license requirement in §744.21 of the EAR (Restrictions on Certain Military End-uses in the People’s Republic of China).” In addition, either in the additional information block or in an attachment to the application, you must include all known information concerning the military end-use 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 items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC and would result in advancing the country’s military activities contrary to the national security interests of the United States. When it is determined that an export, reexport, or transfer would make such a contribution, the license will be denied.

(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 other reasons that are designated to the PRC for a military end-use also will be subject to the review policy stated in paragraph (e)(1) of this section.

(f) 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 a military item described on the Wassenaar Arrangement Munitions List (as set out on the Wassenaar Arrangement Web site at http://www.wassenaar.org); incorporation into items listed under ECCNs ending in “A018” on the CCL in supplement No. 1 to part 774 of the EAR; or for the “use,” “development,” or “production” of military items described on the USML or the IML, or items listed under ECCNs ending in “A018” on the CCL. “Military end-use” also means “deployment” of items classified under ECCN 9A991 as set forth in supplement No. 2 to part 744.

NOTE TO PARAGRAPH (f) OF THIS SECTION: As defined in part 772 of the EAR, “use” means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing; “development” is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts; and “production” means all production stages, such as: product engineering, manufacturing, integration, assembly (mounting), inspection, testing, quality assurance.

For purposes of this section, operation means to cause to function as intended; installation means to make ready for use, and includes connecting, integrating, incorporating, loading software, and testing; maintenance means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; and deployment means placing in battle formation or appropriate strategic position.

§744.22 Restrictions on exports, reexports and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464.

Consistent with Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007 and Executive Order 13464 of April 30, 2008, BIS maintains restrictions on exports, reexports, and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464. These persons include individuals and entities listed in the Annexes to Executive Orders 13310, 13448 and 13464, as well as other persons whose property and interests in property are blocked pursuant to those orders.

(a) License Requirements. (1) A license requirement applies to the export, reexport, or transfer of any item subject to the EAR (except for agricultural
commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) to—

(i) Persons listed in the Annexes to Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007 or Executive Order 13464 of April 30, 2008; or

(ii) Persons designated pursuant to Executive Order 13310, Executive Order 13448 or Executive Order 13464.

NOTE TO PARAGRAPH (a)(1): All persons listed in or designated pursuant to Executive Orders 13310, 13448, or 13464 are identified with the reference [BURMA] on OFAC’s list of Specially Designated Nationals and Blocked Persons set forth in appendix A to 31 CFR chapter V and on OFAC’s Web site at http://www.treas.gov/OFAC. Consistent with guidance issued by OFAC on February 14, 2008, a person whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by OFAC is considered to have an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50% or greater interest. The property and interests in property are blocked, regardless of whether the entity itself is listed in the annex to an Executive order or otherwise designated pursuant to such order. The OFAC guidance on this topic is available at http://www.treas.gov/offices/enforcement/ofacprograms/common/licensing_guidance.pdf.

(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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) 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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464).

(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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) 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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) 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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464).
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(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 (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) 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, except as available under 31 CFR 337.210(c).

[74 FR 771, Jan. 8, 2009]

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]

[88 FR 1797, Jan. 14, 2003]

Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use License Requirement of §744.21

The following items, as described, are subject to the military end-use 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 Limited to fibrous and filamentary materials other than glass, aramid or polyethylene controlled by 1C910 or 1C210, for use in “composite” structures and with a specific modulus of 3.18 × 10⁶ m or greater and a specific tensile strength of 7.62 × 10⁴ m or greater.

(iii) 1C996 Hydraulic fluids containing synthetic hydrocarbons, 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) 2A991 Limited to bearings and bearing systems not controlled by 2A001 and with operating temperatures above 573K (300 °C).

(ii) 2B991 Limited to “numerically-controlled” machine tools having “positioning accuracies”, with all compensations available, less (better) than 9µm along any linear axis, and machine tools controlled under 2B991.d.1.a.

(iii) 2B992 Non-“numerically controlled” machine tools for generating optical quality surfaces, and specially designed components therefor.

(iv) 2B996 Limited to dimensional inspection or measuring systems or equipment not controlled by 2B906 with measurement uncertainty equal to or less (better) than (1.7 + L/1000) micrometers in any axes (L measured Length in mm).

3. Category 3—Electronics Design, Development and Production

(i) 3A292.d Limited to digital oscilloscopes and transient recorders, using analog-to-digital conversion techniques, capable of storing transients by sequentially sampling single-shot inputs at greater than 2.5 gigasamples per second.

(ii) 3A999.c All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers.