



EIB World Trade Headlines

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EIB Features PODCAST

Now on our home page, www.eib.com, iTunes and a number of well know Podcast locations via [Buzzsprout](#), we have export news and regulatory updates. We plan to release two informational pieces per month.

First Podcast features basic info about the New, Nov. 30, 2020 DFARS Cyber Security flow downs and requirements. Link to the info below or on our home page! eib.com

Thanks for following us. Feel free to share the link.

<https://eibexportnews.buzzsprout.com/1592353/7147897-cyber-security-basics-for-the-defense-industrial-base-dfars-nist>

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OFAC Penalties 2020

<https://home.treasury.gov/policy-issues/financial-sanctions/civil-penalties-and-enforcement-information>

Civil Penalties Information Chart

| Detailed Penalties Information | Name | Aggregate Number of Penalties or Settlements | Monthly Penalties/Settlements Total in USD |
|--------------------------------|---|--|--|
| 12/30/2020 | BitGo, Inc. | 1 | 98,830 |
| 12/28/2020 | National Commercial Bank | 1 | 653,347 |
| 10/20/2020 | Berkshire Hathaway, Inc. | 1 | 4,144,651 |
| 10/01/2020 | Generali Global Assistance, Inc. | 1 | 5,864,860 |
| 09/24/2020 | Keysight Technologies Inc. | 1 | 473,157 |
| 09/17/2020 | Comtech Telecommunications Corp. | 1 | 894,111 |
| 09/09/2020 | Deutsche Bank Trust Company Americas | 2 | 583,100 |
| 08/11/2020 | An Individual | 1 | 5,000 |
| 07/28/2020 | Whitford Worldwide Company, LLC | 1 | 824,314 |
| 07/16/2020 | Essentra FZE Company Limited | 1 | 665,112 |
| 07/08/2020 | Amazon.com , Inc. | 1 | 134,523 |
| 05/06/2020 | BIOMIN America, Inc. | 1 | 257,862 |
| 02/26/2020 | Société Internationale de Télécommunications Aéronautiques SCRL | 1 | 7,829,640 |
| 01/27/2020 | Eagle Shipping International (USA) LLC | 1 | 1,125,000 |
| 01/21/2020 | Park Strategies, LLC | 1 | 12,150 |
| Year to date totals: | | 16 | 23,565,657 |

Enforcement Actions for 2020:

- [Finding of Violation issued to American Express Travel Related Services Company by the U.S. Department of the Treasury's Office of Foreign Assets Control](#)

Microsoft says Russians hacked its network, viewing source code

Ellen Nakashima 26 mins ago Dec 31, 2020

Microsoft says Russians hacked its network, viewing source code

Russian government hackers engaged in a sweeping series of breaches of government and private-sector networks have been able to penetrate deeper into Microsoft's systems than previously known, gaining access to potentially valuable source code, the tech giant said Thursday.

The firm previously acknowledged that it had inadvertently downloaded a software patch used by the Russians as a potential "back door" into victims' systems. But it was not known that the hackers had viewed the firm's source code, or the crucial DNA of potentially valuable, proprietary software.

[Russian hack was 'classic espionage' with stealthy, targeted tactics]

Microsoft, however, did not specify what type of source code was accessed.

"We detected unusual activity with a small number of internal accounts and upon review, we discovered one account had been used to view source code in a number of source code repositories," the firm said in a [blog post](#).

The hackers did not have permissions to modify any code or engineering systems, Microsoft said, adding "our investigation further confirmed no changes were made. These accounts were investigated and remediated."

Microsoft has played a pivotal if unwitting role in the breaches, as its cloud service platform has been used by the Russians to send commands to victim networks. The firm was the first to alert several U.S. government agencies in recent weeks to the fact they had been compromised.

The Redmond, Wash.-based company said it has found no evidence of access to production services or customer data. It said its investigation also found no indications that its systems have been used to attack others.

However, some of its cloud customers have been hacked through a third-party partner that handles the firm's cloud-access services, [The Washington Post reported last week](#).

FAA Approves Automated Commercial Drones

A Massachusetts company is the first approved for commercial drone flights without a person directing the machine and keeping it in sight.

Jan 18th, 2021 WASHINGTON (AP) — A Massachusetts company has been granted approval to operate commercial drone flights without a person directing the machine and keeping it in sight.

It's the first time that the Federal Aviation Administration has allowed fully automated commercial drone flights. American Robotics Inc. touted the advantage of its machines as being able to operate continuously without "expensive human labor." The Marlborough, Massachusetts, company said Friday it has tested fully automated drones for four years.

CEO and co-founder Reese Mozer said there could be a \$100 billion market in providing drone services to industries such as energy and agriculture, but that FAA safety requirements have restricted their use. The company said its Scout drones have technology to stay a safe distance from other aircraft. They are housed in base stations that allow for autonomous charging and to process and transmit the data they collect from aerial surveys.

The FAA has allowed companies to operate drones beyond the line of sight of operators, but a person on the ground had to be nearby. Lisa Ellman, a lawyer for the company and executive director of the Commercial Drone Alliance, said allowing expanded operations beyond the sight of an operator "is critical for the industry to truly take off."

According to documents posted Thursday by the FAA, the drones, which fly along planned routes, will be limited to altitudes below 400 feet (122 meters) in rural areas. The FAA will allow them to have a maximum takeoff weight of 20 pounds (nine kilograms).

Implementation in the Export Administration Regulations of the United States' Rescission of Sudan's Designation as a State Sponsor of Terrorism

In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement the rescission of Sudan's designation as a State Sponsor

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of Terrorism (SSOT). The Secretary of State rescinded this designation effective December 14, 2020 in accordance with established statutory procedures, including the President's October 26, 2020 submission to Congress of a report justifying the rescission and certifying Sudan had not

provided any support for acts of international terrorism during the preceding six month period and that Sudan had provided assurances that it would not support acts of international terrorism in the future. Accordingly, BIS amends the EAR by removing Anti-Terrorism (AT) controls on the country and by removing Sudan from Country Group E:1 (Terrorist supporting countries). These actions render the country eligible for a general 25 percent *de minimis* level. As a consequence of these actions, as well as the addition of the country to Country Group B, Sudan

is also potentially eligible for several new license exceptions under the EAR. However, pursuant to this rule, two license exceptions will be unavailable for exports and reexports to Sudan. BIS

also makes conforming amendments in other applicable EAR provisions as part of this rule. Rule effective 01/14/2021.

CHANGES INVOLVING US PERSONS

Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons.

The Bureau of Industry and Security (BIS), Department of Commerce, is issuing this interim final rule to implement the provisions of the Export Control Reform Act of 2018 by: imposing additional license requirements under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country), as well as specific activities of U.S. persons, in connection with certain military-intelligence end uses and end users; clarifying that license requirements under the EAR for specific activities of U.S. persons apply even when the items at issue are not subject to the EAR; establishing restrictions on transactions intended to circumvent license requirements for listed entities; and expanding the scope of activities subject to chemical and biological weapons and rocket systems and unmanned aerial vehicles end-use controls. *Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov).*

The [regulations.gov](http://www.regulations.gov) ID for this rule is: BIS-2020-0044 or RIN 0694-A138. **Comments must be received by BIS no later than March 1, 2021.**

Frequently Asked Questions Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users in the People’s Republic of China, Russia, or Venezuela.

Final Rule. (85 FR 23459) (April 28, 2020)

Updated January 19, 2021

Changes to Section 744.21

Q1: What are the regulatory changes implemented in the Military End User (MEU) rule?

A: The new rule makes the following changes to Section 744.21 of the Export Administration Regulations (EAR):

1. Adds a license requirement for exports of items classified in the Export Control Classification Numbers (ECCNs) listed in Supplement No. 2 to Part 744 when the exporter has knowledge the items are intended for a “military end user” in China;
2. Expands the definition of “military end use” in Section 744.21(f) of the EAR to include any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items;
3. Removes the definitional notes to Paragraph (f) in Section 744.21;
4. Changes the license review policy to a presumption of denial for items subject to Section 744.21 of the EAR and listed in Supplement No. 2 to Part 744;
5. Adds additional ECCNs and expands the description of previous ECCNs to Supplement No. 2 to Part 744: items for which a license is required for a “military end use” and “military end user;”
6. Revises Section 758.1 of the EAR to expand Electronic Export Information (EEI) filing requirements in the Automated Export System (AES) to require EEI filing for exports of any value of items on the Commerce Control List to China, Russia, or Venezuela, unless the shipment is eligible for License Exception GOV; and
7. Relocates the licensing requirement currently in Section 744.21 with a regional stability column one control in the individual ECCNs of items classified under 9x515 and in the 600 series that have a .y paragraph to the license requirement sections of the relevant ECCNs on the Commerce Control List (CCL).

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Military End User

Q2: Does the rule change the definition of “military end user” in Section 744.21 of the EAR?

A: No. However, the definition of “military end user” covers additional end users because it references the expanded definition of “military end uses” as defined in Section 744.21(f) – see Q18 below regarding the expanded definition of “military end uses.” Additionally, this rule now also applies to “military end users” in China (in addition to Russia and Venezuela)

Q3: What type of end user is covered by the term “other MEUsers?”

A: Section 744.21(g) of the EAR includes two types of military end users: (1) traditional foreign military and related organizations (defined in the text as “national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations”); and (2) any other end user “whose activities are intended to support ‘military end uses’ as defined in Section 744.21(f)” (i.e., referred to as “other MEUsers”). “Other MEUsers” covers other foreign national governmental organizations, as well as state- owned enterprises (SOEs) or other specific entities that develop, produce, maintain, or use military items. SOEs are entities over which their national governments can or do exercise significant direction or control of the SOE’s operations through supervision, financing, subsidization, or ownership, including significant minority ownership. Pursuant to Section 748.5(f) of the EAR, an end user, including MEUsers, is the person abroad who receives and ultimately uses the exported or reexported items. The end user is not a forwarding agent or intermediary but may be the purchaser or the ultimate consignee.

Q4: Do I need to know that a “military end user” intends to use an item listed in Supplement No. 2 of Part 744 of the EAR for a “military end use” to trigger a license requirement?

A: No. If the end user meets the definition of a “military end user” under paragraph (g) of Section 744.21, the export, reexport, or transfer (in-country) of any ECCN listed in Supplement No. 2 of Part 744 of the EAR requires a license, even if the item is destined for a non-military end use.

Q5: Would a subsidiary agency in the Ministry of Defense, such as a military hospital, in China, Russia or Venezuela now be considered a “military end user” and require a license?

A: Due diligence is required to determine whether the “military hospital” is part of the national armed services of China, Russia or Venezuela, which would depend on a number of factors, such as the actual relation of the “military hospital” to the country’s national armed services and the patient population served by the hospital, or whether it is an entity that develops, produces, maintains, or uses military items.

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Q6: I exported a medical device designated EAR99 to a military hospital in China under No License Required (NLR), but I need to service what I sell. If the 4A994 computer in the device fails, will I need a license to replace it?

A: Under Supplement No. 3 to Part 744 of the EAR, if the 4A994 computer is not incorporated in, or exported with, the EAR99 medical device, it would be an ECCN subject to Section 744.21. Due diligence is required to determine whether the “military hospital” is part of the national armed services of China, which would depend on a number of factors, such as the actual relation of the “military hospital” to China’s national armed services and the patient population served by the hospital, or whether it is an entity that develops, produces, maintains, or uses military items.

Q7: What about an export to the finance, human resources, or administrative office of a subsidiary agency in China’s Ministry of Defense?

A: Subordinate entities of Ministries of Defense are evaluated on whether they are part of the national armed services or whether they develop, produce, maintain, or use military items.

Q8: How can exporters determine whether a person’s or entity’s actions or functions are intended to “support or contribute to” a “military end use?” For example, U.S. companies have been exporting EAR-controlled items to Chinese companies, including SOEs, for the manufacture of parts for end use on commercial aircraft.

A: Due diligence is required to determine if the specific end user to receive the item is engaged in activities defined as “military end uses” in Section 744.21(f). If so, the end user would be a “military end user,” even if the specific exports of items are intended for civil end uses. Conversely, if the specific end user to receive the item is engaged exclusively in civilian work, it would not be a “military end user.”

Q9: If I have knowledge that a parent organization of my end user, or one of my end user’s subordinate entities, is involved in “military end uses,” does that mean I have knowledge that the entity I sell to is a “military end user,” even if I have no specific knowledge that the end user is involved in manufacturing items for “military end uses?”

A: A license is required if your end user is involved in “military end uses.” You must exercise due diligence to determine whether the parent or subordinate entity’s military activities is relevant to the specific end user’s activities and that knowledge should be taken into account along with information regarding the specific end user. Under the EAR, “knowledge” includes not only positive knowledge that the circumstances exist or are substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts.

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Q10: How much of a company’s activity in support of incorporating items into military items will constitute “knowledge” that the entire company is a “military end user,” such that a license would be required even when that item has been unambiguously determined by the exporter’s due diligence that it will not be for a “military end use?”

A: Irrespective of whether the item is for a “military end use,” a license is required if the specific end user is a person or entity that “develops, produces, maintains, or uses military items.” The activities of the specific end user determine whether it meets that test. There is no specific volume level for such activities that would trigger a license requirement.

Q11: I sell items classified under ECCN 5A992 (included in Supplement No. 2 to Part 744) to a distributor that provides mass-market products, such as laptops, mobile phones, and other standard electronic devices, to military end users and non-military end users. The 5A992 items can be used without any customization for military end use. However, the distributor knows that a military end user may use the laptop or phone to command troop or military items. Do I have “knowledge” the distributor is a “military end user?”

A: No. Pursuant to Section 748.5(f) of the EAR, an end user is the person abroad who receives and ultimately uses the exported or reexported items. The end user is not a forwarding agent or intermediary but may be the purchaser or the ultimate consignee. However, a license requirement under section 744.21 will apply if you have knowledge that the distributor intends to reexport or transfer (in-country) your items for a “military end use.”

Q12: Would knowing that a systems integrator uses mass-market products for multiple systems, including a data center for a military end user, render the integrator a “military end user?”

A: If you have knowledge that the specific transaction is for an item or items subject to Supplement No. 2 to Part 744 that support or contribute to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production” of the military items described in paragraph (f), this is a “military end use” under paragraph (f) of Section 744.21. Using mass market items for products sold to the general market, which may include “military end users,” does not, absent contrary facts as discussed in Q3 above, make the system integrator (i.e., end user) a “military end user.” However, if you have knowledge that the systems integrator intends to reexport or transfer (in-country) your items for a “military end use,” a license is required.

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Q13: When a university belongs to, or is funded by, the Army, but provides general university academic training to members of the public, will this university be regarded as “military end user” under the new rules?

A: You must exercise due diligence to determine whether the university qualifies as a “military end user.” The definition of “military end user” in Section 744.21(g) includes actual military and related national security organizations (defined in the text as “national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations”), while the second part of the “military end user” definition includes other MEUsers who are other national governmental organizations that develop, produce, maintain, or use military items.

Q14: If I sell to one university department for civil research, but I know other parts of the university conduct research for the military, do I have knowledge that the particular department, research group or individual I sell to is a “military end user?”

A: This would depend on all the facts determined by you about the specific end user involved in your transaction. As defined in the EAR, “knowledge” includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts. Thus, knowledge of university's military-related activities is relevant and should be taken into account along with information regarding the specific department. Knowledge of the specific department or individual's research would also be a relevant fact.

Q15: What factors should be taken into account when assessing prospective customers?

A: The Know Your Customer Guidance on the BIS website at [click here](#) provides guidance on due diligence in knowing your customers. You can also seek additional guidance from BIS on knowing your customer.

Q16: A U.S. company sells items classified under ECCN 9A991.d to a company in the United Kingdom (UK) that is owned by a Chinese parent. The UK company in turn sells the items to the Chinese People's Armed Police Force. Would the UK company be considered a military end-user for purposes of U.S. exports?

A: You must evaluate the UK company pursuant to the definition of “military end user” as noted above. In addition, Section 744.21 applies to reexports, as well as exports and transfers (in- country) of items controlled by ECCNs listed in Supplement No. 2 to Part 744 of the EAR. China's national police is a military end user as defined in Section 744.21(g). A reexport to the People's Armed Police Force would require a license under Section 744.21.

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Q17: Are local, municipal, provincial, regional and state level police considered to be “National Police” and therefore subject to Military End User controls?

A: A national police force consists of all elements and entities that have national jurisdiction and authority to carry out law enforcement functions and may include internal security forces and national guard units. This varies from country to country and can be determined by an analysis of the entity from a command, control, and authority perspective. Exporters should be aware that national police authority can extend through several echelons from the national headquarters at, for example, the Ministry level down to all subordinate agencies/bureaus as is the case in China (including Hong Kong), Russia and Venezuela.

Q18: How does this rule expand the definition of “military end use” in Section 744.21(f) of the EAR?

A: This rule expands the definition of “military end use” in Section 744.21(f) of the EAR from incorporation into military items (e.g., U.S. Munitions List (USML) articles, “A018,” 600 series, or Wassenaar Munitions List items) to also include “any item that supports or contributes to the operation, installation, refurbishing, “development,” or “production,” of military items on the USML, or items classified under ECCNs ending in “A018” or in “600 series” ECCNs.

Q20: What does “any item that supports or contributes to” mean in this rule?

A: In this rule, “any item that supports or contributes to” goes beyond incorporation into a military item to mean direct facilitation, such as installation, inspection, or test equipment and related software and technology, of the operation, installation, maintenance, repair, overhaul, or refurbishing, or the “development” or “production” of military items described on the USML, Wassenaar Arrangement Munitions List, or items classified in an ECCN ending in “A018” or a “600 series” ECCN.

Q21: Will BIS provide guidance if I have a question about a specific end use or end user?

A: Yes. You may submit a request for an Advisory Opinion pursuant to Section 748.3 of the EAR.
License Review Policy

Q22: Does the MEU rule change the license review policy for license applications required under Section 744.21 of the EAR?

A: Yes. As of June 29, 2020, this rule changes the license review policy to a presumption of denial for any item subject to the EAR that is listed in Supplement No. 2 to Part 744.

Q23: Given that the license review policy will be a presumption of denial, should I bother submitting a license application for an entity that could be considered a “military end user” because it produces items for both military and civil end use even if I know the item to be exported is for a civil end use?

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A: While the license review policy is a presumption of denial, the presumption can be overcome when applications demonstrate exclusive civil end use, consistent with U.S. national security interests. For example, exporters with existing suppliers in China should submit license applications documenting the supply chain, i.e., what items are exported to the Chinese supplier and what the exporter receives from the Chinese supplier. The reviewing agencies will consider this information in determining whether those factors overcome the presumption of denial for the specific transaction. ECCNs covered by Section 744.21

Q24: Where can I find the ECCNs of the new items that now require a license under this new MEU rule?

A: The added ECCNs appear in the preamble of the rule in the Federal Register at 85 FR 23460 (April 28, 2020). The ECCNs added are: 2A290, 2A291, 2B999, 2D290, 3A991, 3A992, 3A999, 3B991, 3B992, 3C992, 3D991, 5B991, 5A992, 5D992, 6A991, 6A996, and 9B990 to the scope of this end-use and end-user control under Section 744.21. Additionally, this rule expands the scope of items included under ECCNs 1C990, 3A992, 8A992, and 9A991, which already appear in Supplement No. 2 to part 744.

After June 29, 2020, the ECCNs of all items that require a license for export, reexport, and transfer (in-country) to China, Russia, and Venezuela under Section 744.21 of the EAR will be listed in Supplement No. 2 to part 744 of the EAR.

Q25: What changes does this rule make to items classified in the 9x515 category and “600 series?”

A: The new MEU rule relocates the existing licensing requirement for items described in a .y paragraph of a 9x515 or “600 series” ECCN from Section 744.21 to the License Requirements sections of each individual ECCN that includes a .y entry. The scope of the licensing requirement for items classified in the .y portions of the 9x515 or the “600 series” ECCNs remains the same but is now implemented through a new regional stability (RS) control that is stated in each of the ECCNs. This new RS control is described in new subparagraph Section 742.6(a)(7) of the EAR, and the license review policy for applications to export, reexport, or transfer (in-country) is stated in revised subparagraph Section 742.6(a)(8) of the EAR.

Q26: Does the new EEI filing requirement stated in Section 758.1(b)(10) of the EAR apply to all exports now?

A: No. The new mandatory EEI filing requirement in Section 758.1(b)(10) of the EAR applies only to items classified in an ECCN listed on the CCL, regardless of their value, to China, Russia, or Venezuela, unless the shipment is eligible for License Exception GOV. For example, EAR99 items destined for these destinations are not subject to the new filing requirement.

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Q27: Does the new EEI filing requirement stated in Section 758.1(b)(10) of the EAR apply only to items listed in Supplement No. 2 to part 744 of the EAR and destined for a “military end use” or “military end user” in China, Russia, and Venezuela?

A: No. The new mandatory EEI filing requirement in Section 758.1(b)(10) of the EAR applies to all items classified in an ECCN and listed on the CCL. In other words, the new EEI filing requirement in AES is not based on a license requirement or type of authorization, but rather on the classification of the item. Therefore, if the item that is being shipped is classified in an ECCN, there is a mandatory EEI filing requirement in AES. As noted in Q31, the effective date for the filing provisions in Section 758.1 for ECCNs not identified in Supplement No. 2 to Part 744 has been extended by an additional 90 days to September 27, 2020.

Q28: Are exporters required to file EEI for shipments of commercial items valued under \$2,500 if destined to China and it is for commercial end use?

A: Yes. The new mandatory filing requirement in Section 758.1(b)(10) applies to all items that have an ECCN and are destined to China, Russia, or Venezuela, regardless of value, end use or end user. The only one of the exemptions in Section 758.1(c) that is available to overcome this requirement is License Exception GOV.

Q29: Does the new EEI filing requirement stated in Section 758.1(b)(10) of the EAR apply to intangible exports, reexports, or transfers (in-country) such as software downloads?

A: No. Intangible exports do not require an EEI filing in AES. Section 758.1(b) states: “Except when the export of items subject to the EAR is to take place electronically or in an otherwise intangible form, you must file EEI in the AES with the United States Government for items subject to the EAR...” The new Section 758.1(b)(10) does not change this requirement. This exclusion from filing EEI in AES for intangible exports is consistent with other items that are subject to the EAR, including intangible exports authorized under BIS licenses.

Q30: Will there be a new license type code for use in the EEI filing in AES for exports that are AT-controlled on the CCL but exported under No License Required (NLR) to China, Russia, or Venezuela?

A: No. You will continue to use the NLR C33 license type code for items with an AT-controlled ECCN that are being exported under NLR; however, an ECCN will be required under the EAR for items being exported to China, Russia, or Venezuela. BIS encourages filers always to include an ECCN or EAR99 in the EEI filing in AES for NLR shipments, even when it is not required, as a way to head off potential questions at the port.

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Q31: Has the effective date for the EEI filing to the AES been delayed?

A: The effective date for the filing provisions in § 758.1 for ECCNs not identified in Supplement No. 2 to Part 744 has been extended by an additional 90 days to September 27, 2020. However, for the items subject to Supplement No. 2 to Part 744 destined for China, Russia, and Venezuela, the EEI filing requirement becomes effective on June 29, 2020.

Q32: The MEU rule has a delayed effective date and a Savings Clause. Was this intentional? Can BIS comment on the implications of this?

A: The revision to Section 744.21 has a delayed effective date (June 29, 2020) and a savings clause. This means that items that were on the dock for loading, on lighter, laden aboard an exporting carrier, or in route aboard a carrier to a port of export as of June 29, 2020 may be shipped until July 27, 2020.

Department of State Policy Regarding Direct Commercial Sales of Precision-Guided Munitions and Partner Targeting Infrastructure

Background

(U) The U.S. government takes seriously its responsibility to ensure exports of defense articles and defense services are consistent with all aspects of the Conventional Arms Transfer (CAT) Policy, including the protection of human rights and the avoidance of civilian harm. To this end, the Department of State has undertaken a comprehensive review of internal U.S. government criteria for adjudicating the export of precision-guided munitions (PGMs), their critical components, and related technical data and defense services to ensure that U.S.-origin PGMs and those defense articles and services are used in a manner consistent with U.S. intent when approving the transfer. These criteria include, inter alia, a partner's ability to properly mitigate the risk of civilian casualties (CIVCAS).

(U) The responsible and effective employment of PGMs requires advanced target development (ATD) capabilities including weaponeering, collateral damage estimation (CDE), and target coordinate mensuration (TCM, also referred to as Precision Point Mensuration or PPM) for coordinate-seeking weapons. Weaponeering refers to the ability to select the correct munition to achieve a specified level of effect, considering variables such as target vulnerability, warhead damage mechanisms/patterns, and weapon reliability, which result in more accurate target-weapon pairings.

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CDE refers to the ability to accurately predict collateral damage resulting from target engagement, to include both CIVCAS and civilian objects. TCM (or PPM) refers to the ability to generate absolute values of latitude, longitude, and elevation of a target to increase the accuracy of the munition. "Targeting infrastructure" means the training, software, and data necessary to conduct the full spectrum of ATD. Helping U.S. partners obtain this more complete suite of targeting infrastructure will permit greater interoperability, increase operational effectiveness, and provide greater target discrimination.

Statement of Policy

(U) In order to comprehensively assess proposed transfers of U.S.-origin PGMs, their critical components, and/or related technical data or defense services, the U.S. government considers a partner's complete targeting infrastructure. Consistent with the CAT Policy and in concert with the Defense Security Cooperation Agency's October 2019 Policy Memorandum 19-58 (Targeting Infrastructure Policy), the Department of State will henceforth review proposed direct commercial sale (DCS) transfers of U.S.-origin PGMs, their critical components, and/or related technical data or defense services against the criteria of a partner's ATD targeting infrastructure. This approach will ensure an equivalent standard of review for PGM transfers regardless of whether the transfer is completed via DCS or the Foreign Military Sales (FMS) program.

(U) Licenses subject to this policy will continue to be reviewed on a case-by-case basis; however, before authorizing DCS exports, reexports, or retransfer of U.S.-origin PGMs, their critical components, and/or related technical data or defense services, as enumerated below, the U.S. government will confirm the foreign end-user government possesses or is in the process of procuring sufficient U.S., indigenous, or third-party ATD capabilities with respect to the PGMs considered for transfer. Exceptions to this policy may be made in extenuating circumstances - at the sole discretion of the Department of State - where the proposed transfer(s) would contribute to this policy's goal of reducing civilian harm. Exporters are not required to provide evidence of partner targeting infrastructure or proficiency when applying for authorizations, nor are exporters required to offer such capabilities as a part of an authorization request. The U.S. government is committed to identifying the appropriate solutions for partners to employ precision munitions in the most effective manner, including through practices and use of technologies that can minimize collateral damage and mitigate harm to civilians.

(*Continued On The Following Page)

PGMs and Critical Components Subject to This Policy

(U) The following defense articles and services are subject to this policy. These munitions and components are most likely to be found in U.S. Munitions List (USML) Categories III, IV, V, and XI:

(U) Precision Guided Munition Classes: Air-to-Surface and guided indirect fire Surface-to-Surface munitions 105mm in diameter and larger:

Coordinate-seeking/feature-seeking;

Laser-guided;

Infrared/electro-optical;

Radar-seeking; and

Stand-off Munitions.

(U) Critical Components: For end-use in the above U.S. munition classes: Computer Control Groups, Programmable Fuse Assemblies (complete), and Tail/Wing Kits.

(U) Technical Data: Information, other than software, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of any one or more of the defense articles identified above.

(U) Defense Services: The furnishing of assistance to foreign persons whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of any one or more of the defense articles identified above.

Adjudication Procedures

(U) Upon receipt of an license application to export, reexport, or retransfer an article or service identified above, the Directorate of Defense Trade Controls will coordinate with the Department of State's Office of Regional Security and Arms Transfers (PM/RSAT), the Department of Defense's Defense Security Cooperation Agency (DSCA), and the Country Team at the U.S. Embassy in the country of ultimate destination or end-use to assess partner ATD capabilities; this effort is related to the [Targeting Working Group](#) initiative announced by the Department in October 2020. No action will be required on the part of the U.S. applicant. A valid ATD solution is current for five years, after which the technical support and data need to be refreshed. Within the five-year period of currency, in-scope licenses will be adjudicated as normal.

For further information contact the DDTC Response Team at DDTCCustomerService@state.gov or PM/RSAT at PM_RSATGlobalTeam@state.gov.

Potential Delays

Please note, due to significant road closures and additional public safety measures in place in the District, starting on January 13th, and with Martin Luther King Jr. Day on Monday, January 18th and Inauguration Day on Wednesday, January 20th, you may experience longer than normal wait times on responses from DDTC staff, including communications related to incoming/outgoing mail and the DDTC Response Team or Help Desk. We appreciate your patience and will get back to you as soon as we can.

DECCS User Group for 2021

DDTC is excited to announce the first DECCS User Group for 2021.

What is it?

- The mission of the Defense Export Controls and Compliance System (DECCS) User Group is to allow individual industry users to provide feedback on DECCS by establishing and maintaining a forum for active and regular communication between the users of DECCS and the Directorate of Defense Trade Controls (DDTC)
- A DECCS User Group Member will have the opportunity to:
 - Identify functional and technical challenges faced by industry when interacting with DECCS
 - Provide his or her feedback and input for future DECCS enhancements and system support initiatives
 - DDTC will:
 - Communicate recent and upcoming changes in DECCS to the members of the User Group
- The DECCS User Group was approved by OMB under the authority of "Generic Clearance for the Collection of Routine Customer Feedback" (OMB Control Number: 1405-0193)

Who should be involved?

- DDTC is looking for a diverse group of up to 50 industry volunteers (representatives of companies, government agencies and third-party organizations) enrolled with DECCS who can provide the end-user point-of-view on issues related to the system
- Open to U.S.-based and international members

What is the time commitment?

- DDTC plans to kick-off the group on Tuesday, January 26, 2021 at 10:30AM EST via a virtual forum such as WebEx
- Initial plan is for the User Group to span one calendar year

How to get involved:

- To express your interest, email PM_DDTCProjectTeam@state.gov by COB December 23, 2020 and provide your name & company/government affiliation (as applicable)
- As a reminder, we must cap the group at no more than 50 participants and the selection process is at DDTC's discretion
- DDTC will email all selected participants by January 11, 2021 letting them know the final make-up of the 2021 DECCS User Group

Web Notice: The Directorate of Defense Trade Controls (DDTC) is currently in the process of modernizing its IT systems. During this time period, we anticipate there may be delays in response times and time to resolve IT related incidents and requests. We apologize for any inconvenience, and appreciate your patience while we work to improve DDTC services. If you need assistance, please contact the DDTC Service Desk at (202) 663-2838, or email at DtradeHelpDesk@state.gov (06.28.16)

“When we strive to become better than we are, everything around us becomes better too.”

Trump administration plans to add Cuba to list of state sponsors of terrorism, hampering Biden’s ability to quickly broker rapprochement

The decision reverses a signature policy move of the Obama administration. The planned action was confirmed by two people familiar with the decision. A U.S. economic embargo of Cuba already curbs the ability of Americans to do business or visit the communist island, but the new terrorism label could hinder commercial deals with third countries that Cuba relies on to import essential goods as well as turn off foreign investors in its all-important tourism industry.

Rhode Island Gov. Gina Raimondo selected for commerce secretary, Boston Mayor Marty Walsh for labor secretary

The Biden administration plans to nominate the two prominent New England politicians for the key cabinet posts, according to a person familiar with the matter. Raimondo has an economic background and is the first female governor of Rhode Island and has been considered for other Cabinet posts. Walsh is a former union chief.

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