

Military End-Use and End-User and Related Country Policy



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Overview

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- Key Provisions of the MEU List
- MEU License Review Standards
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Background

- BIS published in the *Federal Register* on April 28, 2020:
 - A rule expanding the military end-use and military end-user control in EAR §744.21
 - The rule became final on June 29, 2020
- The rule:
 - Expands ‘military end user’ to include China
 - Increases the scope of items subject to the licensing requirement
 - Broadens the definition of ‘military end use’





Background

- BIS published in the *Federal Register* on December 23, 2020:
 - A final rule adding the 'Military End User' (MEU) List to the EAR
- The rule:
 - Establishes a new MEU List in Supplement No. 7 to part 744 of the EAR
 - Identifies a first tranche of 102 'military end-users' to the MEU List
 - Establishment of MEU List does not imply that other parties, not included on the list, are not subject to 'military end-use' and 'military end user' controls under the EA
- BIS published in the *Federal Register* on January 15, 2021:
 - A final rule making updates to the MEU List and the Entity List
 - BIS may combine amendments, making changes to the MEU List and the Entity List in the same rules

NOTE: These rules do not change the scope of EAR §744.21; the MEU List is part of the 'is informed' process.





‘Military end use’– EAR §744.21(f)

- ‘Military end use’ for this section means:
 - Incorporation into a military item described on the U.S. Munitions List (USML); incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or
 - Any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the USML, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs.





‘Military end user’– EAR §744.21(g)

- ‘Military end user’ for this section means:
 - The 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, or
 - Any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (f) of this section.





Key Provisions of the MEU List

- License requirement for entities on the MEU List applies to export, reexport, or transfer (in-country) of any item subject to the EAR listed in Supplement No. 2 to part 744
- License requirement extends to when an entity on MEU List is a party to the transaction, as described in § 748.5(c) through (f)
- No license exceptions are available to entities on the MEU List for items specified in Supplement No. 2 to part 744, except License Exception GOV §740.11(b)(2)(i) and (ii)
- License application procedure and license review policy is specified in § 744.21(d) and (e)





License Review Standards for § 744.21

(e)(1) Applications to export, reexport, or transfer (in-country) items described in paragraph (a) of this section will be reviewed with a presumption of denial.

(e)(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(e)(3) Applications for items requiring a license for any reason that are destined to Burma, China, the Russian Federation, or Venezuela for a 'military end use' or 'military end user' also will be subject to the review policy stated in paragraph (e)(1) of this section.

NOTE: If your license application involves an entity on MEU List, even if not for a Supplement No. 2 to part 744 item (*e.g.*, for a ECCN 3A001 item), the license would still be reviewed under (e)(1).





License Applications: Classification

- Ensure your item is listed in Supplement No. 2 to Part 744 of the EAR
- Ensure your item is properly classified, for example:
 - ECCN 9A991.d controls: 'Parts' and 'components,' 'specially designed' for 'aircraft,' n.e.s.
 - 'Specially designed' is a defined term – many suppliers did not reevaluate items classified as ECCN 9A991.d when this definition was published in 2013
 - 'Parts,' 'components,' and 'aircraft' are also defined terms
 - ECCN 9E991 controls: 'Technology', for the 'development', 'production' or 'use' of equipment controlled by 9A991 or 9B991.
 - Controlled 'technology' is defined by the General Technology Note
 - 'Required,' 'development,' 'production,' and 'use' are also defined terms
 - 'Use' must include all 6 elements: 'Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.'





License Applications: MEU and *De Minimis*

- Part 744 of the EAR should not be used to identify controlled U.S. content for purposes of determining the applicability of the *de minimis* rules
 - See paragraph (a)(1) to Supplement No. 2 to part 734 of the EAR
- If the U.S-origin items are being incorporated into a foreign-made item (e.g., in France), the foreign manufacturer should review *de minimis* rules before submitting a license application to determine if the foreign-made item is subject to the EAR.
 - If the foreign-made item is subject to the EAR, then the MEU List and all other applicable EAR requirements would need to be followed for the subsequent reexport or transfer (in-country)





License Applications: Things to Highlight for Trying to Overcome Presumption of Denial

- License applications for hardware:
 - Is the item intended for a civil application?
 - Is the applicant aware of any military end-use for the item? If yes, please describe.
- License applications for technology:
 - Is the military end-user (MEU) producing parts and/or components based on U.S. customer designs (*i.e.*, are they producing build-to-print items)? For such cases, is the technology limited to information directly related to the part or component being produced, with no broader applicability?
 - Is the technology in support of an on-going production effort? If yes, how long has the MEU been supplying these items?





License Applications: Things to Highlight for Trying to Overcome Presumption of Denial

- For all license applications:
 - Why is it necessary for the items to be exported to the MEU(s)? Explain, as necessary.
 - What role does this transaction play in the overall supply chain? Explain, as necessary.
 - How does this transaction impact the U.S. industrial base? Explain, as necessary.
 - Explain how this transaction cannot contribute to the advancement of the MEU country's military goals.





License Applications: Supporting Information

- Purchase orders are *not* required for BIS licenses
- History is important – How long has the MEU been your supplier?
- What is the impact to your supply chain?
 - This should not just reflect the cost of the individual parts or components, but it is also helpful to specify information, such as:
 - The time to find new suppliers
 - Any additional lost business from being viewed as an unreliable customer
 - Other information that you believe should be taken into account in terms of the costs





2020 MEU FAQs

- Frequently Asked Questions:
<https://www.bis.doc.gov/index.php/documents/pdfs/2566-2020-meu-faq/file>
- This set of FAQs includes different application questions to assist your understanding

