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### § 736.1 INTRODUCTION

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. A person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement. As such, if an export, reexport, or activity is subject to the EAR, the general prohibitions contained in this part and the License Exceptions specified in part 740 of the EAR must be reviewed to determine if a license is necessary. In the case of all exports from the United States, you must document your export as described in part 762 of the EAR regarding recordkeeping and clear your export through the U.S. Customs Service as described in part 758 of the EAR regarding export clearance requirements. Also note that for short supply controls all prohibitions and License Exceptions are in part 754 of the EAR.

(a) In this part we tell you:

(1) The facts that make your proposed export, reexport, or conduct subject to these general prohibitions, and

(2) The ten general prohibitions.

(b) Your obligations under the ten general prohibitions and under the EAR depend in large part upon the five types of information described in §736.2(a) of this part and upon the general prohibitions described in §736.2(b) of this part. The ten general prohibitions contain cross-

references to other parts of the EAR that further define the breadth of the general prohibitions. For that reason, this part is not freestanding. In part 732, we provide certain steps you may follow in proper order to help you understand the general prohibitions and their relationship to other parts of the EAR.

(c) If you violate any of these ten general prohibitions, or engage in other conduct contrary to the Export Administration Act, the EAR, or any order, license, License Exception, or authorization issued thereunder, as described in part 764 of the EAR regarding enforcement, you will be subject to the sanctions described in that part.

### § 736.2 GENERAL PROHIBITIONS AND DETERMINATION OF APPLICABILITY

#### (a) *Information or facts that determine the applicability of the general prohibitions*

The following five types of facts determine your obligations under the ten general prohibitions and the EAR generally:

(1) **Classification of the item.** The classification of the item on the Commerce Control List (see part 774 of the EAR);

(2) **Destination.** The country of ultimate destination for an export or reexport (see parts 738 and 774 of the EAR concerning the Country Chart and the Commerce Control List);

(3) **End-user.** The ultimate end user (see General Prohibition Four (paragraph (b)(4) of this section) and Supplement No. 1 to part 764 of the EAR for references to persons with whom your transaction may not be permitted; see General Prohibition Five (Paragraph (b)(5) of this section) and part 744 for references to end-users for whom you may need an export or reexport license).

(4) **End-use.** The ultimate end-use (see General Prohibition Five (paragraph (b)(5) of this

section) and part 744 of the EAR for general end-use restrictions); and

**(5) Conduct.** Conduct such as contracting, financing, and freight forwarding in support of a proliferation project as described in part 744 of the EAR.

**(b) General prohibitions**

The following ten general prohibitions describe certain exports, reexports, and other conduct, subject to the scope of the EAR, in which you may not engage unless you either have a license from the Bureau of Industry and Security (BIS) or qualify under part 740 of the EAR for a License Exception from each applicable general prohibition in this paragraph. The License Exceptions at part 740 of the EAR apply only to General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced “Direct Product” Reexports); however, selected License Exceptions are specifically referenced and authorized in part 746 of the EAR concerning embargo destinations and in §744.2(c) of the EAR regarding nuclear end-uses.

**(1) General Prohibition One — Export and reexport of controlled items to listed countries (Exports and Reexports).** You may not, without a license or License Exception, export any item subject to the EAR to another country or reexport any item of U.S.-origin if each of the following is true:

(i) The item is controlled for a reason indicated in the applicable Export Control Classification Number (ECCN), and

(ii) Export to the country of destination requires a license for the control reason as indicated on the Country Chart at part 738 of the EAR. (The scope of this prohibition is determined by the correct classification of your

item and the ultimate destination as that combination is reflected on the Country Chart).<sup>1</sup> Note that each License Exception described at part 740 of the EAR supersedes General Prohibition One if all terms and conditions of a given License Exception are met by the exporter or reexporter.

**(2) General Prohibition Two - Reexport and export from abroad of foreign-made items incorporating more than a *de minimis* amount of controlled U.S. content (U.S. Content Reexports).**

(i) You may not, without a license or license exception, reexport or export from abroad foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are ‘bundled’ with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology if such items require a license according to any of the provisions in the EAR and incorporate or are commingled with more than a *de minimis* amount of controlled U.S. content, as defined in § 734.4 of the EAR concerning the scope of the EAR.

(A) It incorporates more than the *de minimis* amount of controlled U.S. content, as defined in §734.4 of the EAR concerning the scope of the EAR;

(B) It is controlled for a reason indicated in the applicable ECCN; and

(C) Its export to the country of destination requires a license for that control reason as indicated on the Country Chart. (The scope of this prohibition is determined by the correct classification of your foreign-made item and the ultimate destination, as that combination is reflected on the Country Chart.)

are not specified on the Country Chart.

<sup>1</sup> See part 738 of the EAR for selected controls that

(ii) Each License Exception described in part 740 of the EAR supersedes General Prohibition Two if all terms and conditions of a given License Exception are met by the exporter or reexporter.

**(3) General Prohibition Three— Foreign-direct product (FDP) rules. —**

(i) You may not, without a license or license exception, export from abroad, reexport, or transfer (in-country) foreign-“direct products” subject to the EAR pursuant to § 734.9 if such items are subject to a license requirement in part 736, 742, 744, 746, or 764 of the EAR.

(ii) Each license exception described in part 740 of the EAR supersedes General Prohibition Three if all terms and conditions of a given license exception are met and none of the restrictions of §§ 740.2 or 744.11(a) apply.

**(4) General Prohibition Four (Denial Orders) — Engaging in actions prohibited by a denial order.**

(i) You may not take any action that is prohibited by a denial order issued under part 766 of the EAR, Administrative Enforcement Proceedings. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the United States or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the *Federal Register* when they are issued and are the legally controlling documents in accordance with their terms. BIS also maintains compilations of persons denied export privileges on its Web site at <http://www.bis.doc.gov>. BIS may, on an exceptional basis, authorize activity otherwise prohibited by a denial order. See Sec. 764.3(a)(2) of the EAR.

(ii) There are no License Exceptions described in part 740 of the EAR that authorize conduct prohibited by this General Prohibition Four.

**(5) General Prohibition Five — Export or reexport to prohibited end-uses or end-users (End-Use End-User).** You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.

**(6) General Prohibition Six — Export or reexport to embargoed destinations (Embargo).**

(i) You may not, without a license or License Exception authorized under part 746, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls as both are described at part 746 of the EAR.

(ii) License Exceptions to General Prohibition Six are described in part 746 of the EAR, on Embargoes and Other Special Controls. Unless a License Exception or other authorization is authorized in part 746 of the EAR, the License Exceptions described in part 740 of the EAR are not available to overcome this general prohibition.

**(7) General Prohibition Seven – Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities)-**

(i) *Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities).*

(A) If you are a “U.S. person,” as that term is defined in § 772.1 of the EAR, you may not engage in any activities prohibited by §§ 744.6(b) or (c) of the EAR, which prohibit, without a license from BIS, the shipment, transmission, or transfer (in-country) of items not subject to the EAR; facilitating such shipment, transmission, or transfer (in-country); or the performance of any contract, service, or employment (including, but

not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, or transporting, freight forwarding, or conducting negotiations in furtherance of) that you know or are informed by BIS will 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 part 744 of the EAR;

(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) of the EAR, in Belarus, Burma, the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

(B) If you are a “U.S. person” as that term is defined in § 772.1 of the EAR, you may not export a Schedule 1 chemical listed in Supplement No. 1 to part 745 without first

complying with the provisions of §§ 742.18 and 745.1 of the EAR.

(C) If you are a “U.S. person” as that term is defined in § 772.1 of the EAR, you may not export a Schedule 3 chemical listed in Supplement No. 1 to part 745 to a destination *not* listed in Supplement No. 2 to part 745 without complying with the End-Use Certificate requirements in § 745.2 of the EAR that apply to Schedule 3 chemicals controlled for CW reasons in ECCN 1C350, ECCN 1C355, and ECCN 1C395.

(ii) [Reserved]

**(8) General Prohibition Eight — In transit shipments and items to be unladen from vessels or aircraft (Intransit).**

(i) *Unloading and shipping in transit.* You may not export or reexport an item through, or transit through a country listed in paragraph (b)(8)(ii) of this section, unless a license exception or license authorizes such an export or reexport directly to or transit through such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

(ii) *Country scope.* This General Prohibition Eight applies to Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

**(9) General Prohibition Nine — Violation of any order, terms, and conditions (Orders, Terms, and Conditions).** You may not violate terms or conditions of a license or of a License Exception issued under or made a part of the EAR, and you may not violate any order issued under or made a part of the EAR. There are no License Exceptions to this General Prohibition Nine in part 740 of the EAR. Supplements Nos. 1 and 2 to this part provide for certain General Orders and Administrative Orders.

**(10) General Prohibition Ten — Proceeding with transactions with knowledge that a violation has occurred or is about to occur (Knowledge Violation to Occur).** You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the Export Administration

Regulations, the Export Administration Act or any order, license, License Exception, or other authorization issued thereunder has occurred, is about to occur, or is intended to occur in connection with the item. Nor may you rely upon any license or License Exception after notice to you of the suspension or revocation of that license or exception. There are no License Exceptions to this General Prohibition Ten in part 740 of the EAR.

**SUPPLEMENT NO. 1 TO PART 736 - GENERAL ORDERS***(a) General Order No. 1*

General Order No. 1 of September 16, 1998; Establishing a 24-month validity period on reexport authorizations issued without a validity period and revoking those exceeding that period.

**(1) Reexport authorizations issued within 24-months of the General Order.** All reexport authorizations issued with no validity period within the 24-months preceding September 16, 1998 shall be deemed to have an expiration date which shall be the date 24-months from the date of issuance of the reexport authorization or November 16, 1998, whichever is longer.

**(2) Reexport authorizations issued before the 24-month period preceding the General Order.** For reexport authorizations issued with no validity period before the 24-month period preceding September 16, 1998:

**(i)** Effective September 16, 1998, all such outstanding reexport authorizations for terrorist-supporting countries (see parts 742 and 746 of the EAR) are revoked.

**(ii)** Effective November 16, 1998, all other such outstanding reexport authorizations are revoked.

**(3) Extensions.** If necessary, you may request extensions of such authorizations according to procedures set forth in §750.7(g) of the EAR.

**(4) Specific Notice from BIS.** If you have received, or should you receive, specific notice from BIS with regard to a reexport authorization covered by this General Order, informing you of a revocation, suspension, or revision (including validity period) of any such reexport authorization, then the terms of that specific notice will be controlling.

**(5) Definition of “authorization.”** The term “authorization” as used in this General Order encompasses the range of reexport authorizations granted by BIS, which includes licenses, individual letters, and other types of notifications.

*(b) General Order No. 2*

General Order No. 2; Section 5(b) of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (SAA) gives the President authority to waive the application of certain prohibitions set forth in the SAA if the President determines that it is in the national security interest of the United States to do so. The President made such a determination in Executive Order 13338, finding that it was “in the national security interest of the United States to waive application of subsection 5(a)(1) and 5(a)(2)(A) of the SAA so as to permit the exportation or reexportation of certain items as specified in the Department of Commerce’s General Order No. 2.”

The President’s reference to General Order No. 2 addresses applications to export and reexport the following items, which are considered on a case-by-case basis as opposed to the general policy of denial set forth in section 746.9 of the Regulations: items in support of activities, diplomatic or otherwise, of the United States Government (to the extent that regulation of such exportation or reexportation would not fall within the President's constitutional authority to conduct the nation's foreign affairs); medicine (on the CCL) and medical devices (both as defined in Part 772 of the EAR); parts and components intended to ensure the safety of civil aviation and the safe operation of commercial passenger aircraft; aircraft chartered by the Syrian Government for the transport of Syrian Government officials on official Syrian Government business; telecommunications equipment and associated computers, software and technology; items in support of United Nations operations in Syria; and

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items necessary for the support of the Syrian people, including, but not limited to, items related to water supply and sanitation, agricultural production and food processing, power generation, oil and gas production, construction and engineering, transportation, and educational infrastructure. The total dollar value of each approved license for aircraft parts for flight safety normally will be limited to no more than \$2 million over the 24-month standard license term, except in the case of complete overhauls.

*NOTE to GENERAL ORDER NO. 2. The controls for exports and reexports to Syria are set forth in § 746.9 of the EAR.*

### (c) General Order No. 3

General Order No. 3 of July 22, 2015. Certain licenses issued by BIS prior to July 22, 2015 contain conditions that restrict the export, reexport, or transfer (in-country) to or within Country Group E:1 as specified in Supplement No. 1 to part 740 of the EAR. At the time those license were issued, Cuba was in Country Group E:1. Many of those restrictions were intended to apply to Cuba, not only as a State Sponsor of Terrorism but also as a country subject to unilateral embargo. However, BIS did not always list both Country Groups E:1 and E:2 in license conditions because, at the time, doing so would have been redundant. However, with the rescission of Cuba's designation as a State Sponsor of Terrorism and resultant removal from Country Group E:1, continuing those conditions with respect to Cuba is consistent with the embargo. Accordingly, all conditions that apply to Country Group E:1 on licenses issued prior to July 22, 2015 that are in effect on that date, are revised to apply to Country Groups E:1 and E:2 as specified in Supplement No. 1 to part 740 of the EAR. Licensees who seek authorization for transactions that are affected by this General Order No. 3 may submit license applications that refer to General Order No. 3 and explain the reason for the request in Block 24 of the

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application. All license applications involving Cuba are reviewed pursuant to the licensing policy in § 746.2(b) of the EAR. The request should provide any available information in support of the argument that the transaction would be consistent with the licensing policy in § 746.2(b) of the EAR.

### (d) General Order No. 4

[RESERVED]

### (e) General Order No. 5

General Order No. 5 of April 16, 2013; Authorization for Items the President Determines No Longer Warrant Control under the United States Munitions List (USML).

**(1) Continued use of DDTC approvals from the Department of State's Directorate of Defense Trade Controls (DDTC) for items that become subject to the EAR.** Items the President has determined no longer warrant control under the USML will become subject to the EAR as published final rules that transfer the items to the CCL become effective. DDTC licenses, agreements, or other approvals that contain items transitioning from the USML to the CCL and that are issued prior to the effective date of the final rule transferring such items to the CCL may continue to be used in accordance with the Department of State's final rule, *Amendments to the International Traffic in Arms Regulations: Initial Implementation of Export Control Reform*, published on April 16, 2013 in the Federal Register.

### (2) BIS authorization.

(i) Where continued use of DDTC authorization is not or is no longer an available option, or a holder of an existing DDTC authorization returns or terminates that authorization, any required authorization to export, reexport, or transfer (in-country) a

transitioned item on or after the effective date of the applicable final rule must be obtained under the EAR. Following the publication date and prior to the effective date of a final rule moving an item from the USML to the CCL, applicants may submit license applications to BIS for authorization to export, reexport, or transfer (in-country) the transitioning item. BIS will process the license applications in accordance with § 750.4 of the EAR, hold the license application without action (HWA) if necessary, and issue a license, if approved, to the applicant no sooner than the effective date of the final rule transitioning the items to the CCL.

(ii) Following the effective date of a final rule moving items from the USML to the CCL, exporters, reexporters, and transferors of such items may return DDTC licenses in accordance with § 123.22 of the ITAR or terminate Technical Assistance Agreements, Manufacturing License Agreements, or Warehouse and Distribution Agreements in accordance with § 124.6 of the ITAR and thereafter export, reexport, or transfer (in-country) such items under applicable provisions of the EAR, including any applicable license requirements. No transfer (in-country) may be made of an item exported under a DDTC authorization containing provisos or other limitations without a license issued by BIS unless (i) the transfer (in-country) is authorized by an EAR license exception and the terms and conditions of the License Exception have been satisfied, or (ii) no license would otherwise be required under the EAR to export or reexport the item to the new end user.

**(3) Prior commodity jurisdiction determinations.** If the U.S. State Department has previously determined that an item is not subject to the jurisdiction of the ITAR and the item was

not listed in a then existing “018” series ECCN (for purposes of the “600 series” ECCNs, or the 0x5zz ECCNs) or in a then existing ECCN 9A004.b or related software or technology ECCN (for purposes of the 9x515 ECCNs), then the item is per se not within the scope of a “600 series” ECCN, a 0x5zz ECCN, or a 9x515 ECCN. If the item was not listed elsewhere on the CCL at the time of such determination (*i.e.*, the item was designated EAR99), the item shall remain designated as EAR99 unless specifically enumerated by BIS or DDTC in an amendment to the CCL or to the USML, respectively.

**(4) Voluntary Self-Disclosure.** Parties to transactions involving transitioning items are cautioned to monitor closely their compliance with the EAR and the ITAR. Should a possible or actual violation of the EAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Self-Disclosure to the Office of Export Enforcement, in accordance with § 764.5 of the EAR. Permission from the Office of Exporter Services, in accordance with § 764.5(f) of the EAR, to engage in further activities in connection with that item may also be necessary. Should a possible or actual violation of the ITAR, or of any license or authorization issued thereunder, be discovered, the person or persons involved are strongly encouraged to submit a Voluntary Disclosure to DDTC, in accordance with § 127.12 of the ITAR. For possible or actual violations of both the EAR and ITAR, the person or persons involved are strongly encouraged to submit disclosures to both BIS and DDTC, indicating to each agency that they also have made a disclosure to the other agency.



**SUPPLEMENT NO. 2 TO PART 736 - ADMINISTRATIVE ORDERS**

*Administrative Order One: Disclosure of License Issuance and Other Information.* Consistent with section 12(c) of the Export Administration Act of 1979, as amended, information obtained by the U.S. Department of Commerce for the purpose of consideration of or concerning license applications, as well as related information, will not be publicly disclosed without the approval of the Secretary of Commerce. Electronic Export Information (EEI) filings via the Automated Export System (AES) are also exempt from public disclosure, except with the approval of the Secretary of Commerce, in accordance with §301(g) of Title 13, United States Code.

*Administrative Order Two: Conduct of Business and Practice in Connection with Export Control Matters.*

***(a) Exclusion of persons guilty of unethical conduct or not possessing required integrity and ethical standards***

**(1) Who may be excluded.** Any person, whether acting on his own behalf or on behalf of another, who shall be found guilty of engaging in any unethical activity or who shall be demonstrated not to possess the required integrity and ethical standards, may be excluded from (denied) export privileges on his own behalf, or may be excluded from practice before BIS on behalf of another, in connection with any export control matter, or both, as provided in part 764 of the EAR.

**(2) Grounds for exclusion.** Among the grounds for exclusion are the following:

(i) Inducing or attempting to induce by gifts, promises, bribes, or otherwise, any officer or employee of BIS or any customs or post office official, to take any action with respect to the issuance of licenses or any other aspects of the

administration of the Export Administration Act, whether or not in violation of any regulation;

(ii) Offering or making gifts or promises thereof to any such officer or employee for any other reason;

(iii) Soliciting by advertisement or otherwise the handling of business before BIS on the representation, express or implied, that such person, through personal acquaintance or otherwise, possesses special influence over any officer or employee of BIS;

(iv) Charging, or proposing to charge, for any service performed in connection with the issuance of any license, any fee wholly contingent upon the granting of such license and the amount or value thereof. This provision will not be construed to prohibit the charge of any fee agreed to by the parties; provided that the out-of-pocket expenditures and the reasonable value of the services performed, whether or not the license is issued and regardless of the amount thereof, are fairly compensated; and

(v) Knowingly violating or participating in the violation of, or an attempt to violate, any regulation with respect to the export of commodities or technical data, including the making of or inducing another to make any false representations to facilitate any export in violation of the Export Administration Act or any order or regulation issued thereunder.

**(3) Definition.** As used in this Administrative Order, the terms “practice before BIS” and “appear before BIS” include:

(i) The submission on behalf of another of applications for export licenses or other documents required to be filed with BIS, or the execution of the same;

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(ii) Conferences or other communications on behalf of another with officers or employees of BIS for the purpose of soliciting or expediting approval by BIS of applications for export licenses or other documents, or with respect to quotas, allocations, requirements or other export control actions, pertaining to matters within the jurisdiction of BIS;

(iii) Participating on behalf of another in any proceeding pending before BIS;

(iv) Submission on behalf of another of a license or other export control document to U.S. Customs and Border Protection (CBP); and

(v) Reporting on behalf of another Electronic Export Information via the Automated Export System (AES) to CBP.

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**(4) Proceedings.** All proceedings under this Administrative Order shall be conducted in the same manner as provided in part 766 of the EAR.

### *(b) Employees and former employees*

Persons who are or at any time have been employed on a full-time or part-time, compensated or uncompensated, basis by the U.S. Government are subject to the provisions of 18 U.S.C. 203, 205, and 207 (Pub. L. 87-849, 87th Congress) in connection with representing a private party or interest before the U.S. Department of Commerce in connection with any export control matter.