§ 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) Nuclear material activities. Nuclear activities involving the identification, characterization, measurement, weaponization, development, testing, or production of nuclear materials.

(3) Nuclear facility activities. Nuclear activities involving the construction, testing, or operation of nuclear facilities.

(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.

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(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;

(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.