

BUREAU OF INDUSTRY AND SECURITY

UPDATE CONFERENCE ON EXPORT CONTROLS AND POLICY

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EAR Part 744: End-Use and End-User Controls

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- Catch-All Control Overview
- 744.2 / 744.5: Nuclear-Related End-Use Controls
- 744.3: Missile/Unmanned Aerial Vehicle (UAV) End-Use Controls
- 744.4: Chemical/Biological Weapons End-Use Controls
- 744.9: Camera-Related End-Use/End-User Controls
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Catch-All Control Overview

What is a Catch-All Control?

- A control that imposes a license requirement on the export/reexport/transfer of certain items to specific end users or for specific end uses when such items do not otherwise require a license based on their export control classification number (ECCN) and country of destination.
- Catch-all controls may apply to some or all items subject to the Export Administration Regulations (EAR), as well as to specific activities of U.S. persons.
- For example, catch-all controls may apply to:
 - Items being exported from the U.S.
 - Items located abroad but originally manufactured in the U.S.
 - Items located abroad but incorporating above *de minimis* controlled U.S.-origin content
 - Items located abroad that are the direct product of certain controlled U.S.-origin software, technology, or production equipment
 - U.S. persons dealing in wholly foreign items or performing other contracts, services, or employment

When Do Catch-All Controls Apply?

- General Prohibition 5 (736.2(b)(5)): An exporter/reexporter/transferor has “knowledge” of a prohibited end use or end user
- An exporter/reexporter/transferor “is informed” by BIS of a prohibited end use or end user:
 - Specific notice (e.g., “is informed” letter)
 - Public notice (e.g., Entity List, Unverified List)

Nuclear-Related End-Use Controls

Nuclear Catch-All (744.2)

- Scope: all items subject to the EAR
- Restricted end uses:
 - Nuclear explosive activities
 - Unsafeguarded nuclear activities
 - Specific nuclear activities whether or not safeguarded:
 - Heavy water production, isotope separation, etc.

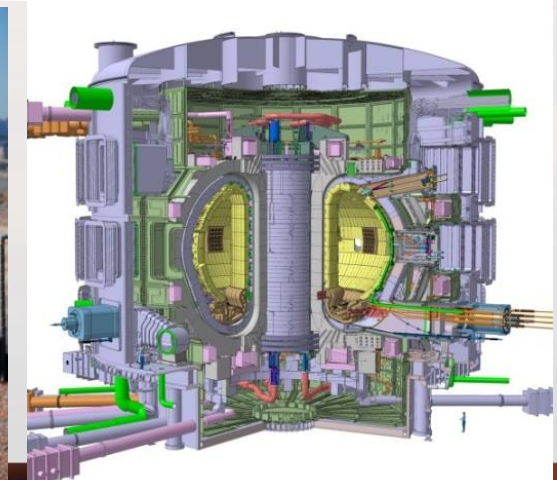
§ 744.2 Restrictions on certain nuclear end-uses.

- (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 know^[1] 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 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.

Generally Not Subject to 744.2

- Mining and milling operations
- Fusion reactors (Tokamak/ITER)
- Most trade with IAEA safeguarded facilities (unless listed on Entity List or for specific nuclear activities)
- Naval nuclear propulsion (see 744.5)
- Excluded countries

Entity	License requirement	License review policy	FEDERAL REGISTER citation
Pakistan Atomic Energy Commission (PAEC), a.k.a., the following one alias: —Power Plant Workshops, P.O. Box 1114, Islamabad; and the following four subordinate entities: —Nuclear reactors (including power plants),	For all items subject to the EAR	Case-by-case for all items listed on the CCL. Presumption of approval for EAR99 items	63 FR 64322 , 11/19/98. 65 FR 14444 , 3/17/00. 66 FR 50090 , 10/1/01. 77 FR 58006 ,



Countries Excluded From 744.2 Controls

Australia

France

Japan

Spain

Austria

Germany

Luxembourg

Sweden

Belgium

Greece

Netherlands

Turkey

Canada

Iceland

New Zealand

Denmark

Ireland

Norway

UK

Finland

Italy

Portugal

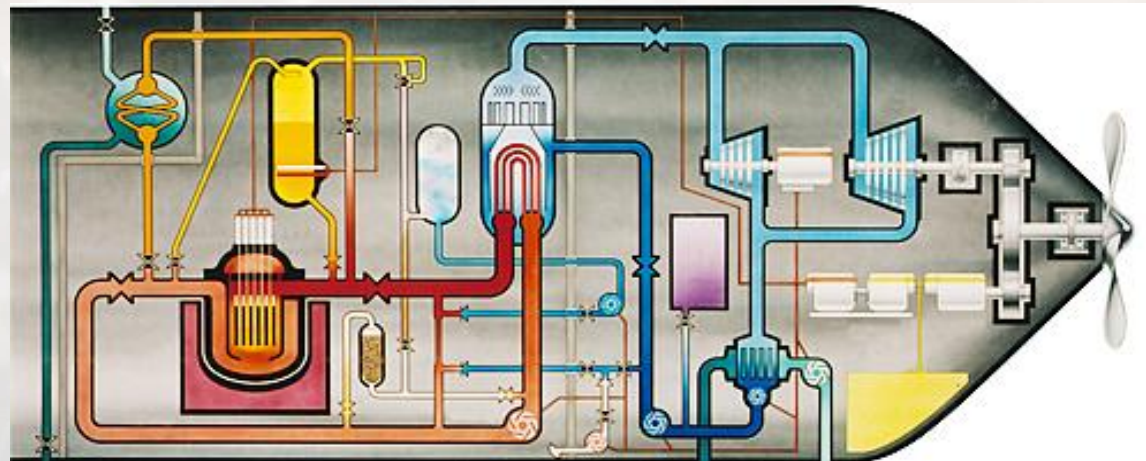
Maritime Nuclear Propulsion (744.5)

Scope: Certain technology subject to the EAR relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support or maintenance.

Restricted end use:

Any foreign maritime nuclear propulsion project

Different licensing policies for naval vs. civil nuclear propulsion projects



Missile/Unmanned Aerial Vehicle (UAV) End-Use Controls

Missile Catch-All (744.3)

Scope: all items subject to the EAR

Restricted end uses:

- Systems for the delivery of WMD worldwide (except nuclear weapons delivery of France/UK)
- Systems with range $\geq 300\text{km}$ in D:4 countries
- Systems of indeterminate capability in D:4 countries



Pakistan RA'AD Cruise Missile



Pakistan Shaheen-2 MRBM

D:4 Countries/Territories

Bahrain

Iraq

Macau

Syria

Belarus

Israel

Oman

UAE

China

Jordan

Pakistan

Venezuela

DPRK

Kuwait

Qatar

Yemen

Egypt

Lebanon

Russia

Iran

Libya

Saudi Arabia

Chemical/Biological Weapons End-Use Controls

Chem/Bio Catch-All (744.4)

- Scope: all items subject to the EAR
- Restricted end uses:
 - Design, development, production, stockpiling, operation, installation, maintenance, repair, overhaul, or refurbishing of chemical or biological weapons worldwide.
 - Whole plants for 1C350 chemical weapons precursors in or by other than A:3 countries.



A:3 Countries

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Croatia
Cyprus
Czechia

Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
India

Ireland
Italy
Japan
Latvia
Lithuania
Luxembourg
Malta
Mexico
Netherlands

New Zealand
Norway
Poland
Portugal
ROK
Romania
Slovakia
Slovenia
Spain

Sweden
Switzerland
Turkey
Ukraine
UK

Military / Military-Intelligence End-Use & End-User Controls U.S. Persons Controls

Military End-User List (Supp. No. 7 to Part 744)

- Scope for Belarus/Russia: all items subject to EAR (incl. foreign-produced items per 734.9(g))
- Scope for Burma, Cambodia, China, Nicaragua, and Venezuela: specific CCL items (see next slide), unless otherwise informed by BIS.
- Military end use:
 - Incorporation into a defense article or “600 series” munitions item
 - Any item that supports/contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of a military/munitions item
- Military end user:
 - Armed services and national guard
 - National police
 - Government intelligence/reconnaissance organization (other than military-intelligence)
 - Any person/entity whose actions/functions are intended to support a military end use

Items subject to 744.21(a)(1) controls:

- 1A290: Depleted uranium
- 1C990/1D993/1E994: Composites and related software/technology
- 1C996: Hydraulic fluids
- 1D999* – Software for prepegs
- 2A290/2A291/2D290: Nuclear plant generators/equipment and related software
- 2B991/2B992: Machine tools
- 2B996*: Dimensional measurement/inspection
- 2B999/3A999: Specific processing equipment
- 3A991/3A992: Electronic devices/equipment
- 3B991/3B992/3D991/3E991*: Semiconductor manufacturing & test equipment and related software/technology
- 3C992: Semiconductor resists
- 4A994*: High-performance computers
- 4D993: Software for real time processing equipment
- 4D994*: Software for computers/analyzers for missiles
- 5A991/5B991/5D991*/5E991*: Telecommunications equipment and related test equipment, software, and technology
- 5A992/5D992: Information security equipment/software
- 6A991: Acoustic equipment
- 6A993: Cameras
- 6A995: Lasers
- 6A996: Magnetometers
- 6C992: Optical fibers
- 7A994/7B994/7D994/7E994: Navigation equipment and related test equipment, software, and technology
- 8A992/8D992/8E992: Vessels and marine systems and related software/technology
- 9A991/9D991/9E991: Aircraft, engines, parts, components, and related software and technology
- 9B990: Vibration test equipment

* Indicates only partial ECCN entry is covered.

Military End-User List (Supp. No. 7 to Part 744)

- May be used to list entities subject to 744.21 controls in Burma, Cambodia, China, Nicaragua, and Venezuela.
- Currently only entries are in China (57).
- Not an exhaustive list; exporters/reexporters/transferors should still exercise due diligence.
- Military end users in Burma, Cambodia, China, Nicaragua, and Venezuela may also be listed on the Entity List with a broader license requirement.
- Military end users in Belarus/Russia are not listed on the Military End-User List and are listed on the Entity List instead with a Footnote 3 designation (indicating license requirement for 734.9(g) foreign-produced items).
 - The Entity List is not an exhaustive listing of military end users in Belarus/Russia; due diligence still required.
 - The Entity List is an exhaustive listing of Belarusian/Russian military end users located outside Belarus/Russia.
- Note: Footnote 3 designation may also be applied to Russia/Belarus procurement entities that do not meet the 744.21 definition of “military end user”

Military-Intelligence End-Use/User Control (744.22)

- Item scope: all items subject to EAR
- Country scope: Belarus, Burma, Cambodia, Cuba, China, DPRK, Iran, Russia, Syria, Venezuela.*
- Military-intelligence end use:
 - Incorporation into military/munitions item intended for military-intelligence end user
 - Operation, installation, maintenance, repair, overhaul, refurbishing, development, or production of military/munitions item intended for military-intelligence end user
- Military end user:
 - Intelligence/reconnaissance organizations of the armed services or national guard
 - 744.22(f)(2) sets forth an illustrative list of identified MIEUs

* Note: Controls apply to Belarusian, Burmese, Cambodian, Cuban, Chinese, DPRK, Iranian, Russian, Syrian, and Venezuelan military-intelligence end users located outside their home countries.

U.S. Persons Activities (744.6)

- U.S. Person:
 - U.S. citizen/permanent resident or protected person located anywhere
 - Any person located in the United States, regardless of nationality
 - Any U.S. corporate entity, including foreign branches
- No U.S. person may support:
 - Nuclear explosive activities worldwide (except countries excluded from 744.2 controls)
 - “Missile”-related activities in D:4 countries or Cuba
 - Chemical/biological weapons activities worldwide
 - Whole plants for chemical weapons precursors worldwide (except A:3 countries)
 - Military-intelligence end uses/users in Belarus, Burma, Cambodia, Cuba, China, DPRK, Iran, Russia, Syria, Venezuela
- Support includes activities such as brokering/facilitating sales of foreign-origin items not subject to the EAR, consulting services, etc.
- Does not apply to activities controlled under the Atomic Energy Act, International Traffic in Arms Regulations, Treasury Sanctions, etc.



Proposed New U.S. Persons Controls

- Would implement new authority in the National Defense Authorization Act for FY23, which amended ECRA (50 U.S.C. 4812(a)) to provide authority to control U.S. persons activities in connection with foreign military, intelligence, and security services
- "End Use and End User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users" (MEU/IEU Rule)
 - RIN 0694-AJ43: published in Federal Register July 29, 2024 (89 FR 60985)
 - Comment period closed October 15, 2024
- "Crime Controls and Expansion/Update of U.S. Persons Controls" (Foreign Security End User (FSEU) Rule)
 - RIN 0694-AI35: published in Federal Register July 29, 2024 (89 FR 60998)
 - Comment period closed October 15, 2024

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	Military End User	Military Support End User	Intelligence End User
Definition	Army, Navy, Marines, Air Force, Coast Guard, National Guard, Paramilitary/Mercenary Forces	Any entity supporting the production of military equipment	Government intelligence, surveillance, or reconnaissance organizations from All Country Group D or E (but not also A:5/A:6); and entities acting on behalf of such organizations
Country Scope	When the 'military end use' occurs in , or the product of the 'military end use' is destined to Macau or a country specified in Country Group D:5 (arms embargo) - OR - A 'military end user,' wherever located, of Macau or D:5	In Macau + D:5 (arms embargo) OR or wherever located if identified on the Entity List in supplement no. 4 of this part 744 with a footnote 6 designation.	Wherever located
License Scope	All items subject to the EAR	All items listed on the CCL	All items subject to the EAR
U.S. Persons Control	All entities meeting definition whether or not on Entity List	Only entities on Entity List with footnote designation	All entities meeting definition whether or not on Entity List
Licensing Policy	- Presumption of denial for E countries, Burma, China, Macau, Nicaragua, and Venezuela. - Policy of denial for Russia and Belarus - Case-by-case per ITAR for all others	- Presumption of denial for Macau and D:5, except Russia and Belarus - Policy of denial Russia and Belarus - Case-by-case per ITAR for all others	- Presumption of denial for Macau and D:5, except Russia and Belarus - Policy of denial Russia and Belarus - Case-by-case consistent with ITAR for all others

Proposed ‘Military Production Activity’ Controls

- **Country Scope:** A ‘military-production activity,’ when such activity occurs in or the product of such activity is destined to a country listed in Country Group D:5 or Macau.
- **Definition:** The term ‘**military-production activity**’ means incorporation into the following types of items or any other activity that supports or **contributes to** the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production” of the following types of items:
 - “600 series” items, including foreign-origin items not subject to the EAR; or
 - Any other item that is either described on the Commerce Control List in other than a “600 series” ECCN, or designated EAR99, including foreign-origin items not subject to the EAR, that you “know” is ultimately destined to or for use by a ‘military end user,’ as defined in §744.21(f)(2);

Proposed Foreign Security End-User Controls

744.25	Foreign Security End User	
Definition	Governmental and other entities with the authority to arrest, detain, monitor, search, or use force in furtherance of their official duties.* OR Other persons or entities performing functions of a 'foreign security end user,' OR Entities designated with a footnote 8 on the Entity List in supplement no. 4 to this part.	*If entity could be military or security end user (e.g., military police), military end user controls apply as they are more restrictive (all items subject to the EAR vs. CCL only)
Country Scope	Wherever located - When a "foreign security end-user" is of a country listed in Country Group D:5 or E	
License Requirement	All items listed on the CCL	
U.S. Persons Control	Only entities on Entity List with footnote designation	
Licensing Policy	- Case-by-case basis to determine whether there is an unacceptable risk of use in human rights violations or abuses. - Presumption of denial for transactions that would pose such an unacceptable risk - Applications will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1)	

Public Comments Received

- Approximately 70 public comments received on the two proposed rules
- A number of comments focused on the proposed scope of the military and intelligence controls and suggested various options to potentially narrow the scope
- Commenters also recommended clarifications to the proposed definitions of intelligence and security end users, especially for support entities
- Several commenters also suggested limiting the proposed application of U.S. persons controls to only those military, intelligence, and security end users identified on the Entity List
- BIS continues to review and assess public comments received

Entity List

What is the Entity List

- Definition in 15 C.F.R. § 744.16
 - The Entity List (supplement no. 4 to this part) identifies persons or addresses of 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 Entity List specifies the license requirements that it imposes on each listed person. Those license requirements are independent of, and in addition to, license requirements imposed elsewhere in the EAR
- Applies to exports, reexports and transfers (in-country)

Criteria for Entity List

- “...reasonable cause to believe, *based on specific and articulable facts*, that the entity or party to the transaction that is operating at an address that presents a high diversion risk 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...”
 - Supporting persons engaged in acts of terror.
 - 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.
 - Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security
 - Prevention of the accomplishment of an end use check conducted by or on behalf of BIS
 - Engaging in conduct that poses a risk of violating the EAR

Entity List (EL)

Country	Entity	License Requirement	License Review Policy	Federal Register Citation
Country the entity is in	Entity name, address, aliases	Triggered when any party to the transaction is on the EL	Determines review standard for license applications submitted to BIS involving listed entities	Where you can find the listing in the Federal Register

End-User Review Committee (ERC)

- Interagency body that makes decisions regarding additions to, removals from, or other modifications to the Entity List and the Military End User List. Also, approves, modifies, or revokes Validated-End User Authorizations.

Structure of the ERC

- The ERC is Chaired by a Commerce representative.
 - Comprised of representatives from the Departments of Commerce (BIS), Defense (DTSA), Energy, State (ISN), and the Department of the Treasury as appropriate
 - The ERC Chair is the official who is responsible for duties necessary to manage the work of the ERC, including, but not limited, to distributing Entity List recommendations to member agencies, convening meetings of the ERC, setting the agendas for ERC meetings, and drafting ERC decision memoranda and other related documentation to formally conclude and enact ERC decisions.

Unverified List

The Unverified List (UVL) – Effect

- Exports, reexports, and transfers (in-country) when a UVL entity is a party to the transaction may not be made under a license exception
 - In certain cases, this means an individually-validated license will be required
- Prior to exporting to an entity on the UVL, the exporter must obtain a statement from the entity, to include information confirming:
 - The end use, end user, and destination of the items
 - Intent to comply with export and reexport controls
 - Intent to cooperate with an end-use check
- All exports to entities on the UVL must be filed in the Automated Export System, regardless of value

UVL – Addition Process

BIS adds foreign parties to the UVL when an end-use check cannot be completed for reasons outside the U.S. government's control:

- The foreign party cannot be located/contacted
- The foreign party cannot provide disposition information for U.S.-origin items,
 - i.e., produce the item for inspection or provide resale documentation
- Lack of host government cooperation prevents the check from being conducted
 - Prolonged inability to conduct a check may result in placement on the Entity List

UVL – Removal Process

- Requests for removal are submitted to BIS's Office of Enforcement Analysis
- Requests should include information confirming the *bona fides* of the party and the disposition of any items received from the U.S.
- Removal decisions are made by the Deputy Assistant Secretary for Export Enforcement

THANK YOU