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;

(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 of this part; and

(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.

Bureau of Industry and Security, Commerce

§ 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

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 air 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 or use of certain rocket systems or unmanned air vehicles;

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

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use for certain rocket system or unmanned air 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.