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**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 742**

**[Docket No. 200624-0168]**

**RIN 0694 – AH70**

**Amendment to Licensing Policy for Items Controlled for Crime Control Reasons**

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by revising, in part, the licensing policy for items controlled for crime control (CC) reasons, which is designed to promote respect for human rights throughout the world. BIS also is amending the EAR to provide that, except for items controlled for short supply reasons, it will consider human rights concerns when reviewing license applications for items controlled for reasons other than CC. This revision is necessary to clarify to the exporting community that licensing decisions are based in part upon U.S. Government assessments of whether items may be used to engage in, or enable violations or abuses of, human rights including those involving censorship, surveillance, detention, or excessive use of force.

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

**FOR FURTHER INFORMATION CONTACT:** Sheila Quarterman, Regulatory Policy Division, Office of Exporter Services, at email [RPD2@bis.doc.gov](mailto:RPD2@bis.doc.gov) or by phone at (202) 482-2440; and refer to RIN-0694-AH70.

**SUPPLEMENTARY INFORMATION:**

**Background**

Items on the Commerce Control List (CCL), Supplement No. 1 to part 774 of the Export Administration Regulations (EAR), are listed for multilateral and unilateral control reasons to serve U.S. national security and foreign policy interests. Under the EAR, multiple criteria related to those multilateral and unilateral reasons for control may be considered in reviewing license applications for the export or reexport of items. Under the EAR, multilateral reasons for control include chemical and biological (CB), nuclear nonproliferation (NP), national security (NS), and missile technology (MT) reasons. Unilateral reasons for control include regional stability (RS), crime control (CC) and anti-terrorism (AT) reasons, as well as reasons related to exports of firearms to Organization of American States member countries (FC) and United Nations embargoes (UN). Controls for United Nations Security Council purposes are identified by the abbreviation “UN” in the applicable CCL entries. The “UN” reason for control is described in § 746.2(b) of the EAR.

To date, § 742.7 of the EAR has addressed the licensing of CC equipment and related technology and software (CC-controlled items). The licensing requirement set forth in paragraph (a) and the licensing policy set forth in paragraph (b) of § 742.7 were created to promote the observance of human rights throughout the world. The impact of an export or reexport based on human rights concerns has been a consideration for CC-controlled items. Under the licensing

policy set forth in paragraph (b) of § 742.7, BIS will generally consider license applications favorably on a case-by-case basis unless there is civil disorder in the country or region of destination or unless there is evidence that the government of the importing country may have violated internationally recognized human rights.

In this final rule, the Bureau of Industry and Security (BIS) is amending the EAR by revising the licensing policy of paragraph (b) of § 742.7. With these amendments, BIS will both expand its licensing policy as it applies to CC-controlled items and expand its consideration of human rights beyond CC-controlled items to include those items controlled for any other reason, with the exception of items controlled for short supply. Therefore, this final rule amends § 742.7 by revising paragraph (b), in part, to specify in new subparagraph (b)(1) that BIS generally will consider favorably, on a case-by-case basis, license applications for a CC-controlled item unless there is civil disorder in the country or region of destination or if BIS assesses that there is a risk that the items will be used in a violation or abuse of human rights. This revision is necessary to clarify to the exporting community that licensing decisions are based in part upon U.S. Government assessments about whether CC-controlled items may be used to engage in or enable violations or abuses of human rights including through violations and abuses involving censorship, surveillance, detention, or excessive use of force.

This final rule also amends § 742.7 by adding a new subparagraph (b)(2) to make clear that BIS will consider the licensing policy set forth in new subparagraph (b)(1) when reviewing items controlled for reasons other than CC with the exception of items controlled for short supply. This revision furthers the foreign policy interests of the United States pertaining to the prevention of human rights violations and abuses by helping to ensure that items controlled for reasons other than CC are not exported or reexported in support of human rights violations or

abuses. This revision is necessary to prevent items currently controlled for reasons other than CC, including reasons related to certain telecommunications and information security and sensors, from being used to engage in or enable the violation or abuse of human rights. As revised, this licensing policy will enable BIS and other reviewing agencies to consider (1) violations or abuses of human rights by individuals or entities other than the government of the importing country and (2) abuses of human rights by the government in addition to violations of internationally recognized human rights.

### **Export Control Reform Act of 2018**

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

### **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, distribute 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 final rule has been designated to be not significant for purposes of Executive

Order 12866. The requirements of Executive Order 13771 do not apply because the rule is not significant.

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 an approved collection, the Simplified Network Application Processing (control number 0694-0088), which carries a burden hour estimate of 43 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. The amendment to the licensing review policy for items controlled for crime control reasons, which typically are licensable, is not expected to significantly increase the number of submissions under these collections.

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

4. Pursuant to section 1762 of ECRA (*see* 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act requirements (under 5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. 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. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

### **List of Subjects in 15 CFR Part 742**

Exports, Terrorism.

Accordingly, part 742 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

### **PART 742 – [AMENDED]**

1. The authority citation for part 742 continues to read as follows:

**Authority:** 50 U.S.C. 4801-4852; 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; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 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. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

2. Amend § 742.7 by revising paragraph (b) to read as follows:

### **§ 742.7 Crime control and detection.**

\* \* \* \* \*

(b) *Licensing policy.* (1) Applications for items controlled under this section will generally be considered favorably on a case-by-case basis, unless there is civil disorder in the country or region or unless there is a risk that the items will be used to violate or abuse human rights. The judicious use of export controls is intended to deter human rights violations and abuses, distance the United States from such violations and abuses, and avoid contributing to civil disorder in a country or region.

(2) BIS will review license applications in accordance with the licensing policy in paragraph (b)(1) of this section for items that are not controlled under this section but that require a license pursuant to another section for any reason other than short supply and could be used by the recipient Government or other end user specifically to violate or abuse human rights.

\* \* \* \* \*

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

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