

§ 744.11

(in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

[64 FR 14605, Mar. 26, 1999, as amended at 74 FR 45992, Sept. 8, 2009]

§ 744.11 License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States.

BIS may impose foreign policy export, re-export, and transfer (in-country) license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License requirements, limitations on use of license exceptions, and license application review policies will be imposed under this section by adding an entity to the Entity List (supplement no. 4 to this part) with a reference to this section and by stating on the Entity List the license requirements and license application review policies that apply to that entity, or by informing an exporter, re-exporter, or transferor pursuant to paragraph (c) of this section that a specific entity is subject to a license requirement, limitations on use of license exceptions and license application review policies as specified in a specific notice provided to an exporter, re-exporter, or transferor. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future, or if it is no longer at significant risk of acting contrary to the national security or foreign policy interests of the United States as described therein. BIS may modify the license exception limitations and license application review policies that apply to a particular entity to implement the policies of this section. BIS will implement the provisions of this section in accordance with the decisions of the End-User Review Committee or, if appropriate in a particular case, in accordance with the decisions of the body to which the End-User Review Committee decision is escalated. The End-User Review Com-

15 CFR Ch. VII (1–1–24 Edition)

mittee will follow the procedures set forth in supplement no. 5 to this part.

(a) *License requirement, availability of license exceptions, and license application review policy.* A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity that is listed on the Entity List is a party to the transaction as described in § 748.5(c) through (f) of the EAR unless otherwise authorized or excluded in this section. License exceptions may not be used unless authorized in the Entity List entry for the entity that is party to the transaction. Applications for licenses required by this section will be evaluated as stated in the Entity List entry for the entity that is party to the transaction, in addition to any other applicable review policy stated elsewhere in the EAR.

(1) *Standards related activity.* A license is not required for the release of “technology” or “software” designated EAR99 or controlled on the CCL for anti-terrorism reasons only, when such a release is for a “standards-related activity.” In addition, a license is not required for the release of the following ECCN “items” level paragraphs of “technology” or “software” specifically for the “development,” “production,” or “use” of cryptographic functionality when such a release is for a “standards-related activity:” “software” that is classified under ECCN 5D002.b or 5D002.c.1 (for equipment specified in ECCN 5A002.a and 5A002.c only); “technology” that is classified under ECCN 5E002 (for equipment specified in ECCN 5A002.a, .b and .c); and “technology” for software controlled under ECCN 5D002.b or .c.1 (for equipment specified in ECCN 5A002.a and .c only).

(2) *Entity List foreign-“direct product” (FDP) license requirements, review policy, and license exceptions—(i) Footnote 1 entities.* You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(1)(i) of the EAR when an entity designated with footnote 1 on the Entity List in supplement. no. 4 to this part is a party

to the transaction. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in § 740.2 of this EAR do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the “development” or “production” of telecom systems, equipment, and devices below the 5G level (*e.g.*, 4G, 3G) will be reviewed on a case-by-case basis.

(ii) *Footnote 4 entities.* You may not, without a license, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to this part is a party to the transaction, or that will be used in the “development” or “production” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any such entity. See § 744.23 for additional license requirements that may apply to these entities. The license review policy for foreign-produced items subject to this license requirement is set forth in the entry in supplement no. 4 to this part for each entity with a footnote 4 designation.

(b) *Criteria for revising the Entity List.* Entities for which there is reasonable 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 policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. An entity may pose a significant risk through certain circumstances that may be outside of its own control. Such circumstances that may place an entity at significant risk include situations involving a sustained lack of cooperation by a host government authority, for example, by preventing an end-use check from being conducted, that effectively pre-

vents BIS from determining compliance with the EAR. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to § 744.8, § 744.12, § 744.13, § 744.14, or § 744.18. This section may not be used to place any U.S. person, as defined in § 772.1 of the EAR, on the Entity List. Paragraphs (b)(1) through (5) of this section provide an illustrative list of activities that could be or represent a significant risk of being contrary to the national security or foreign policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world.

(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 terrorism.

(3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity.

(4) Prevention of the accomplishment of an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State by:

(i) The entity precluding access to; refusing to provide information about; or providing false or misleading information about parties to the transaction or the item to be checked. The conduct in this example includes: expressly refusing to permit a check; providing false or misleading information; or engaging in dilatory or evasive conduct 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 complete, accurate and useful check is required, even though an express refusal by the party to be listed is not required; or

(ii) A sustained lack of cooperation by the host government to schedule and facilitate the completion of an end-use check of entities identified on the Unverified List pursuant to § 744.15, resulting in sufficient concern such that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the entity and the possible imposition of license conditions or license denial enhance BIS's ability to prevent violations of the EAR.

(5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review Committee believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

(c) *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:

(1) A specific export, reexport, or transfer (in-country) because there is an unacceptable risk that the export, reexport, or transfer (in-country) is intended to circumvent the license requirement imposed on an entity listed in supplement no. 4 to this part; or

(2) The export, reexport, or transfer (in-country) of specified items to a certain party because there is an unacceptable risk that the party is acting as an agent, front, or shell company for an entity listed in supplement no. 4 to this part, or is otherwise assisting that listed entity in circumventing the license requirement set forth in that entity's entry in supplement no. 4 to this part; or

(3) The export, reexport, or transfer (in-country) of specified items to a certain party because there is reasonable 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 policy interests of the United States, including the foreign policy interest of the protection of human rights throughout the world, and those acting

on behalf of such entity. Specific notice will 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 written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The specific notice will include the license requirement, limitations on use of license exceptions, and license application review policy with which that exporter, re-exporter, or transferor must comply pursuant to this paragraph (c)(3). The ERC may add such entities to the Entity List in supplement no. 4 to this part.

[87 FR 61973, Oct. 13, 2022, as amended at 87 FR 62200, Oct. 13, 2022; 88 FR 18985, Mar. 30, 2023]

§ 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 exports and reexports to persons designated in or pursuant to Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism). These persons include individuals and entities listed in the Annex to Executive Order 13224, as well as persons 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 FEDERAL REGISTER and includes such persons in Appendix A to 31 CFR Chapter V, which lists persons subject to various sanctions programs administered by OFAC. The Department of State also announces the names of foreign persons designated pursuant to Executive Order 13224 in the FEDERAL REGISTER. All persons designated in or pursuant to Executive Order 13224 are identified in Appendix A to 31 CFR