when you know the items will be used in the “development” or “production” of ICs destined to a “facility” located in Macau or a destination specified in Country Group D:5 where “production” of “advanced-node ICs” occurs.

(ii) Category 3 items to a “facility” where the technology node is unknown. Any item subject to the EAR specified in an ECCN in Product Groups B, C, D, or E in Category 3 of the CCL when you know the item will be used in the “development” or “production” of ICs destined to

a “facility” located in Macau or a destination specified in Country Group D:5 where “production” of integrated circuits occurs, but you do not know whether “production” of “advanced-node ICs” occurs at such “facility.”

(3) Advanced computing items.

(i) Any item subject to the EAR and specified in ECCN 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, 5A992.z, 5D002.z, or 5D992.z destined to any destination other than those specified in Country Groups D:1, D:4, or D:5 (excluding any destination also specified in Country Groups A:5 or A:6) for an entity that is headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5 (e.g., a PRC-headquartered cloud or data server provider located in a destination not otherwise excluded).

(ii) ECCN 3E001 (for 3A090) “technology” when it meets all of the following:

(A) The technology is developed by an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5;

(B) The “technology” is subject to the EAR pursuant to the foreign direct product rule in § 734.9(h)(1)(i)(B)(1) and (h)(2)(ii) of the EAR;

(C) The “technology” is for reexport or transfer (in-country) from or within a destination specified in Country Group D:1, D:4, D:5, excluding any destination also specified in Country Groups A:5 or A:6, to any destination worldwide; and

(D) The “technology” is for the “production” of commodities or software specified in ECCN 3A001.z, 3A090, 4A003.z, 4A004.z, 4A005.z, 4A090, 5A002.z, 5A004.z, or 5A992.z.

Note 1 to paragraph (a)(3)(ii): This

paragraph (a)(3)(ii) includes items subject to the EAR pursuant to the foreign direct product rule in § 734.9(h)(1)(i)(B)(1) and (h)(2)(ii) of the EAR.

(4) Semiconductor manufacturing equipment (SME). Any item subject to the EAR and specified on the CCL when destined to either Macau or a destination specified in Country Group D:5 for the “development” or “production” of “front-end integrated circuit “production” equipment” and “components,” “assemblies,” and “accessories” therefor specified in ECCN 3B001 (except 3B001.g, .h, and .j), 3B002, 3B611, 3B991 (except 3B991.b.2), or 3B992.

Note 1 to paragraph (a)(4): Front-end integrated circuit “production” equipment includes equipment used in the production stages from a blank wafer or substrate to a completed wafer or substrate (i.e., the integrated circuits are processed but they are still on the wafer or substrate). If there is a question at the time of export, reexport, or transfer (in-country) about whether equipment is used in front-end integrated circuit “production,” you may submit an advisory opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(5) Back-end exclusion. For purposes of paragraph (a)(2) of this section, the term “production” does not apply to back-end steps such as assembly, test, or packaging that do not alter the integrated circuit technology level. If there is a question at the time of export, reexport, or transfer (in-country) about whether a manufacturing stage is back-end or whether a back-end activity alters the technology level, you may submit an Advisory Opinion request to BIS pursuant to § 748.3(c) of the EAR for clarification.

(b) Additional prohibition on persons informed by BIS

BIS may inform persons, either individually by specific notice or through amendment to the EAR

published in the Federal Register, that a license is required for a specific export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end-user, because there is an unacceptable risk of use in, or diversion to, the end uses specified in paragraphs (a)(1) through (4) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

(c) *License exceptions*

No license exceptions may overcome the prohibition described in paragraph (a) of this section.

(d) *License review standards*

Applications will be reviewed with a presumption of denial for Macau and destinations specified in Country Group D:5. However, there is a presumption of approval license review policy when there is a foreign-made item available that is not subject to the EAR and performs the same function as the item subject to the EAR, and for end users headquartered in the United States or a destination in Country Group A:5 or A:6, that are not majority-owned by an entity headquartered in either Macau or a destination specified in Country Group D:5. For all other applications, there is a case-by-case license review policy. License review will take into account factors including technology level, customers, and compliance plans. Contract sanctity will be a factor in the review of all applications.

**SUPPLEMENT NO. 1 TO PART 744 - MILITARY END-USE EXAMPLES FOR
§744.17**

- (a) *Examples of military end-uses (as described in §744.17 (d) of this part) of general-purpose microprocessors classified as ECCN 3A991.a.1 includes employing such microprocessors in the “use”, “development”, “production”, or deployment of:*
- (1) Cruise missiles;
 - (2) Electronic suites of military aircraft and helicopters;
 - (3) Radar for searching, targeting, or tracking systems;
 - (4) Command/control/communications or navigation systems;
 - (5) Unmanned aerial vehicles capable of performing military reconnaissance, surveillance, or combat support;
 - (6) Rocket or missile systems;
 - (7) Electronic or information warfare systems; *or*
 - (8) Intelligence, reconnaissance, or surveillance systems suitable for supporting military operations.
- (b) [RESERVED]

**SUPPLEMENT NO. 2 TO PART 744 - LIST OF ITEMS SUBJECT TO THE MILITARY
END-USE OR END USER LICENSE REQUIREMENT OF §744.21**

The following items, as described, are subject to the military end use or end user license requirement in §744.21.

**(1) Category 1 Materials, Chemicals,
Microorganisms, and Toxins**

- (i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U 235) in shipments of more than 1,000 kilograms in the form of shielding contained in X ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.
- (ii) 1C990 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in “composite” structures and with a specific modulus of 3.18×10^6 m or greater and a specific tensile strength of 7.62×10^4 m or greater.
- (iii) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the characteristics in the List of Items Controlled.
- (iv) 1D993 Software” specially designed for the “development”, “production”, or “use” of equipment or materials controlled by 1C210.b, or 1C990.
- (v) 1D999 Limited to specific software controlled by 1D999.b for equipment controlled by 1B999.e that is specially designed for the production of prepregs controlled in Category 1, n.e.s.
- (vi) 1E994 Limited to “technology” for the “development”, “production”, or “use” of fibrous and filamentary materials other than glass, aramid or polyethylene controlled by 1C990

(2) Category 2 Materials Processing

- (i) 2A290 Generators and other equipment “specially designed,” prepared, or intended for use with nuclear plants.
- (ii) 2A291 Equipment, except items controlled by 2A290, related to nuclear material handling and processing and to nuclear reactors, and “parts,” “components” and “accessories” therefor (see List of Items Controlled).
- (iii) 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573 K (300° C).
- (iv) 2B991 Limited to “numerically controlled” machine tools having “positioning accuracies”, with all compensations available, less (better) than 9 μ m along any linear axis; and machine tools controlled under 2B991.d.1.a.
- (v) 2B992 Non “numerically controlled” machine tools for generating optical quality surfaces, and specially designed components therefor.
- (vi) 2B996 Limited to dimensional inspection or measuring systems or equipment not controlled by 2B006 with measurement uncertainty equal to or less (better) than $(1.7 + L/1000)$ micrometers in any axes (L measured Length in mm).
- (vii) 2B999 Specific processing equipment, n.e.s. (see List of Items Controlled)
- (viii) 2D290 “Software” “specially designed” or modified for the “development,” “production,” or “use” of items controlled by 2A290 or 2A291.

(3) Category 3 Electronics Design, Development and Production

- (i) 3A991 Electronic devices, and “components” not controlled by 3A001.
- (ii) 3A992 General purpose electronic equipment not controlled by 3A002.
- (iii) 3A999 Specific processing equipment, n.e.s. (see List of Items Controlled).
- (iv) 3B991 Equipment not controlled by 3B001 for the manufacture of electronic “parts,” “components” and materials, and “specially designed” “parts,” “components” and “accessories” therefor.
- (v) 3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic “components” and materials, and “specially designed” “parts,” “components” and “accessories” therefor.
- (vi) 3C992 Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 245 nm.
- (vii) 3D991 “Software” “specially designed” for the “development,” “production”, or “use” of electronic devices, “parts” or “components” controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992; or “software” “specially designed” for the “use” of equipment controlled by 3B001.g and .h.
- (viii) 3E991 Limited to “technology” according to the General Technology Note for the “development,” “production,” or “use” of digital oscilloscopes and transient recorders using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at successive intervals of less than 1 ns (greater than 1 giga-sample per second), digitizing to 8 bits or greater resolution and

storing 256 or more samples.

(4) Category 4 Computers

- (i) 4A994 Limited to computers not controlled by 4A001 or 4A003, with an Adjusted Peak Performance (“APP”) exceeding 0.5 Weighted TeraFLOPS (WT).
- (ii) 4D993 “Program” proof and validation “software”, “software” allowing the automatic generation of “source codes”, and operating system “software” that are specially designed for real time processing equipment.
- (iii) 4D994 Limited to “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 4A101.

(5) Category 5 (Part 1) Telecommunications and Category 5 (Part 2) Information Security

- (i) 5A991 Limited to telecommunications equipment designed to operate outside the temperature range from 219K (-54 °C) to 397K (124 °C), which is controlled by 5A991.a., radio equipment using Quadrature-amplitude-modulation (QAM) techniques, which is controlled by 5A991.b.7., and phased array antennae, operating above 10.5 Ghz, except landing systems meeting ICAO standards (MLS), which are controlled by 5A991.f.
- (ii) 5B991 Telecommunications test equipment, n.e.s.
- (iii) 5D991 Limited to “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f., or of “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991.a., 5A991.b.7.,

and 5A991.f.

(iv) 5E991 Limited to “technology” for the “development”, “production” or “use” of equipment controlled by 5A991.a., 5A991.b.7., or 5A991.f., or of “software” specially designed or modified for the “development”, “production”, or “use” of equipment controlled by 5A991.a., 5A991.b.7., and 5A991.f.

(v) 5A992 Equipment not controlled by 5A002 (see List of Items Controlled).

(vi) 5D992 “Information Security” “software” not controlled by 5D002 (see List of Items Controlled).

(6) Category 6 Sensors and Lasers

(i) 6A991 Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and “specially designed” “parts” and “components,” n.e.s.

(ii) 6A993 Cameras, not controlled by 6A003 or 6A203 (see List of Items Controlled).

(iii) 6A995 “Lasers”, not controlled by 6A005 or 6A205.

(iv) 6A996 “Magnetometers” not controlled by ECCN 6A006, “Superconductive” electromagnetic sensors, and “specially designed” “components” therefor, as follows (see List of Items Controlled).

(v) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a “beat length” of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by “mole fraction.”

(7) Category 7 Navigation and Avionics

(i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

(ii) 7B994 Other equipment for the test, inspection, or “production” of navigation and avionics equipment.

(iii) 7D994 “Software”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication and other avionics.

(iv) 7E994 “Technology”, n.e.s., for the “development”, “production”, or “use” of navigation, airborne communication, and other avionics equipment.

(8) Category 8 Marine

(i) 8A992 Vessels, marine systems or equipment, not controlled by 8A001 or 8A002, and “specially designed” “parts” and “components” therefor, and marine boilers and “parts,” “components,” “accessories,” and “attachments” therefor (see List of Items Controlled).

(ii) 8D992 “Software” specially designed or modified for the “development”, “production” or “use” of equipment controlled by 8A992.

(iii) 8E992 “Technology” for the “development”, “production” or “use” of equipment controlled by 8A992.

(9) Category 9 Propulsion Systems, Space Vehicles and Related Equipment

(i) 9A991 “Aircraft”, n.e.s., and gas

turbine engines not controlled by 9A001 or 9A101 and “parts” and “components,” n.e.s. (see List of Items Controlled).

(ii) 9B990 Vibration test equipment and “specially designed” “parts” and “components,” n.e.s.

(iii) 9D991 “Software”, for the "development" or "production" of equipment controlled by 9A991 or 9B991.

(iv) 9E991 “Technology”, for the “development”, “production” or “use” of equipment controlled by 9A991 or 9B991.

**SUPPLEMENT NO. 3 TO PART 744 - COUNTRIES NOT SUBJECT TO
CERTAIN NUCLEAR END-USE RESTRICTIONS IN §744.2(a)**

Australia
Austria
Belgium
Canada
Denmark
Finland
France
Germany
Greece
Iceland
Ireland
Italy (includes San Marino and Holy See)
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Turkey
United Kingdom

SUPPLEMENT NO. 4 TO PART 744 - ENTITY LIST

Supplement No. 4 to part 744 is in a separate electronic file.

SUPPLEMENT NO. 5 TO PART 744 - PROCEDURES FOR END-USER REVIEW COMMITTEE ENTITY LIST AND 'MILITARY END USER' (MEU) LIST DECISIONS

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, will make all decisions to make additions to, removals from or changes to the Entity List and the 'Military End User' (MEU) List. The ERC will be chaired by the Department of Commerce and will make all decisions to add an entry to the Entity List and MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote.

When determining to add an entity to the Entity List or MEU List or to modify an existing entry, the ERC will also specify the section or sections of the EAR that provide the basis for that determination. All additions and modifications to the MEU List are done pursuant to § 744.21(b). The license requirements, the license application review policy, or the availability of license exceptions for entities on the MEU List are specified in § 744.21 under paragraphs (b) to (e). In addition, for the Entity List if the section or sections that form the basis for an addition or modification do not specify the license requirements, the license application review policy, or the availability of license exceptions, the ERC will specify the license requirements, the license application review policy and which license exceptions (if any) will be available for shipments to that entity.

Any agency that participates in the ERC may make a proposal for an addition to, modification of, or removal of an entry from the Entity List or MEU List by submitting that proposal to the chairperson.

The ERC will vote on each proposal no later than 30 days after the chairperson first circulates it to all member agencies unless the ERC unanimously agrees to postpone the vote. If a member agency is not satisfied with the outcome of the vote of the ERC that agency may escalate the matter to the Advisory Committee on Export Policy (ACEP). A member agency that is not satisfied with the decision of the ACEP may escalate the matter to the Export Administration Review Board (EARB). An agency that is not satisfied with the decision of the EARB may escalate the matter to the President.

The composition of the ACEP and EARB as well as the procedures and time frames shall be the same as those specified in Executive Order 12981 as amended by Executive Orders 13020, 13026 and 13117 for license applications. If at any stage, a decision by majority vote is not obtained by the prescribed deadline the matter shall be raised to the next level.

A final decision by the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) to make an addition to, modification of, or removal of an entry from the Entity List or MEU List shall operate as clearance by all member agencies to publish the addition, modification or removal as an amendment to the Entity List or MEU List even if, in the case of a decision by the ERC to add an entry or any decision by the ACEP or EARB, such decision is not unanimous. Such amendments will not be further reviewed through the regular Export Administration Regulations interagency review process.

A proposal by the ERC to make any change to the EAR other than an addition to, modification of, or removal of an entry from the Entity List or MEU List shall operate as a recommendation and shall not be treated as interagency clearance of an EAR amendment. The chairperson of the ERC will be responsible for circulating to all member agencies proposals submitted to him or her by any member agency. The chairperson will be responsible for serving as secretary to the ACEP and EARB for all review of ERC matters. The chairperson will communicate all final decisions that require Entity List or MEU List amendments, to the Bureau of Industry and Security which shall be responsible for drafting the necessary

changes to the Entity List and MEU List. If the ERC decides in a particular case that a party should be informed individually instead of by EAR amendment the chairperson will be responsible for preparing the “is informed” letter for the signature of the Deputy Assistant Secretary for Export Administration.

A listed entity may present a request to remove or modify its Entity List or the MEU List entry along with supporting information to the chairman at Room 3886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. The chairperson shall refer all such requests and supporting information to all member agencies. The member agencies will review and vote on all such requests. The time frames, procedures and right of escalation by a member agency that is dissatisfied with the results that apply to proposals made by a member agency shall apply to these requests. The decision of the ERC (or the ACEP or EARB or the President, as may be applicable in a particular case) shall be the final agency decision on the request and shall not be appealable under part 756 of the EAR. The chairperson will prepare the response to the party who made the request. The response will state the decision on the request and the fact that the response is the final agency decision on the request. The response will be signed by the Deputy Assistant Secretary for Export Administration.

The End-User Review Committee will conduct regular reviews of the Entity List and MEU List for the purpose of determining whether any listed entities should be removed or modified. The review will include analysis of whether the criteria for listing the entity are still applicable and research to determine whether the name(s) and address(es) of each entity are accurate and complete and whether any affiliates of each listed entity should be added or removed.

SUPPLEMENT NO. 6 TO PART 744 – UNVERIFIED LIST

Supplement No. 6 to part 744 is in a separate electronic file.

SUPPLEMENT NO. 7 TO PART 744 – ‘MILITARY END-USER’ (MEU) LIST

Supplement No. 7 to part 744 is in a separate electronic file.