

ELEMENT 5: MISSILE SCREEN

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

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

PROCEDURE: The EMS Administrator may wish to establish a procedure for complying with missile technology restrictions in which the individual responsible for the check has access to the relevant information. A decision flow chart displays the screening process in Attachment 5-A.

This screen is designed for use after a firm has determined that, based on a CCL classification of the item being transferred, a License Exception or NLR could normally be used for the export, or the item is classified as EAR99 but is going to a missile end use/user. General Prohibition Five found in Part 736 of the EAR prohibits the export/reexport to prohibited end-uses or end-users. The missile end-use and missile related activities described in Part 744, apply to Country Groups D:4 in Supplement No. 1 to Part 740. Under this prohibition, a firm may not, without a license, knowingly export/reexport any item subject to the EAR to a missile end-user or end-use that is prohibited by Section 744.3 of the EAR. General Prohibition Seven requires a U.S. person to obtain a license if engaging in any activities described in Section 744.6 (a) or (b) of the EAR which prohibits the performance, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that will assist in certain proliferation activities. This screen will help exporters determine whether a license is required, based on the destination and activities of the end-user.

Screening Procedures

BXA recommends that the missile 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 missile checklist provided on the following attachment and any information included on 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 missile activities.

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 missile-related information (i.e., license required because of customer's new missile-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 from the actual customer, as 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 Screen

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

Screening Levels

Because this check is designed to determine the license authorization required to effect a shipment, the level of analysis and documentation requirements may be minimized by completing the following sequence of screening:

Level 1

- Is the item controlled for MT reasons?
- If yes, is the transaction eligible for NLR or a License Exception?
- If no, apply for a license.
- If yes, proceed to Level 2.

Level 2

- Have you been "informed by" the Bureau of Export Administration (BXA) as described in Section 744.3(b), that a license is required?
- If yes, a license application must be submitted to BXA and a license exception may not be used.
- If no, proceed to Level 3.

Level 3

- Is the customer located in a destination listed in Country Group D:4 in Supplement No. 1 to Part 740 of the EAR and involved in a project listed in the footnote to Country Group D:4.
- If yes, a license application must be submitted to BXA and a license exception may not be used.
- If no, proceed to level 4.

Level 4

- Will the items to be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4 (whether or not that use involves a listed project) as defined by Section 744.3 of the EAR?
- If yes, a license is required.
- If no, a NLR or a License Exception may be used provided no other aspect of the transaction requires a license.

COMMENTS: The missile technology controls are maintained in support of U.S. foreign policy goals of opposing the proliferation of missiles capable of carrying weapons of mass destruction. A license is required to export items related to the design, development, production or use of missiles to all destinations except Canada. These items, contained in the CCL may not be shipped under License Exceptions. In addition, a license is also required for items controlled for other than Missile Technology reasons, and for items normally eligible for License Exceptions if the exporter “knows” that the transaction involves end-uses related to the design, development, production or use of missiles in or by destinations listed in Country Group D:4, Supplement 1 to Part 740 of the EAR. (See Section 744.3 of the EAR) In addition, a license is required if BXA “informs” the exporter that such a license is required, or if the end-user/customer is on the Entity List because there is an unacceptable risk of use in or diversion to such activities anywhere in the world. (See Section 744.3(b) of the EAR).

Extra caution should be used in exporting items to institutes of science and technology; satellite application centers; space research organizations; liquid propulsion entities; telemetry, tracking, and command networks; conventional weapons and armaments research and development establishments; and other military entities.

Completion of the missile screening process can be viewed as a procedure for helping to ensure that exporters are involved only in authorized trade. Therefore, this screen is provided to assist the exporter in establishing and maintaining a documented audit trail to show how missile technology compliance is determined. The missile technology checklist should be documented in

writing. It should be dated, initialed and maintained according to your recordkeeping practices.

The missile technology checklist should be completed as customers are evaluated for credit purposes or during the order process. It should be performed by the EMS Administrator, an account representative or engineer with sufficient knowledge of the consignee or known end customer's activities to respond to the questions on the missile technology checklist.

Activities of U.S. Persons

Firms must be aware that Section 744.6 of the EAR restricts "knowing" participation and support by U.S. persons, including foreign branches of U.S. firms, in the 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 missiles in or by a country listed in Country Group D:4, Supplement No. 1 to Part 740 of the EAR. No U.S. person shall, without a license from BXA, knowingly support such an export, reexport, or transfer. Support activities include financing, freight forwarding, transportation and other comparable assistance by which a person facilitates an export, reexport or transfer without being the actual exporter or reexporter. In addition, Section 774.6 of the EAR prohibits any U.S. person from performing any contract, service or employment knowing it will assist in missile activities in or by destinations listed in Country Group D:4, Supplement No. 1 to Part 740 of the EAR.

Therefore, a firm may wish to create missile proliferation awareness among its employees. Sales representatives, traffic departments and personnel involved with credit checks, order receipts, requests for quotes, invoicing and servicing of products should be fully trained to recognize a potential transaction or activity of concern. Accordingly, questionable transactions should be reported to the EMS Administrator for further review and action.

Firms may also wish to consider including missile proliferation information in the management policy statement. This is especially true for firms that export to destinations listed in Country Group D:4, Supplement 1 to Part 740. Including this information will demonstrate to employees that the firm's management requires and supports their efforts in complying with missile technology controls.

Attachment 5-B
MISSILE TECHNOLOGY CHECKLIST

FIRM NAME: _____
COUNTRY: _____
ORDER #: _____
DATE SCREENED: _____
PERFORMED BY: _____

Level 1

Is the item controlled for MT reasons?

YES _____ NO _____

If yes, is the transaction eligible for a License Exception?

If no, apply for a license.

If yes, proceed to Level 2.

Level 2

Have you been “informed by” the Bureau of Export Administration (BXA) that a license is required or is the end-user/customer on the Entity List?

YES _____ NO _____

If yes, a license application must be submitted to BXA and a License Exception may not be used.

If no, proceed to Level 3.

Level 3

Is the customer located in a destination listed in Country Group D:4 in Supplement No. 1 to Part 740 of the EAR and involved in a project listed in the footnote to Country Group D:4.

YES _____ NO _____

If yes, a license application must be submitted to BXA.

If no, proceed to Level 4.

Level 4

A. Will the items be used in the design, development, production or use of missiles in or by a country listed in Country Group D:4 (whether or not that involves a listed project), defined by Section 744.3 of the EAR?

YES _____ NO _____

If yes, a license application must be submitted to BXA.

If no, answer the following questions.

B. Is the end-user of the items being sold involved in any activities involving the development of missiles as identified below?

YES _____ NO _____

Do they have any direct or indirect assistance in the design, fabrication, operation or maintenance of rocket systems (including ballistic missile systems, space launch vehicles and sounding rockets)?

YES _____ NO _____

Or, in unmanned air vehicles systems (including cruise missile systems, target drones, remotely piloted vehicles and reconnaissance drones)?

YES _____ NO _____

If yes, contact BXA to determine if a license is required,

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

C. Does the end-user have any of the “red flag” indicators noted on the Diversion Risk Profile?

YES _____ NO _____

If yes, and the questions cannot be adequately resolved, you should consider filing a license application with BXA.

If no, NLR or a License Exception may be used provided no other aspect of the transaction requires a license.