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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 200921-0252]

RIN 0694-AI04

Controls on Exports and Reexports of Water Cannon Systems

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 to impose a license requirement on exports and reexports of water cannon systems for riot or crowd control and parts and components specially designed therefor. This action furthers U.S. foreign policy interests for crime control (CC) reasons and is intended to address the spread of violations of human rights globally by enabling the government to review covered exports and reexports worldwide, except to NATO member countries and certain other military allies. This change will also enable the Government to more effectively control exports of water cannons to the Hong Kong Police Force, consistent with a 2019 Congressional mandate to prohibit the licensing of such transactions. This rule also makes conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Steven Schrader, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at *Foreign.Policy@bis.doc.gov*, or by phone at 202–482–4252.

SUPPLEMENTARY INFORMATION:

Background

This rule furthers U.S. foreign policy interests for crime control (CC) reasons and is intended to promote the U.S. foreign policy of protecting human rights by imposing a license requirement under the Export Administration Regulations (EAR) for water cannon systems and related items.

Specifically, in this rule, BIS establishes export and reexport controls on water cannon systems for riot or crowd control and parts and components specially designed therefor by creating new Export Control Classification Numbers (ECCN) 0A977, 0D977 and 0E977 within the Commerce Control List (CCL) of the EAR, Supplement No. 1 to Part 774. A license is now required under the EAR for the export and reexport of water cannon systems and related software and technology to countries that have been designated with an X in CC (crime control) Column 1 of the Commerce Country Chart, Supplement No. 1 to Part 738 of the EAR. This includes most countries worldwide, other than NATO member countries and certain other military allies.

Consistent with the current licensing policy described in § 742.7 of the EAR – Crime control and detection – applications to export or reexport items subject to control pursuant to this rule 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 evidence that the government of the importing country may have violated internationally recognized human rights. These ECCN entries include illustrative, but not comprehensive, lists of features and items for additional clarity of what is controlled.

As a conforming change, BIS amends § 742.7 of the EAR by adding ECCNs 0A977, 0D977 and 0E977 to paragraph (a) (*License requirements*), which identifies the license requirements for items controlled for Crime Control reasons on the CCL.

On November 27, 2019, the Congress passed Public Law 116-77 to prohibit the commercial export of covered munitions items to the Hong Kong Police Force (the “Act”). The Act explicitly directs the President to prohibit, starting 30 days after enactment, the issuance of licenses for the export of water cannons, among other items, to the Hong Kong Police Force, unless the President makes certain certifications to Congress beforehand. Prior to this rule, all of the items covered by the licensing prohibition cited in the Act were generally controlled for export to Hong Kong, except for water cannons. With this rule, water cannons and related items will now require a license for export or reexport to Hong Kong, and license applications will be reviewed consistent with all applicable laws.

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) (codified, as amended, at 50 U.S.C. §§ 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 not been designated to be a “significant regulatory action” under section 3(f) of Executive Order 12866.
2. This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a military and foreign affairs function of the United States. In particular, protection of human rights is a foreign affairs function addressed by this rule. Accordingly, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing E.O. 13771. See <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>.
3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.
4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. § 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. § 553) requirements 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.

6. Notwithstanding any other provision of law, no person may be required to respond to or 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 a collection currently approved by OMB under control number 0694-0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to minimally increase and have limited impact on the existing estimates. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be submitted through www.reginfo.gov/public/do/PRAMain.

List of Subjects

15 CFR Part 742

Exports, Terrorism

15 CFR Part 774

Exports, Reporting and recordkeeping requirements

Accordingly, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 742 – [AMENDED]

1. The authority citation for part 746 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. Section 742.7 is amended by revising paragraph (a)(1) to read as follows:

§ 742.7 Crime control and detection

(a) ***

(1) Crime control and detection instruments and equipment and related “technology” and “software” identified in the appropriate ECCNs on the CCL under CC Column 1 in the Country Chart column of the “License Requirements” section. A license is required to countries listed in CC Column 1 (Supplement No. 1 to part 738 of the EAR). Items affected by this requirement are identified on the CCL under the following ECCNs: 0A502, 0A504, 0A505.b, 0A977, 0A978, 0A979, 0D977, 0E502, 0E505 (“technology” for “development” or for “production” of buckshot shotgun shells controlled under ECCN 0A505.b), 0E977, 1A984, 1A985, 3A980, 3A981, 3D980, 3E980, 4A003 (for fingerprint computers only), 4A980, 4D001 (for fingerprint computers only), 4D980, 4E001 (for fingerprint computers

only), 4E980, 6A002 (for police-model infrared viewers only), 6E001 (for police-model infrared viewers only), 6E002 (for police-model infrared viewers only), and 9A980.

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PART 774 – [AMENDED]

3. The authority citation for part 774 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.; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

4. In Supplement No. 1 to Part 774, Category 0 is amended by adding ECCN 0A977 between existing ECCNs 0A919 and 0A978 to read as follows:

Supplement No. 1 to Part 774 – The Commerce Control List

* * * * *

0A977 Water cannon systems for riot or crowd control, and “parts” and “components” “specially designed” therefor.

License Requirements

Reason for Control: CC 1

Control(s)	Country Chart (See Supp. No. 1 to part 738)
CC applies to entire entry	CC Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used for 0A977.

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Note: 0A977 water cannon systems include, for example: vehicles or fixed stations equipped with remotely operated water cannon that are designed to protect the operator from an outside riot with features such as armor, shatter resistant windows, metal screens, bull-bars, or run-flat tires. Components “specially designed” for water cannons may include, for example: deck gun water nozzles, pumps, reservoirs, cameras, and lights that are hardened or shielded against projectiles, elevating masts for those items, and teleoperation systems for those items.

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5. In Supplement No. 1 to part 774, Category 0 is amended by adding ECCN 0D977 between existing ECCNs 0D617 and 0D999 to read as follows:

Supplement No. 1 to Part 774 – The Commerce Control List

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0D977 “Software” “specially designed” for the “development,” “production” or “use” of commodities controlled by 0A977.

License Requirements

Reason for Control: CC1

Control(s)	Country Chart (See Supp. No. 1 to part 738)
CC applies to entire entry	CC Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used for 0D977.

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

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6. In Supplement No. 1 to part 774, Category 0 is amended by adding ECCN 0E977 between existing ECCNs 0E617 and 0E982 to read as follows:

Supplement No. 1 to Part 774 – The Commerce Control List

* * * * *

0E977 “Technology” “required” for the “development” or “production” of commodities controlled by 0A977.

License Requirements

Reason for Control: CC1

Control(s)	Country Chart (See Supp. No. 1 to part 738)
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CC applies to entire entry	CC Column 1
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List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

Special Conditions for STA

STA: License Exception STA may not be used for 0E977.

List of Items Controlled

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

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