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Title 15 - Commerce and Foreign Trade

Subtitle B - Regulations Relating to Commerce and Foreign Trade

Chapter VII - Bureau of Industry and Security, Department of Commerce

Subchapter C - Export Administration Regulations

Part 744 - Control Policy: End-User and End-Use Based

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; 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. 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 September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

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

§ 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, reexport, or transfer (in-country) 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 in the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or destination, worldwide; or in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a whole plant to make chemical weapons precursors specified in ECCN 1C350 in or by countries other than those listed in Country Group A:3 (Australia Group) (see supplement no. 1 to part 740 of the EAR).
- (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, 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 persons 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, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer (in-country) would make a material contribution to the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons. When an export, reexport, or transfer (in-country) 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, reexport, or transfer in terms of its contribution to the design, "development," "production," stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons;
- (iii) The nonproliferation credentials of the importing country or the country in which the transfer would take place;
- (iv) The types of assurances or guarantees against the design, "development," "production," stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons; and
- (v) The existence of a pre-existing contract. See supplement no. 1 to part 742 of the EAR for relevant contract sanctity dates.

[61 FR 12802, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1997; 70 FR 16111, Mar. 30, 2005; 70 FR 19691, Apr. 14, 2005; 73 FR 68326, Nov. 18, 2008; 86 FR 4871, Jan. 15, 2021]