

§743.1 Wassenaar Arrangement.

(a) *Scope.* This section outlines special reporting requirements for exports of certain commodities, software and technology controlled under the Wassenaar Arrangement. Such reports must be submitted to BXA semiannually in accordance with the provisions of paragraph (f) of this section, and records of all exports subject to the reporting requirements of this section must be kept in accordance with part 762 of the EAR. This section does not require reports for reexports.

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see §762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section under any of the following License Exceptions authorized by part 740 of the EAR: license Exceptions GBS, CIV, TSR, LVS, CTP, and GOV. For purposes of this part 743, “you” has the same meaning as “U.S. exporter”, as defined in part 772 of the EAR.

(c) *Items for which reports are required.*

(1) You must submit reports to BXA under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002, 1C007.c and .d, 1C010.c and .d, 1D002, 1E001, 1E002.e, and 1E002.f.;

(ii) *Category 2:* 2B001.a or .b (certain items only; see Note to this paragraph) 2B001.f, 2B003, 2D001, 2E001, and 2E002;

Note to paragraph (c)(1)(ii): The following are not controlled for NP reasons: turning machines controlled by 2B001.a with a capacity equal to or less than 35 mm diameter; bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks (machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or milling machines controlled by 2B001.b with x-axis travel greater than two meters and overall “positioning accuracy” on the x-axis more (worse) than 0.030 mm. Therefore, exports of such items under License Exception GOV are subject to reporting requirements.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001, and 3E001;

(iv) *Category 4:* 4A001.a.2 and .b, 4A003.b and .c (see paragraph (c)(2) of this section), 4D001, 4D003.c, and 4E001;

(v) *Category 5:* 5A001.b.8, 5B001 (items specially designed for 5A001.b.8), 5D001.a and .b, 5E001.a, 5A002, 5B002, 5D002, and 5E002;

(vi) *Category 6:* 6A001.a.1.b, .a.2.c, .a.2.d, and .a.2.e; 6A002.b, 6A004.c and d, 6A006.g and h, 6A008.d, .h, and .k; 6D001, 6D003.a, 6E001, and 6E002;

(vii) *Category 8:* 8A001.c; 8A002.b, .h, .j, .o.3.a, and .p; 8D001, 8D002, 8E001, and 8E002.a; and

(viii) *Category 9:* 9B001.b, 9D001, 9D002, 9D004.a and .c, 9E001, 9E002, 9E003.a.1, 9E003.a.2, .a.3, .a.4, .a.5, .a.8, and .a.9.

(2) Reports for “digital computers” and “electronic assemblies” controlled under ECCN 4A003.b and .c are required only for computers with a composite theoretical performance (CTP) exceeding 4,000 MTOPS or computer enhancements thereof such that the CTP exceeds 4,000 MTOPS. Records for software controlled by 4D001 are required for software specially designed for the development or production of computers having a CTP exceeding 4,000 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

(d) *Country Exceptions.* You must report each export subject to the provisions of this section, except for exports to countries identified in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR).

(e) *Information that must be included in each report.*

(1) Each report submitted to BXA for items other than those identified in paragraph (e)(2) of this section must include the following information for each export during the time periods specified in paragraph (f) of this section:

(i) Export Control Classification Number and paragraph reference as identified on the Commerce Control List;

(ii) Number of units in the shipment; and

(iii) Country of ultimate destination.

(2) Reports for “digital computers” and “electronic assemblies” controlled under ECCN 4A003.b and .c must include the following information:

(i) Date of shipment;

(ii) Name and address of the end-user and each intermediate consignee;

(iii) CTP of each computer or aggregation of computing elements in shipment;

(iv) Quantity shipped; and

(v) End-use.

(f) *Frequency and timing of reports.* You must submit reports subject to the provisions of this section semiannually. The reports must be labeled with the exporting company’s name and address at the top of each page and must include for each such export all the information specified in paragraph (e) of this section. The reports shall cover exports made during six month time periods spanning from January 1 through June 30 and July 1 through December 31.

(1) The first report must be submitted to and received by BXA no later than August 1, 1998 for the partial reporting period beginning January 15, 1998 and ending June 30, 1998. Thereafter, reports are due according to the provisions of paragraphs (f)(2) and (f)(3) of this section.

(2) Reports for the reporting period ending June 30 must be submitted to and received by BXA no later than August 1.

(3) Reports for the reporting period ending December 31 must be submitted to and received by BXA no later than February 1.

(g) *Mailing address and facsimile number:*

(1) Two (2) copies of reports required under this section shall be delivered to one of the following addresses. BXA will not accept reports sent C.O.D.

(i) For deliveries by U.S. postal service:

Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: “Wassenaar Reports”, Washington, D.C. 20044

(ii) For courier deliveries:

Bureau of Export Administration, U.S. Department of Commerce, Attn: “Wassenaar Reports”, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230

(2) Reports may also be sent by facsimile to: (202) 482-3345, Attn: “Wassenaar Reports”.

(h) *Contacts.* General information concerning the Wassenaar Arrangement and reporting obligations thereof is available from the Office of Strategic Trade and Foreign Policy Controls, Tel. (202) 482-0092, Fax: (202) 482-4094.

§743.2 [Reserved]

PART 744

CONTROL POLICY: END-USER AND END-USE BASED

Sec.

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Supplement No. 1 to Part 744 — [Reserved]

Supplement No. 2 to Part 744 — [Reserved]

Supplement No. 3 to Part 744 — Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)

Supplement No. 4 to Part 744 — Entity List

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; 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. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 915; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 14, 1996, 3 CFR, 1996 Comp., p. 298; and Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

§744.1 General provisions.

(a) *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 Four (Denial Orders) and prohibitions against exports or reexports to certain end-uses as introduced, under General Prohibition Five (End-use/End-users). 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 weapons, 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. 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.

(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. License applications will be reviewed under the license review standards set forth in this part 744. No License Exceptions are available for exports or reexports to listed entities of specified items.

§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}

(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 BXA.* BXA 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 BXA 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 notice within two working days signed by the Deputy Assistant Secretary for Export Administration. The absence of any such notification does not excuse the exporter or reexporter 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 Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), Iceland and New Zealand. 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 Country Group A:1, Iceland and New Zealand.

(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.

§744.3 Restrictions on certain missile end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item:

(1) Is destined to or for a project listed in the footnote to Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(2) Will be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4, whether or not that use involves a listed project.

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for exports or reexports of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to activities described in paragraph (a) of this section, anywhere in the world. Specific notice is to

¹ Part 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.

² Nuclear 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.

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

⁴ Such 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.

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 the exporter from compliance with the license requirements of paragraph (a) of this section. An illustrative list of projects is included in a footnote to Country Group D:4. Exporters and reexporters are deemed to have been informed that an individual license is required to export or reexport to these projects. Exporters should be aware that the list of projects in Country Group D:4 is not comprehensive; extra caution should be exercised when making any shipments to a country listed in Country Group D:4.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraph (a) and (b) of this section.

(d) *License review standards for certain missile end-uses.*

(1) Applications to export the items subject to this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export 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 in terms of its contribution to the design, development, production, or use of missiles;
- (iii) The capabilities and objectives of the missile and space programs of the recipient country;
- (iv) The non-proliferation credentials of the importing country;
- (v) The types of assurances or guarantees against design, development, production or use for missiles 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.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if at the time of the export or reexport you know the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibition on exporters informed by BXA.* BXA may inform the exporter or reexporter, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export or reexport, or for export or reexport of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. 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 the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(d) *License review standards.*

(1) Applications to export or reexport items subject to this section will be considered on a case-by-case basis to determine whether the export or reexport would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a 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 under this section:

- (i) The specific nature of the end-use;
- (ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;
- (iii) The non-proliferation credentials of the importing country;
- (iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and
- (v) The existence of a pre-existing contract.⁵

§744.5 Restrictions on certain maritime nuclear propulsion end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport certain technology

subject to the EAR without a license if at the time of the export or reexport you know the item is for use in connection with a foreign maritime nuclear propulsion project. This prohibition applies to any technology relating to maritime nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, or maintenance, including any machinery, devices, components, or equipment specifically developed or designed for use in such plants or facilities.

(b) *Exceptions.* The exceptions provided in part 740 of the EAR do not apply to the prohibitions described in paragraph (a) of this section.

(c) *License review standards.* It is the policy of the United States Government not to participate in and not to authorize United States firms or individuals to participate in foreign naval nuclear propulsion plant projects, except under an Agreement for Cooperation on naval nuclear propulsion executed in accordance with §123(d) of the Atomic Energy Act of 1954. However, it is the policy of the United States Government to encourage United States firms and individuals to participate in maritime (civil) nuclear propulsion plant projects in friendly foreign countries provided that United States naval nuclear propulsion information is not disclosed.

§744.6 Restrictions on certain activities of U.S. persons.

(a) *General prohibitions.*

(1) *Activities related to exports.*

(i) No U.S. person as defined in paragraph (c) of this section may, without a license from BXA, export, reexport, or transfer to or in any country any item where that person knows that such items:

(A) Will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to part 740 of the EAR).

(B) Will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(ii) No U.S. person shall, without a license from BXA, knowingly support an export, reexport, or transfer that does not have a license as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(2) *Other activities unrelated to exports.* No U.S. person shall, without a license from BXA:

(i) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, or use of missiles in or by a country listed in Country Group D:4 (see Supplement No. 1 to part 740 of the EAR); or

(ii) Perform any contract, service, or employment that the U.S. person knows directly will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Country Group D:3 (see Supplement No. 1 to part 740 of the EAR).

(3) *Whole plant requirement.* No U.S. person shall, without a license from BXA, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3 (Australia Group) (See Supplement No. 1 to part 740 of the EAR).

(b) *Additional prohibitions on U.S. persons informed by BXA.* BXA may inform U.S. persons, either individually or through amendment to the EAR, that a license is required because an activity could involve the types of participation and support described in paragraph (a) of this section anywhere in the world.

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 the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *Definition of U.S. person.* For purposes of this section, the term *U.S. person* includes:

(1) Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3);

(2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

⁵ See Supplement No. 1 to part 742 of the EAR for relevant contract sanctity dates.

(3) Any person in the United States.

(d) *Exceptions.* No License Exceptions apply to the prohibitions described in paragraphs (a) and (b) of this section.

(e) *License review standards.* Applications to engage in activities otherwise prohibited by this section will be denied if the activities would make a material contribution to the design, development, production, stockpiling, or use of nuclear explosive devices, chemical or biological weapons, or of missiles.

§744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) *General end-use prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

- (1) To the country in which the vessel or aircraft is located, and
- (2) To the country in which the vessel or aircraft is registered, or will be registered in the case of a vessel or aircraft under construction, and
- (3) To the country, including a national thereof, which is currently controlling, leasing, or chartering the vessel or aircraft.

(b) *Exception for U.S. and Canadian carriers.*

(1) Notwithstanding the general end-use prohibition in paragraph (a) of this section, export and reexport may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided that such commodities are⁶ all of the following:

- (i) Ordered by the person in command or the owner or agent of the vessel or plane to which they are consigned;
- (ii) Intended to be used or consumed on board such vessel or plane and necessary for its proper operation;
- (iii) In usual and reasonable kinds and quantities during times of extreme need, except that usual and reasonable quantities of ship's bunkers or aviation fuel are considered to be only that quantity necessary for a single onward voyage or flight; and
- (iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their use.

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports and reexports of the commodities described in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's installation or agent in any foreign destination except North Korea or Country Group D:1 (excluding the PRC and Romania), (see Supplement No. 1 to part 740) provided such commodities are all of the following:

- (i) Ordered by a U.S. or Canadian airline and consigned to its own installation or agent abroad;
- (ii) Intended for maintenance, repair, or operation of aircraft registered in either the United States or Canada, and necessary for the aircraft's proper operation, except where such aircraft is located in, or owned, operated or controlled by, or leased or chartered to, North Korea or Country Group D:1 (excluding the PRC) (see Supplement No. 1 to part 740) or a national of such country;

- (iii) In usual and reasonable kinds and quantities; and
- (iv) Shipped as cargo for which a Shipper's Export Declaration (SED) is filed with the carrier, except that an SED is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

(3) *Applicable commodities.* This §744.7 applies to the commodities listed subject to the provisions in paragraph (b) of this section:

- (i) Fuel, except crude petroleum and blends of unrefined crude petroleum with petroleum products, which is of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);
- (ii) Deck, engine, and steward department stores, provisions, and supplies for both port and voyage requirements, except crude petroleum, provided that any commodities which are listed in Supplement No. 2 to part 754 of the EAR are of non-Naval Petroleum Reserves origin or derivation (refer to short supply controls in part 754 of the EAR);
- (iii) Medical and surgical supplies;

- (iv) Food stores;
- (v) Slop chest articles;
- (vi) Saloon stores or supplies; and
- (vii) Equipment and spare parts.

§744.8 Restrictions on certain exports to all countries for Libyan aircraft.

(a) *General end-use prohibition for Libyan aircraft.* In addition to the license requirements for items specified on the CCL, you may not export or reexport to any destination such parts and accessories specified in paragraph (b) of this section if intended for use in the manufacture, overhaul, or rehabilitation in any country of aircraft that will be exported or reexported to Libya or Libyan nationals.

(b) *Scope of products subject to end-use prohibition for Libyan aircraft.* The general end-use prohibition in paragraph (a) of this section applies to items controlled by ECCNs 6A008, 6A108, 6A990, 7A001, 7A101, 7A002, 7A102, 7A003, 7A103, 7A004, 7A104, 7A006, 7A994, 9A001, 9A101, 9A003, 9A018.a, 9A991, and 9A994.

§744.9. Restrictions on technical assistance by U.S. persons with respect to encryption items.

(a) *General prohibition.* No U.S. person may, without a license from BXA, provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the United States of encryption commodities and software that, if of United States origin, would be controlled for "EI" reasons under ECCN 5A002 or 5D002. Note that this prohibition does not apply if the U.S. person providing the assistance has a license or is otherwise entitled to export the encryption commodities and software in question to the foreign person(s) receiving the assistance. Note in addition that the mere teaching or discussion of information about cryptography, including, for example, in an academic setting, by itself would not establish the intent described in this section, even where foreign persons are present.

(b) *Definition of U.S. person.* For purposes of this section, the term U.S. person includes:

- (1) Any individual who is a citizen or permanent resident alien of the United States;
- (2) Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and
- (3) Any person in the United States.

(c) *License review standards.* Applications involving activities described in this section will be reviewed on a case-by-case basis to determine whether the activity is consistent with U.S. national security and foreign policy interests.

Supplement No. 1 to Part 744 — [Reserved]

Supplement No. 2 to Part 744 — [Reserved]

Supplement No. 3 to Part 744 — Countries Not Subject to Certain Nuclear End-Use Restrictions in §744.2(a)

Australia
Belgium
Canada
Denmark
France
Germany
Greece
Iceland
Italy (includes San Marino and Holy See)
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Turkey
United Kingdom

Supplement No. 4 to Part 744 — Entity List

This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. This list of entities is revised and

⁶ Where a license is required, see §§748.2 and 748.4(g) of the EAR.

updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

All-Russian Scientific Research Institute of Technical Physics, (aka VNIITP, Chelyabinsk-70, All-Russian Research Institute of Technical Physics, ARITP, Russian Federal Nuclear Center), the All-Union Scientific Research Institute of Experimental Physics, (aka VNIIEF, Arzamas-16, Russian Federal Nuclear Center, All Russian Research Institute of Experimental Physics, ARIEP, Khariton Institute) and any other entities, institutes, or centers associated with the Ministry for Atomic Power of Russia located in either Snezhinsk or Kremlev, Russia, for all items subject to the EAR.

Ben Gurion University, Israel for computers between 2,000 and 7,000 Mtops
Bharat Electronics Limited (BEL) in Bangalore, India; and Bharat Electronics Limited (BEL) in Hyderabad, India; for all items subject to the EAR having a classification other than EAR99. In addition, exporters are reminded to follow “BXA’s Know Your Customer Guidance and Red Flags”, see Supplement No. 3 to part 732 of the EAR, with regard to the specific end-use of any item subject to the EAR destined to any Bharat Electronics Limited located in India.

Bhaba Atomic Research Center (BARC), Trombay, India, for all items subject to the EAR.

Chinese Academy of Engineering Physics (aka Ninth Academy, including the Southwest Institutes of: Applied Electronics, Chemical Materials, Electronic Engineering, Explosives and Chemical Engineering, Environmental Testing, Fluid Physics, General Designing and Assembly, Machining Technology, Materials, Nuclear Physics and Chemistry, Structural Mechanics; Research and Applications of Special Materials Factory; Southwest Computing Center (all of preceding located in or near Mianyang, Sichuan Province); Institute of Applied Physics and Computational Mathematics, Beijing; and High Power Laser Laboratory, Shanghai, People’s Republic of China), for all items subject to the EAR.

Indira Gandhi Center for Atomic Research, Kalpakkam, India, for all items subject to the EAR.

Indian Rare Earths, Ltd., India, for all items subject to the EAR.

Khan Research Laboratory, Kahuta, Pakistan, for all items subject to the EAR.

National Development Centre, Pakistan, for all items subject to the EAR.

Nuclear Research Center at Negev, Dimona, Israel, for all items subject to the EAR.

Pakistan Institute for Nuclear Science and Technology, Rawalpindi, Pakistan, (including New Labs Rawalpindi) for all items subject to the EAR.

PART 746 EMBARGOES AND OTHER SPECIAL CONTROLS

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Supplement No. 2 to Part 746 — United Nations Arms Embargoes Administered by the Department of State: Liberia, Somalia and Countries of the Former Yugoslavia (Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia and Montenegro, Slovenia)	
Supplement No. 3 to Part 746 — [Removed and Reserved]	

AUTHORITY: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997).

§746.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part implements broad based controls for items and activities subject to the EAR imposed to implement U.S. government policies. Two categories of controls are included in this part.

(a) *Comprehensive controls.* This part contains or refers to all the BXA licensing requirements, licensing policies, and License Exceptions for countries subject to general embargoes, currently Cuba, Libya, North Korea, Iran and Iraq. This part is the focal point for all the EAR requirements for transactions involving these countries.

(1) *Cuba, Libya, North Korea.* All the items on the Commerce Control List (CCL) require a license to Cuba, Libya, or North Korea. In addition, most other items subject to the EAR, but not included on the CCL, designated by the Number “EAR99”, require a license to Cuba, Libya, and North Korea. Most items requiring a license to these destinations are subject to a general policy of denial. Because these controls extend to virtually all exports, they do not appear in the Country Chart in part 738 of the EAR, nor are they reflected in the Commerce Control List in part 774 of the EAR.

(2) *Iran and Iraq.* While BXA maintains controls on exports and reexports to Iran and Iraq, comprehensive embargoes on transactions involving these countries are administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC).

(b) *Rwanda.* The second category of controls that apply to Rwanda are supplemental to the controls described in the Country Chart in part 738 of the EAR. Such controls are listed under each affected ECCN on the CCL in part 774 of the EAR.

(c) This part also contains descriptions of controls maintained by the Office of Foreign Assets Control in the Treasury Department and by the Office of Defense Trade Controls in the Department of State. Comprehensive embargoes and supplemental controls implemented by BXA under the EAR usually also involve controls on items and activities maintained by these agencies. This part sets forth the allocation of licensing responsibilities between BXA and these other agencies. References to the requirements of other agencies are informational; for current, complete, and authoritative requirements, you should consult the appropriate agency’s regulations.

(d) Supplement No. 1 to this part provides you with general information on United Nations sanctions administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC) (31 CFR part 590) on UNITA in Angola.

(e) Supplement No. 2 to this part provides you with general information on United Nations arms embargoes administered by the Department of State (22 CFR parts 120 through 130) on all the countries of the former Yugoslavia (Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia, Montenegro, and Slovenia), Liberia and Somalia.

(f) Supplement No. 3 to this part provides you with information on embargoes on the Federal Republic of Yugoslavia (Serbia and Montenegro) and certain areas of Croatia and Bosnia-Herzegovina administered by OFAC (31 CFR part 585).

§746.2 Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, except as follows.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see §740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see §740.13(a) of the EAR).

(iii) Sales technology (TSU) (see §740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see §740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see §740.10(a) of the EAR).

(vi) Baggage (BAG) (see §740.14 of the EAR).

(vii) Governments and international organizations (GOV) (see §740.11 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see §740.12 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see §740.9(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see §740.15(a) of the EAR).

(xi) Permissive reexports of certain spare parts in foreign-made equipment (see §740.16(h) of the EAR).

(2) [Reserved.]