

## ELEMENT 4: NUCLEAR SCREEN

**A system for assuring compliance with the restriction on prohibited nuclear end-uses/end users (General Prohibitions Five & Seven).**

**OBJECTIVE:** To ensure that transactions do not involve prohibited nuclear end-uses/end-users without authorization from the U.S. Government.

**PROCEDURE:** The EMS Administrator may wish to establish a procedure for complying with nuclear restrictions in which the individual responsible for the check has access to the relevant information. The nuclear screen may be performed by the EMS Administrator, account representative or engineer with sufficient knowledge of the end-user's activities to respond competently.

This screen is designed to lead a firm through a series of questions to a final decision of whether a license is required based upon certain nuclear end-use and end-user prohibitions and exceptions to such prohibitions. The basis for the screening method described in these procedures is displayed as a decision flow chart in Attachment 4-A. The screen consists of the following key points:

1. **RESTRICTIONS ON CERTAIN NUCLEAR END-USES**

General Prohibition Five defined in Part 736 of the EAR states that you may not, without a license, knowingly export or reexport to *any destination any item* subject to the EAR to an end-user or end-use that is prohibited by Part 744 of the EAR. That includes:

- o an item is classified under a specific ECCN on the CCL and could normally be exported under a License Exception or NLR; or
- o an item falls under EAR99.

Under Section 744.2(a), the nuclear end-use restrictions apply to all countries except those countries listed in Supplement No. 3 to Part 744. Therefore, the nuclear screen is appropriate for all countries other than those listed in Supplement No. 3.

The exception to the “**any item**” is that you may export technology subject to the EAR under the operation technology and software or sales technology and software provisions of License Exception TSU (see Section 740.13(a) and (b), but only to and for use in

countries listed in Country Group A:1 (See Supplement No. 1 to Part 740 of the EAR), Iceland and New Zealand).

2. **RESTRICTIONS ON CERTAIN ACTIVITIES OF U.S. PERSONS (744.6(a)(1)(i)(A))**

General Prohibition Seven described in Part 736 of the EAR lists activities that a U.S. Person may not engage in without first obtaining a license from BXA. Support activities include: any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter. No U.S. person may, without a license from BXA, export, reexport, or transfer to or in any country, any item where that person knows that such item will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country Group D:2 (see Supplement No. 1 to Part 740 of the EAR.)

3. **PROHIBITION ON EXPORTERS OR REEXPORTERS INFORMED BY BXA (744.2(b)) & 744.6(b).**

BXA may inform an exporter, reexporter, or U.S. persons, either individually by specific notice or through amendment to the EAR, that a license is required for export or reexport of specified items to specified end-users, because BXA has determined that there is an unacceptable risk of use in or diversion to, any of the activities described in Section 744.2 of the EAR.

NOTE: There are restrictions on the use of license exceptions for shipments involving certain nuclear-related activities on specific items that could be of significance for nuclear explosive purposes (see Section 744.2 of the EAR). These items are identified as controlled for “nuclear proliferation” in the “Reason for Control” paragraph within each Export Control Classification Number.

**HOW DO I BLEND SCREENING OF THE ABOVE PROHIBITIONS INTO DAILY ROUTINES?**

This screen was designed to help exporters consistently consider each of these prohibitions in a checklist format. It is recommended that the nuclear screen be performed on a transaction basis since the check relates to the appropriateness of the end-use activities of the customer. The screen may be performed using the nuclear checklists provided on the following attachments and then included in the firm’s customer file. Since orders may be revised while in process, it is important that all employees involved in international sales and order processing activities be trained to recognize certain nuclear activities.

## **Documentation of Customer File**

A well-documented customer file noting each customer's usual activities and orders would be helpful in screening new orders. Such a file would be updated whenever new information on a customer became available. The customer file would reflect changes in licensing requirements due to any nuclear-related information (i.e., license required because of customer's new nuclear-related activities). New customers would be screened, and a file created, before placing the new customer on the firm's approved customer list.

New information on a customer may come from many sources, including government, industry, the media or directly from the customer. This could include when the customer changes activities, indicates a new end-use or end-user, requests a change in an existing order, or furnishes replies to the firm's inquiries.

## **Documentation of Screens**

The nuclear check should also be documented. Documentation consists of noting the presence or absence of nuclear activities, the name or initials of the person performing the screen and the date the screening took place. The nuclear check may be documented on the individual order or in the firm's customer file whenever new information on the customer becomes available.

## **Screening Levels**

The firm may complete the nuclear check more efficiently if performed in the following sequence designed to limit the levels of analysis:

- o Perform the Nuclear Applicability Checklist For Exports, Attachment 4-B.
- o Perform the Nuclear Controls Checklist, Attachment 4-C, if the answer to any of the Level 3 questions on Attachment 4-B was "yes".

Attachment 4-B, Level 3, raises a question of whether the end-user/customer business in an industry may involve nuclear related activities and prompts further questioning. Attachment 4-C provides a more specific level to determine whether a customer might be directly or indirectly involved in any of the prohibited nuclear activities.

Attachment 4-B and 4-C can be reproduced and used by the firm to screen proposed customers as appropriate. It is recommended that the firm retain documentation for each nuclear check performed. If the firm becomes aware of changes in a customer's activities, then a new check should be completed and documented. A firm may consider establishing and maintaining a current list of its customers who are "classified" as nuclear end-users (e.g., customers that answer "yes" to any question on Attachment 4-C).

ATTACHMENT 4-B

NUCLEAR APPLICABILITY CHECKLIST  
FOR EXPORTS

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

DATE: \_\_\_\_\_ COMPLETED BY \_\_\_\_\_

**Level 1**

Have you been informed by the Bureau of Export Administration (BXA) as described in Section 744.2(b) that a license is required or is the end-user/customer on the Entity List (Supplement 4, Part 744)?

YES \_\_\_\_\_ NO \_\_\_\_\_

If the answer is "YES", a license application must be submitted to BXA and a license exception may not be used.

If the answer is "NO", then proceed to level 2.

**Level 2**

Is the end-user/customer located outside of Canada or outside of a country listed in Supplement 3 to Part 744?

YES \_\_\_\_\_ NO \_\_\_\_\_

If no, a license exception may be used provided no other aspect of the transaction requires a license.

If yes, proceed to level 3.

**Level 3**

Indicate if the end-user/customer is involved in any of the following potentially nuclear related industries or activities:

power plants \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_

energy plants \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_

nuclear facilities _____	YES ____ NO ____
nuclear explosives or weapons activities _____	YES ____ NO ____
manufacturing of parts used in atomic facilities _____	YES ____ NO ____
nuclear or atomic reprocessing plants _____	YES ____ NO ____
nuclear or atomic waste activities _____	YES ____ NO ____
nuclear or atomic "source" material _____	YES ____ NO ____
separation of isotopes of any source or special nuclear material _____	YES ____ NO ____
production of heavy water _____	YES ____ NO ____
nuclear fuel fabrication _____	YES ____ NO ____
plants of any kind supported by fast breeder reactor _____	YES ____ NO ____
institute of science and technology _____	YES ____ NO ____
radiological facilities _____	YES ____ NO ____
conventional weapons and armaments research and development establishments _____	YES ____ NO ____
other military entities _____	YES ____ NO ____

If the answer to any of these is yes, proceed to Level 4, Nuclear Control Checklist.

If the answer to all of these is no, a license exception may be used if no other aspect of the transaction requires a license.

**ATTACHMENT 4-C  
NUCLEAR CONTROLS CHECKLIST (NCC)**

FIRM NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
DATE \_\_\_\_\_  
COMPLETED BY: \_\_\_\_\_

This checklist examines the customer involvement and the U.S. person involvement in certain activities.

**Level 4**

Is the customer directly or indirectly involved in any of the following activities:

(1) **Nuclear explosive activities.**

Research on or development, design, manufacture, construction, testing or maintenance of any nuclear explosive device or components or subsystems of such a device?

YES \_\_\_ NO \_\_\_

Are you a U.S. person involved in support activities where you know that the items will be used in the design, development, production, or use of nuclear explosive devices in or by a country listed in Country group D:2 (Supplement No. 1 to Part 740 of the EAR). "Support activities" includes financing, transportation, and freight forwarding and any action by which you facilitate an export, reexport, or transfer in any other way without being the actual exporter or reexporter.

YES \_\_\_ NO \_\_\_

(2) **Unsafeguarded \*nuclear activities.**

Research on, or development, design, manufacture, construction, operation, or maintenance of:

- a nuclear reactor - - - - - YES \_\_\_ NO \_\_\_

- a critical facility - - - - - YES \_\_\_ NO \_\_\_

- a facility for the fabrication of nuclear fuel - - - - - YES \_\_\_ NO \_\_\_

- a facility for the conversion of nuclear -----YES\_\_\_NO\_\_\_  
material from one form to another

- a storage installation ----- YES\_\_\_NO\_\_\_

\* Unsafeguarded means that there is no obligation on the part of the country, to accept International Atomic Energy Agency (IAEA) safeguards at the relevant facility or installation that contains any source or special fissionable material (regardless of whether or not it contains such material at the time of export), or where any such obligation is not met.

**(3) Safeguarded and unsafeguarded nuclear activities.**

Nuclear fuel cycle activities, including research on a development, design, manufacture, construction, operation or maintenance of any of the following facilities:

- Facilities for the chemical processing of irradiated  
special nuclear or source material ----- YES\_\_\_NO\_\_\_

- Facilities for the production of heavy water -----YES\_\_\_NO\_\_\_

- Facilities for the separation of isotopes of  
source and special nuclear material ----- YES\_\_\_NO\_\_\_

- Facilities for the fabrication of nuclear  
reactor fuel containing plutonium ----- YES\_\_\_NO\_\_\_

If you answered “yes” to any of the above questions, you should apply for a license.

If you answered “no” to all of the above questions, your activity does not require a license based upon nuclear end-use activity, or U.S. person involvement in certain nuclear end-use activities.