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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740 and 744**

**[Docket No. 161005929-6929-01]**

**RIN 0694-AH18**

**Burma: Amendment of the Export Administration Regulations Consistent with an Executive Order that Terminated U.S. Government's Sanctions**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) consistent with Executive Order 13742 of October 7, 2016. That Executive Order terminated the national emergency with respect to the actions and policies of the Government of Burma (Burma) and revoked several Burma-related Executive Orders in recognition of Burma's substantial advances to promote democracy, including historic elections held in November 2015 that resulted in the formation of a democratically elected, civilian-led government. Specifically, in this rule, BIS removes license requirements and other restrictions on exports, reexports or transfers (in country) of items subject to the EAR made to persons whose property and interests in property were blocked pursuant to three Burma-related Executive Orders that were revoked on October 7, 2016. Consistent with the revised U.S. policy toward

Burma, this rule also moves Burma from Country Group D:1 to Country Group B, a less restrictive country group placement under the EAR.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance at telephone (202) 482-4252 or email Tracy.Patts@bis.doc.gov .

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *U.S. Sanctions Against Burma*

In Executive Order 13047 of May 20, 1997, President Bill Clinton declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the actions and policies of the Government of Burma in response to a deepening pattern of severe repression by the State Law and Order Restoration Council, the then-governing regime in Burma, and prohibited new investment in Burma by U.S. persons.

To take additional steps with respect to the national emergency and to implement the Burmese Freedom and Democracy Act of 2003 (Pub. L. 108-61, 50 U.S.C. 1701 note) signed into law on July 28, 2003, President George W. Bush issued on the same day Executive Order 13310 (E.O. 13310), which banned all imports into the United States of products of Burma and

the export of financial services from the United States or by U.S. persons, wherever located, to Burma. E.O. 13310 also blocked the property and property interests of persons listed in its Annex or designated pursuant to criteria set forth in E.O. 13310. To address the Government of Burma's continued repression of the country's democratic opposition, President Bush issued two additional Executive Orders, Executive Order 13448 of October 18, 2007 and Executive Order 13464 of April 30, 2008, that further expanded the scope of the national emergency and took additional steps with respect to it. Each of these two Executive Orders blocked the property and interests in property of persons listed in its Annex or designated pursuant to criteria set forth in the Executive Orders. President Barack Obama subsequently issued two Burma-related Executive Orders, Executive Order 13619 of July 11, 2012 (E.O. 13619) and Executive Order 13651 of August 6, 2013 (E.O. 13651), that further modified the scope of the national emergency and took additional steps with respect to it. E.O. 13619 blocked the property and interests in property of persons listed in its Annex or designated pursuant to criteria set forth in the Executive Order. E.O. 13651 revoked the ban imposed in E.O. 13310 on the importation of products of Burma and imposed a ban on importing into the United States jadeite or rubies, and articles of jewelry containing jadeite or rubies, mined or extracted from Burma.

Consistent with Executive Orders 13310, 13448, and 13464, and the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7201 *et seq.*), BIS amended the EAR by creating new § 744.22 (see 72 FR 60248, October 24, 2007; 74 FR 770, January 8, 2009), to impose a license requirement for exports, reexports, or transfers (in country) of items subject to the EAR, except agricultural commodities, medicine, or medical devices designated as EAR99, to persons listed in or designated pursuant to Executive Orders 13310, 13448, or 13464. As part of the initial October 2007 regulatory changes, Burma was moved from Computer Tier 1 to

Computer Tier 3 in part 740 of the EAR (License Exceptions), thereby restricting Burma's access to high-performance computers and certain related technology and software under License Exception APP (§ 740.7). In Supplement No. 1 to part 740 (Country Groups), Burma was moved from Country Group B (countries raising few national security concerns) to Country Group D:1 (countries raising national security concerns). This move further limited the number of license exceptions available for exports or reexports to Burma. Burma remained in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons).

As set forth in § 744.22 of the EAR, exports, reexports or transfers of items subject to the EAR, except agricultural commodities, medicine, or medical devices designated as EAR99, to any person whose property and interests in property were blocked pursuant to Executive Orders 13310, 13448 or 13464, required a license under the EAR and were reviewed under a general policy of denial. The requirement applied to such "blocked" persons either listed in the Annexes to one of these three Executive Orders or to persons designated pursuant to one of the Executive Orders. Persons included in an Annex or designated pursuant to one of these Executive Orders were identified with the reference [BURMA] on Treasury's Office of Foreign Assets Control (OFAC's) list of Specially Designated Nationals and Blocked Persons on OFAC's website at <http://www.treas.gov/OFAC>.

#### *Termination of U.S. Sanctions Against Burma*

In Executive Order 13742 of October 7, 2016, President Obama terminated the national emergency declared in Executive Order 13047 and revoked that Executive Order and the five additional Burma-related Executive Orders, including Executive Orders 13310, 13448 and

13464. Consistent with the President’s action, in this final rule, BIS removes and reserves §744.22 of the EAR.

In recognition of Burma’s substantial advances to promote democracy identified by President Obama in Executive Order 13742, BIS is also removing Burma from Country Group D:1 and placing it in Country Group B, a change that typically broadens the scope of license exceptions which may be available for exports and reexports of items under the EAR. Note, however, that Burma will remain in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons). Burma will also remain in Country Group D:5 (U.S. Arms Embargoes), consistent with § 126.1 of the International Traffic in Arms Regulations, 22 CFR 120-130, and State Department Federal Register notices. Therefore, the country is subject to the general license exception restrictions described in section 740.2(a)(12) of the EAR that apply to 9x515 or “600 series” items destined to, shipped from, or manufactured in a destination listed in Country Group D:5, except as narrowly provided in subparagraphs (a)(12)(i) and (ii). Further, Burma will remain in Computer Tier 3 in part 740 (License Exceptions) pending additional consideration. Finally, as a general matter, exports and reexports to Burma, and transfers (in country), remain subject to EAR part 744 end user and end-use based controls.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule affects one approved collection: the Simplified Network Application Processing + Redesign system (control number 0694-0088), which carries a burden hour estimate of 43.8 minutes, including the time necessary to submit license applications, among other things, as well as miscellaneous and other recordkeeping activities that account for 12 minutes per submission. This rule is expected to decrease the number of submissions under this collection.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a)(1). This final rule implements the President's Executive Order 13742 of October 7, 2016, terminating the national emergency with respect to Burma that had been in effect since May 20, 1997, revoking certain Burma-related Executive Orders that expanded or otherwise modified the national emergency, and waiving other statutory blocking and financial sanctions on Burma. This rule serves the foreign policy interests of the United

States by removing Burma sanctions under the EAR that were directly related to three of the revoked Executive Orders and conforming the treatment of Burma under the EAR with the change in U.S. foreign policy toward the country already in effect pursuant to Executive Order 13742. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Therefore, this regulation is issued in final form and is made effective immediately upon publication.

#### **List of Subjects**

##### *15 CFR Part 740*

Administrative practice and procedure, Burma, Exports, Reporting and recordkeeping requirements.

##### *15 CFR Part 744*

Burma, Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 740 and 744 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

#### **PART 740—[AMENDED]**

1. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

**Supplement No. 1 to Part 740-[Amended]**

2. Supplement No. 1 to part 740 is amended by:
  - a. Adding “Burma” in Country Group B in alphabetical order; and
  - b. Removing the “X” from the row for Burma in the D:1 column of the Country Group D table.

**PART 744-[AMENDED]**

3. The authority citation for part 744 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

**§ 744.22 [Removed and Reserved]**

4. Remove and reserve § 744.22.

DATED: December 20, 2016.

Kevin J. Wolf

Assistant Secretary for Export Administration

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