

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

SOURCE: 61 FR 12802, Mar. 25, 1996, unless otherwise noted.

§ 744.1 General provisions.

(a)(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end-users and end-uses as introduced under General Prohibition Five (End-use/End-users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, 744.4 and 744.5 prohibit exports and reexports of items subject to the EAR to defined nuclear, missile, chemical and biological activities and nuclear maritime end-uses. Section 744.6 prohibits certain activities by U.S. persons in support of certain nuclear, missile, chemical, or biological end-uses regardless of whether that support involves the export or reexport of items subject to the EAR. Sections 744.7 and 744.8 prohibit exports and reexports of certain items for certain aircraft and vessels. Section 744.9 prohibits U.S. persons from providing technical assistance to certain foreign persons seeking to develop or manufacture certain encryption commodities or software. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in Supplement No. 4 of this part. Sections 744.12, 744.13 and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 describes re-

strictions on exports and reexports to persons named in general orders. Section 744.16 prohibits exports and reexports by U.S. persons of items subject to the EAR to persons designated pursuant to Executive Order 13088, as amended by Executive Order 13192, including Slobodan Milosevic, his close associates, and persons determined to be under open indictment by the International Criminal Tribunal for the former Yugoslavia. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain in-country transfers of items subject to the EAR to denied parties.

(2) If controls set forth under more than one section of part 744 apply to a person, the license requirements for such a person will be determined based on the requirements of all applicable sections of part 744, and license applications will be reviewed under all applicable licensing policies.

(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, or other activity. See Supplement No. 1 to part 732 for guidance.

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). Exporters are 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 or 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 intended to ensure

the safety of civil aviation and safe operation of commercial passenger aircraft.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 51370, Oct. 1, 1997; 63 FR 64324, Nov. 19, 1998; 66 FR 50091, Oct. 1, 2001; 68 FR 34194, June 6, 2003]

§ 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 or reexport to any destination, other than countries in the Supplement No. 3 to this part, any item subject to the EAR without a license if at the time of the export or reexport you know¹ 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 3}

¹Part 772 of the EAR defines “knowledge” for all of the EAR except part 760, Restrictive Trade Practices and Boycotts. The definition, which includes variants such as “know” and “reason to know”, encompasses more than positive knowledge. Thus, the use of “know” in this section in place of the former wording “know or have reason to know” does not lessen or otherwise change the responsibilities of persons subject to the EAR.

²Nuclear explosive devices and any article, material, equipment, or device specifically designed or specially modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices are subject to export licensing or other requirements of the Office of Defense Trade Controls, U.S. Department of State, or the licensing or other restrictions specified in the Atomic Energy Act of 1954, as amended. Similarly, items specifically designed or specifically modified for use in devising, carrying out, or evaluating nuclear weapons tests or nuclear explosions (except such items as are in normal commercial use for other purposes) are subject to the same requirements.

³Also see §§ 744.5 and 748.4 of the EAR for special provisions relating to technical data for maritime nuclear propulsion plants and other commodities.

(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:⁴

- (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 exporters or reexporters informed by BIS.* BIS may inform an exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of specified items to specified end-users, because BIS has determined that there is an unacceptable risk of use in, or diversion to, any of the activities described 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

⁴Such activities may also require a specific authorization from the Secretary of Energy pursuant to § 57.b.(2) of the Atomic Energy Act of 1954, as amended, as implemented by the Department of Energy’s regulations published in 10 CFR 810.