§ 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 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.\(^{2,3}\)

\(^{2}\)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.

\(^{3}\)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 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 transfers of items subject to the EAR to denied parties.

(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, transfer (in-country) or other activity. See Supplement No. 1 to part 732 for guidance. For exports, reexports 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) or 744.6(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) 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.

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). The public is hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. No License Exceptions are available for exports and reexports 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.

15 CFR Ch. VII (1–1–10 Edition)
(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:

(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. 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 paragraphs (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;
§ 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, 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 export, reexport or transfer (in-country) you know that the item:

(1) Will be used in the design, development, production or use of rocket systems or unmanned air 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 member of NATO, in the design, development, production or use of rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, development, production or use of any rocket systems or unmanned air 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 air vehicles, or

(ii) Whether the rocket systems or unmanned air 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 missile systems, space launch vehicles, and sounding rockets. Also, for the purposes of this section, “unmanned air vehicles” include, but are not limited to, cruise missile systems, 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