



UNITED STATES DEPARTMENT OF COMMERCE  
Assistant Secretary for Export Enforcement  
Washington, D.C. 20230

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MEMORANDUM FOR ALL EXPORT ENFORCEMENT EMPLOYEES

FROM: MATTHEW S. AXELROD *MSA*  
ASSISTANT SECRETARY FOR EXPORT ENFORCEMENT

SUBJECT: ADDRESSING FOREIGN GOVERNMENT PREVENTION OF END-USE CHECKS

While most federal law enforcement agencies have multiple areas of responsibility, our focus is singular. As the Export Enforcement arm of the Bureau of Industry and Security (BIS), our sole mission is to protect sensitive American goods and technology from falling into the wrong hands.

Among the tools we employ to accomplish that mission are end-use checks – site visits to foreign companies in order to verify those companies' *bona fides* (i.e., their reliability and legitimacy) for receiving U.S. exports. End-use checks help prevent the diversion of sensitive goods and technology. They also help facilitate future trade, both licensed and unlicensed, by verifying specific foreign companies as reliable recipients of U.S.-origin items. Timely completion of end-use checks is critical to the effective enforcement of U.S. export controls and a core principle of our export control system as outlined in the Export Control Reform Act of 2018 (ECRA).

When we are unable to establish the *bona fides* of a foreign party subject to an end-use check due to reasons outside of that foreign party's control, we have the option to place that party on the Unverified List, pursuant to Section 744.15 of the Export Administration Regulations (EAR). Placement on the Unverified List triggers additional regulatory requirements on exports to the listed party and notifies U.S. industry of BIS's inability to determine if that party is legitimate and reliable. As a matter of policy, until a successful end-use check is completed, BIS imposes pre-license checks on all subsequent license applications received for exports to a listed party.

Most foreign governments, eager to receive U.S. exports, welcome our end-use checks and work to assist us with them. When a foreign government prevents an end-use check from being completed, however, we are denied visibility into the reliability and legitimacy of the foreign end user. When such a situation arises, we attempt to work with the foreign government to address any concerns they might have so that an end-use check can be promptly scheduled. But if our inability to conduct a check persists, we are faced with the unacceptable risk of diversion or misuse of EAR items. In other words, when a foreign government will not permit us to perform a requested end-use check, it can effectively prevent BIS from determining

compliance with the EAR and thereby risks undermining U.S. national security and foreign policy interests.

For these reasons, effective today, Export Enforcement is implementing a new, two-step policy to address instances where a foreign government prevents us from accomplishing an end-use check, including through persistent scheduling delays. Amendments to the EAR under our existing ECRA authority reflecting this policy will also shortly be published in the *Federal Register*:

- **Additions to the Unverified List.** For us to have confidence in the reliability and legitimacy of parties receiving U.S. exports, we need requested end-use checks to be scheduled and conducted promptly. Specifically, we expect end-use checks to be conducted within 60 days of request. If 60 days pass without a requested check being conducted, Export Enforcement will initiate the interagency regulatory process to add the foreign party to the Unverified List.
- **Addition to the Entity List.** The addition of a foreign party to the Unverified List due to a foreign government's prevention of a timely end-use check will start the running of a second 60-day clock. If we are not able to successfully complete an end-use check within 60 days following the listing, Export Enforcement will initiate the interagency regulatory process to have the foreign party moved from the Unverified List to the Entity List.  
*Note:* For parties already on the Unverified List as of today, the 60-day escalation clock will be initiated immediately.

In rare cases, if we believe that extenuating circumstances justify the foreign government's inability to ensure an end-use check is conducted within the relevant 60-day period, we may exercise our discretion to extend the deadline for successful completion of the check.

Upon successful completion of an end-use check with favorable results, Export Enforcement will initiate the regulatory process for removal of the subject party from the Unverified List or Entity List, depending on which list they are on at the time the end-use check is conducted.

All of us at Export Enforcement are committed to advancing U.S. national security and foreign policy objectives through effective enforcement of the EAR. End-use checks are a critical tool in this effort. With this policy change, foreign governments have clarity as to our expectations on timelines for end-use checks. We are hopeful that this clarity will lead to fewer instances where our end-use checks are prevented.