



**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 744**

**[Docket No. 170207154-7253-01]**

**RIN 0694 – AH32**

**Revision to an Entry on the Entity List**

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by revising one existing entry in the Entity List, under the destination of Russia. The license requirement for the entry is being revised to conform with a general license issued by the Department of the Treasury's Office of Foreign Assets Control on February 2, 2017.

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

**FOR FURTHER INFORMATION CONTACT:** Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Email: ERC@bis.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The “license review policy” for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the *Federal Register* notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

## **Entity List Revision**

This rule implements the decision of the ERC to revise one existing entry in the Entity List, under the destination of Russia as described below.

### *Modification to license requirements for an entry on the Entity List*

On February 2, 2017, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued General License No. 1, *Authorizing Certain Transactions with the Federal Security Service*, an entity in the Russian Federation. This general license authorizes transactions and activities, otherwise prohibited pursuant to Executive Order 13694 (E.O.) of April 1, 2015, as amended by E.O. 13757 of December 28, 2016, that are necessary and ordinarily incident to: requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by the Federal Security Service (a.k.a. Federalnaya Sluzhba Bezopasnosti) (a.k.a. FSB) for the importation, distribution or use of information technology products in the Russian Federation, provided that (i) the exportation, reexportation, or provision of any goods or technology that are subject to the EAR, 15 CFR parts 730 through 774, are licensed or otherwise authorized by the Department of Commerce and (ii) the payment of any fees to the Federal Security Service for such licenses, permits, certifications, or notifications does not exceed \$5,000 in any calendar year. The OFAC general license also authorizes transactions and activities ordinary and necessarily incident to complying with law enforcement or administrative actions or investigations involving the Federal Security Service and transactions and activities ordinary and necessarily incident to complying with rules and regulations administered by the Federal Security Service. The general license does not authorize exportation, reexportation, or provision of any goods, technology, or services to the

Crimea region of Ukraine or any transactions that otherwise violate E.O. 13757 of April 1, 2015. Any questions regarding to the scope of this general license should be directed to OFAC.

In light of OFAC's General License No. 1, BIS makes a conforming change by modifying the listing for the Federal Security Service on the Entity List under the destination of Russia (the term used in the EAR for the Russian Federation). This final rule modifies the license requirement column for this entity to specify that the Entity List's license requirements do not apply to items subject to the EAR that are related to transactions authorized by OFAC pursuant to new General License No. 1 (i.e., transactions that are necessary and ordinarily incident to requesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by the Federal Security Service (a.k.a. Federalnaya Sluzhba Bezopasnosti) (a.k.a. FSB) for the importation, distribution, or use of information technology products in the Russian Federation, so long as the transactions do not involve exportation, reexportation, or provision of any goods, technology, or services to the Crimea region of Ukraine and do not otherwise violate E.O. 13757). Except for the limited purposes described above, this conforming change does not authorize the exportation, reexportation, or provision of goods or technology to or on behalf of the Federal Security Service.

This final rule makes the following revision to one entry on the Entity List:

**Russia**

- (1) Federal Security Service (FSB), a.k.a., the following one alias:
  - Federalnaya Sluzhba Bezopasnosti.

Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; and Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia.

*Note: As described above, the changes this final rule makes to this Russian entity are limited to the License requirement column for this entry.*

### **Export Administration Act of 1979**

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

### **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 be 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 Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K\\_Seehra@omb.eop.gov](mailto:Jasmeet_K_Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Section 553(d) of the Administrative Procedure Act (APA) generally provides that rules may not take effect earlier than thirty (30) days after they are published in the Federal Register. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule’s revision of the license requirement for the Federal Security Service (FSB) reduces the compliance burden that may be imposed on exporters due to the inconsistent sanctions. The revision also reduces the

parties that are affected by the license requirements, addressing an unintended consequence of listing this entity on the Entity List.

In addition, the Department finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment for the revision included in this rule because they are either unnecessary or contrary to the public interest. The revision is limited to ensure consistency with OFAC's General License No. 1, and thus prior notice and the opportunity for public comment are unnecessary. The conforming change to the listing for Federal Security Service (FSB) is intended to ensure consistent treatment of this entity under both the EAR and OFAC's sanctions regime. Narrowing the scope of the license requirements addresses unintended consequences and unnecessary economic losses that U.S. exporters may face as they turn away potential sales due to this entity being listed on the Entity List. By publishing without prior notice and comment, U.S. exporters will be able to submit licenses, permits, certifications and notifications that are required under Russian law for information technology products imported into, distributed or used in Russia immediately, an action which was approved under OFAC's General License No. 1 since February 2, 2017. A prolonging of the inconsistent treatment for the sanctioned entity would create unnecessary compliance burden on exporters who are complying with OFAC and BIS regulations as well as additional delay and loss of potential sales for U.S. exporters.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an

opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

#### **List of Subjects in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

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

#### **PART 744 – [AMENDED]**

1. The authority citation for 15 CFR 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 August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016); Notice of January 13, 2017, 82 FR 6165 (January 18, 2017).

2. Supplement No. 4 to part 744 is amended by revising, under Russia, one Russian entity “Federal Security Service (FSB), a.k.a., the following one alias: -Federalnaya Sluzhba Bezopasnosti. Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; and Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia” to read as follows:

**Supplement No. 4 to Part 744 – Entity List**

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Country	Entity	License requirement	License review policy	Federal Register citation
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<b>RUSSIA</b>	***** Federal Security Service (FSB), a.k.a., the following one alias: -Federalnaya Sluzhba Bezopasnosti.  Ulitsa Kuznetskiy Most, Dom 22, Moscow 107031, Russia; <u>and</u> Lubyanskaya Ploschad, Dom 2, Moscow 107031, Russia.	For all items subject to the EAR (see §744.11 of the EAR), apart from items that are related to transactions that are authorized by the Department of the Treasury's Office of Foreign Assets Control pursuant to General License No. 1 of February 2, 2017.	Presumption of denial.	82 FR 724, 1/4/17. 82 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]
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Dated: April 13, 2017

Matthew S. Borman,  
 Deputy Assistant Secretary  
 for Export Administration

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