

# PUBLICATION

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## New Rules for Export and Re-export Controls for the People's Republic of China: Effective Date 6/19/2007

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Goals of the rule:

- To encourage and facilitate exports to legitimate civil end-users in the People's Republic of China (PRC)
- Will not permit exports that would make a direct and significant contribution to the PRC's military capability
- Will restrict exports of certain dual-use products and technologies that would not otherwise need an export license, if those items are destined for military end-use in the PRC

### Revision of Licensing Review Policy and License Requirements

This rule amends section 742.4(b)(7) (national security licensing policy) to make clear that the overall policy of the United States for exports to the PRC of these items is to approve exports for civil end-uses but generally to deny exports that will make a direct and significant contribution to Chinese military capabilities.

This rule also implements a new control on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC, *only* when the exporter has knowledge that such items are destined for "military end-use" in the PRC.

The new dual-use controls cover 20 products and associated technologies in the following categories (see Supplement No.2 to Part 744 of the EAR):

- Materials, chemicals, microorganisms and toxins
- Materials processing
- Electronics design, development and production
- Computers
- Telecommunications
- Sensors and lasers
- Navigation and avionics
- Marine
- Propulsion systems, space vehicles and related equipment
- Civil aircraft and aircraft engine parts (BIS decided not to include aircraft parts and components because they would be too hard to track.)

Applications to export, re-export or transfer items controlled pursuant to the military end-use control will be reviewed on a case-by-case basis to determine whether the export, re-export or transfer will make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the national security interests of the United States.

New Authorization for Validated End-User

To facilitate legitimate exports to civilian end-users, BIS established a new authorization called Validated End-User (VEU). The authorization will allow the export, re-export and transfer of eligible items without individual licenses to specific end-users in an eligible destination, initially the PRC. This is an optional program that allows Chinese entities to decide whether to apply for VEU status. Once VEU status is authorized, the entity's name will be published in Subpart 7 to Part 748 of the EAR, and *any exporter* will be able to ship to them without an individual license. The program is intended to serve as a public notice of trusted civil end-user customers in PRC.

Validated end-users will be those entities who meet a number of criteria, including:

- A demonstrated record of engaging only in civil end-use activities;
- The entities compliance with U.S. export controls;
- The need for an on-site review prior to approval;
- The entity's capability of complying with the requirements of VEU authorization;
- The entity's agreement to on-site reviews to ensure adherence to the conditions of the VEU authorization by representatives of the U.S. Government; and
- The entity's relationship with U.S. and foreign companies.
- The End-User Review Committee will also consider the status of the export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

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- ERC is composed of representatives of the U.S. Departments of State, Defense, Energy, Commerce and other agencies, as appropriate. It is responsible for determining whether to add, remove or otherwise amend the list of validated end-users and associated items. DOC chairs the ERC.
- A unanimous vote of the committee is required to authorize candidate, or to add items to the list of pre-existing authorizations. A majority vote is required to remove VEU authorizations or items from the list.
- ERC will determine whether to grant authorization no later than 30 calendar days after the candidate's complete application is circulated to all ERC agencies. The ERC may request additional information from the applicants *and end-users*.

Applications to the ERC must include the following information:

- Name of proposed VEU candidate, including all names under which the candidate does business; complete list of all company physical addresses; telephone number; fax number; email; company website; and name of the individual BIS should contact. If this information is not submitted by the prospective validated VEU, the applicant should submit the same.
- An overview of the structure, ownership and business of the prospective VEU, including a description of the entity, type of business activity, ownership, subsidiaries and joint venture projects, *as well as an overview of any business activities or corporate relationships that than the entity has with either government or military organizations. DOC officials have noted that they do not believe these requirements will preclude partially government-owned companies from receiving certification.*
- A list of the items proposed for VEU authorization approval and their intended end-uses, including a description of the items, their ECCN numbers, technical parameters for the items including performance specifications, and end-use descriptions of the items. A CCATS number may be provided in lieu of this info.
- Physical addresses of the location where these items will be used, if different from that listed for the prospective end-user.

- How the prospective VEU's recordkeeping will allow compliance with the requirements of the VEU authorization program.
- An original statement on letterhead of the prospective VEU, signed and dated by a person who has authority to legally bind the prospective VEU certifying that the end-user will comply with all VEU requirements including recordkeeping requirements and on-site review by U.S. officials.

The new rule also establishes record-keeping requirements and periodic reviews for users of VEU authorization:

- Exporters and re-exporters who make use of the VEU authorization are required to submit annual reports to BIS. These reports must include for each VEU to whom the exporter or re-exporter sent items:
  - The name and address of each VEU to whom eligible items were exported or re-exported;
  - The eligible destination to which the items were sent;
  - The quantity of such items;
  - The value of such items; and
  - The ECCN(s) of such items.
- Reports are due by February 15 of each year and must cover the period of January 1 through December 31 of the prior year.
- Records that are related to activities under VEU authorization that are maintained by exporters, re-exporters *and valid end-users*, will be reviewed on a periodic basis. Upon request by BIS, these parties must allow a review of their records, including on-site reviews covering the information set forth in the annual reports.

#### Revision of End-User Statement Requirements

This rule requires exporters to obtain PRC end-user statements from the Ministry of Commerce of the PRC for all exports of items on the CCL requiring a license to the PRC over a specific value, which for most exports will be a new, higher threshold of \$50,000.

The rule changes the requirement that exporters submit the end-user statement from the PRC's Ministry of Commerce with the licensing application. Exporters must instead keep a copy on file and produce upon request from BIS.