cause to believe, based on specific and
articulable facts, that the entity 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 pol-
icy interests of the United States and
those acting on behalf of such entities
may be added to the Entity List pursu-
ant to this section. This section may
not be used to place on the Entity List
any party to which exports or reex-
ports require a license pursuant to
§744.12, §744.13, §744.14 or §744.18 of this
part. This section may not be used to
place on the Entity List any party if
exports or reexports to that party of
items that are subject to the EAR are
prohibited by or require a license from
another U.S. government agency. This
section may not be used to place any
U.S. person, as defined in §772.1 of the
EAR, on the Entity List. Examples (1)
through (5) of this paragraph provide
an illustrative list of activities that
could be contrary to the national secu-
riety or foreign policy interests of the
United States.

(1) Supporting persons engaged in
acts of terror.

(2) 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 ter-
rorism.

(3) Transferring, developing, serv-
cicing, repairing or producing conven-
tional weapons in a manner that is
contrary to United States national secu-
ritv or foreign policy interests or en-
abling such transfer, service, repair,
development, or production by sup-
plying parts, components, technology,
or financing for such activity.

(4) Preventing accomplishment of an
end use check conducted by or on be-
half of BIS or the Directorate of De-
fense Trade Controls of the Depart-
ment of State by: precluding access to;
refusing to provide information about;
or providing false or misleading infor-
mation about parties to the trans-
action or the item to be checked. The
conduct in this example includes: ex-
pressly refusing to permit a check, pro-
viding false or misleading information,
or engaging in dilatory or evasive con-
duct that effectively prevents the
check from occurring or makes the
check inaccurate or useless. A nexus
between the conduct of the party to be
listed and the failure to produce a com-
plete, accurate and useful check is re-
quired, even though an express refusal
by the party to be listed is not re-
quired.

(5) Engaging in conduct that poses a
risk of violating the EAR when such
conduct raises sufficient concern that
the End-User Review committee be-
lieves that prior review of exports, re-
exports, or transfers (in-country) in-
volving the party and the possible im-
position of license conditions or license
denial enhances BIS’s ability to pre-
vent violations of the EAR.

[73 FR 49321, Aug. 21, 2008, as amended at 74
FR 45992, Sept. 8, 2009]

§ 744.12 Restrictions on exports and
reexports to persons designated in
or pursuant to Executive Order
13224 (Specially Designated Global
Terrorist) (SDGT).

BIS maintains restrictions on ex-
ports and reexports to persons des-
ignated in or pursuant to Executive
Order 13224 of September 23, 2001
(Blocking Property and Prohibiting
Transactions with Persons Who Com-
mit, Threaten to Commit, or Support
Terrorism). These persons include indi-
viduals and entities listed in the Annex
to Executive Order 13224, as well as per-
sons subsequently designated by the
Secretary of State or Secretary of the
Treasury pursuant to criteria set forth
in the Order. Pursuant to Executive
Order 13224, the Department of the
Treasury’s Office of Foreign Assets
Control (OFAC) maintains 31 CFR part
594, the Global Terrorism Sanctions
Regulations. OFAC announces the
names of persons designated pursuant
to Executive Order 13224 in the FED-
ERAL REGISTER and includes such per-
sons in Appendix A to 31 CFR Chapter
V, which lists persons subject to var-
ious sanctions programs administered
by OFAC. The Department of State
also announces the names of foreign
persons designated pursuant to Execu-
tive Order 13224 in the FEDERAL REG-
ISTER. All persons designated in or pur-
suant to Executive Order 13224 are
identified in Appendix A to 31 CFR.
Chapter V by the bracketed initials (SDGT) and are also known as Specially Designated Global Terrorists (SDGTs).

(a) License requirement(s). (1) A license requirement applies to the export or reexport to an SDGT of any item subject to the EAR.

(2) To avoid duplication, U.S. persons are not required to seek separate authorization for an export or reexport to an SDGT of an item subject to both the EAR and OFAC’s regulatory authority pursuant to Executive Order 13224. Therefore, if OFAC authorizes an export from the United States or an export or reexport by a U.S. person to an SDGT, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export or reexport to an SDGT of any item subject to the EAR but not subject to OFAC’s Global Terrorism Sanctions Regulations in 31 CFR part 594.

(4) Non-U.S. persons must seek authorization from BIS for any export from abroad or reexport to an SDGT of any item subject to the EAR.

(5) Any export or reexport to an SDGT of any item subject to the EAR and OFAC’s regulatory authority pursuant to Executive Order 13224 and not authorized by OFAC is a violation of the EAR.

(6) Any export or reexport by a U.S. person to an SDGT of any item subject to the EAR that is not subject to regulation by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad or reexport by a non-U.S. person to an SDGT of any item subject to the EAR 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 authorization are available for any export or reexport to an SDGT of any item subject to the EAR.

(c) Licensing policy. Applications for licenses for the export or reexport to an SDGT of any item subject to the EAR generally will 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.

NOTE TO §744.12: This section does not implement, construe, or limit the scope of any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 2339A, and does not excuse any person from complying with any criminal statute, including (but not limited to) 18 U.S.C. 2339B(a)(1) and 18 U.S.C. 2339A.

[68 FR 34194, June 6, 2003]