

Q & A on the Rescission of North Korea from the State Sponsor of Terrorism List

Q: What effect does the President's announcement that the U.S. Government is lifting the designation of State Sponsor of Terrorism from North Korea have on the Export Administration Regulations (EAR)?

There is no immediate effect. The President's June 26, 2008 announcement triggered a 45-day congressional notification period prior to the formal rescission of the designation. The Administration plans to carry out the rescission only after the Six Parties reach agreement on acceptable verification principles and protocol regarding North Korea's nuclear activities. Following such agreement, and barring further congressional action, BIS plans to publish an amendment to the Export Administration Regulations (EAR) removing North Korea from Country Group E:1 and making other conforming changes to implement the rescission.

Q: How does the President's announcement affect U.S exporters?

There is no change for U.S. exporters. Pursuant to Section 746.4 of the EAR, the Department of Commerce will continue to require a license for the export or reexport to North Korea of items subject to the EAR, except food and medicine classified as EAR99. Once the rescission takes effect, the Department of Commerce plans to amend the EAR to remove North Korea from Country Group E:1 and make other conforming changes to implement the rescission. Removing North Korea from Country Group E:1 will raise the threshold value for calculating the de minimis level of foreign goods destined to North Korea to 25% controlled U.S. content. Currently as a member of Country Group E:1 the threshold value for North Korea is 10%.

Q: When will this change take place?

Barring further Congressional action, the earliest a change can take place is after the 45-day Congressional notification period is over, but the Administration will not carry out the rescission until after the Six Parties reach agreement on acceptable verification principles and protocol.

Q: Does the President's announcement mean that BIS export controls will be lifted?

No. Even after North Korea's designation as a state sponsor of terrorism is rescinded, certain export control requirements, in particular those related to North Korea's detonation of a nuclear device on October 9, 2006, proliferation activities, and human rights violations, will continue to apply on the basis of other laws and regulations, and in accordance with United Nations Security Council Resolution 1718 (UNSCR 1718).

Q: Do I still need a license to export controlled items to North Korea?

Yes. Pursuant to Section 746.4 of the EAR, the U.S. Government will continue to require a license for all items subject to the EAR (except food and medicine) and destined for North Korea. “Items” means “commodities, software and technology.”

Q: Do I still need a license to export EAR99 items?

Food and medicines classified as EAR99 do not require a license for export to North Korea. However, BIS will continue to require a license for the export or reexport of other EAR99 items to North Korea, pursuant to Section 6 of the Export Administration Act, and in accordance with the UNSCR 1718. These sanctions are related to North Korea’s detonation of a nuclear device, proliferation activities, and human rights violations.

Q: How would the removal from Country Group E:1 affect exports to North Korea?

North Korea is currently a member of Country Groups D:1, D:2, D:3, D:4, and E:1. In response to the formal rescission of North Korea’s designation as a state sponsor of terrorism, the Department of Commerce would remove North Korea from Country Group E:1, but North Korea would likely retain membership in all four “D” Country Groups. Controls for the “D” Country Groups are as follows: D:1, national security and/or conventional military; D:2, nuclear concerns; D:3, chemical and biological; and D:4, missile technology.

Generally, membership in these Country Groups affects what License Exceptions are available to a given country. However, pursuant to Section 740.2(a)(6) of the EAR, additional License Exceptions are not available for North Korea unless specified. The EAR lists the License Exceptions that are currently available to North Korea in Section 746.4(c). A determination regarding the availability of additional license exceptions for exports or reexports to North Korea will be made once the rescission is finalized.

Additionally, removing North Korea from Country Group E:1 will raise the threshold value for calculating the de minimis level of foreign goods destined to North Korea to 25% controlled U.S. content. Currently as a member of Country Group E:1 the threshold value for North Korea is 10%.

Q: I am applying for a license to export to North Korea. Can I expect it to be approved?

The licensing policy for North Korea has not yet changed. Once the rescission takes effect, the Department of Commerce will review applicable licensing policy.

Current licensing policy for North Korea is the following:

- The U.S. Government will generally approve applications to export or reexport:
 - Non-food, non-medical humanitarian items meeting subsistence needs and intended for the benefit of the North Korean people; and
 - Items in support of the United Nations and other humanitarian efforts.

- The U.S. Government will generally deny applications to export or reexport to North Korea:

- Luxury goods (an illustrative list of luxury goods appears on the BIS website at www.bis.doc.gov);
 - Arms and related materiel, and items controlled under the multilateral export control regimes; and
 - Items that could contribute to North Korea's nuclear-, ballistic missile-, or other weapons of mass destruction-related programs.
- The U.S. Government will review, on a case-by-case basis, applications to export and reexport all other items subject to the EAR, consistent with all applicable licensing policies set forth in the EAR.

Q. Are there additional restrictions on dealings with North Korean entities elsewhere in the EAR?

Yes. In addition to the licensing requirements set forth in Part 746 of the EAR, exporters are reminded to consult the end-use and end-user controls set forth in Part 744 of the EAR. In particular, pursuant to Section 744.19 of the EAR, BIS will deny license applications involving parties subject to certain U.S. nonproliferation sanctions.