

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)*

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).

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.

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.” Thus, you must ascertain the activities of the specific end users in determining whether the intended end user is a “military end user.”

The existence of U.S. government export licenses to a “military end user” does not affect the license requirement.

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.

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.

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 <https://www.bis.doc.gov/index.php/all-articles/23-compliance-a-training/47-know-your-customer-guidance> 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.

Q17: Are provincial or municipal police departments considered part of the National Police?

A: As a general rule, the definition of “military end user” applies to national police, not provincial or municipal police departments. However, you would need to determine whether any red flags exist that suggest the item may ultimately be destined to the national police. As noted above, however, “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. In addition, other provisions of the EAR may apply to such transactions.

Military End Use

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?

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.

Electronic Export Information (EEI) Filing Requirement in the Automated Export System (AES)

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.

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. 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.

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.

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.