



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 740

[Docket No. 201120-0311]

RIN 0694-AI12

Amendment to Country Groups for Ukraine, Mexico and Cyprus Under the Export

Administration Regulations

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) to revise the Country Group designations for Ukraine, Mexico and Cyprus. Specifically, in this rule, BIS moves Ukraine from Country Group D to Country Group B and adds Mexico and Cyprus in Country Group A:6. This rule also includes conforming changes.

DATES: EFFECTIVE [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of National Security and Technology Transfer Controls, Patricia.Muldonian@bis.doc.gov .

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations (EAR) designates countries in Country Groups (A, B, D and E) (Supplement No. 1 to Part 740) which reflect each country's export control policy, multilateral regime membership, system, and practice. The Country Groups generally serve as a basis for the availability of exceptions from license requirements described in part 740 (License Exceptions) of the EAR, when applicable conditions are met in part 740. Country

Groups may also be used when describing license review policy and end-user and end-use based controls under part 744.

The EAR also sets forth license requirements in the Commerce Country Chart (Supplement No. 1 to Part 738). The Commerce Country Chart contains licensing requirements based on the destination to which items listed on the Commerce Control List (CCL) (Supplement No. 1 to Part 774) will be exported or reexported and their corresponding “Reason for Control,” which is found in the CCL entry. An “X” in the cell where the “reason for control” column intersects with the row of the destination indicates a license requirement. Licenses are required to export and reexport items under the EAR for multilateral reasons (*i.e.*, chemical and biological (CB), nuclear nonproliferation (NP), national security (NS), and missile technology (MT)); and for unilateral reasons (*i.e.*, region stability (RS), crime control (CC) and anti-terrorism (AT)), as well as to implement controls for firearms convention (FC) and United Nations Security Council purposes. 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.

In combination with the CCL - the list of items classified and set-out as Export Control Classification Numbers (ECCNs) and arranged by categories - the Commerce Country Chart allows an exporter to determine whether a license is required for the export or reexport of an item on the CCL to the destinations on the Chart, unless otherwise specified in the particular ECCN entry on the CCL.

Specific Amendments in this Rule

Ukraine

Ukraine is a member of the four multilateral export control regimes (Australia Group; Missile Technology Control Regime; Nuclear Suppliers Group; Wassenaar Arrangement). In addition, Ukraine works with the United States on a variety of export control matters. As a result, this rule removes Ukraine from Country Group D:1 and places Ukraine in Country Group

B. This removes Ukraine from Country Group D completely. This rule does not remove “Xs” in Columns CB1, NS1, NS2, MT1, RS1, RS2, CC1 and CC2 for Ukraine in the Commerce Country Chart. In addition, BIS has determined that exports to Ukraine are not eligible for License Exceptions Shipments to Country Group B countries (GBS) and Technology and software under restriction (TSR). This rule makes conforming changes in part 740 consistent with that policy. Those amendments are described further in the following section on the “Impact of the Amendments in this Rule”.

Mexico

Mexico is a member of three multilateral export control regimes (Australia Group; Nuclear Suppliers Group; Wassenaar Arrangement). Mexico also has national security interests and policies compatible with those of the United States. As a result, this rule adds Mexico to Country Group A:6. This rule does not remove “Xs” in Columns CB1, NS1, MT1, RS1, and CC1 for Mexico in the Commerce Country Chart.

Cyprus

Cyprus is a member of the European Union. The European Union’s export control regulations implement the controls of the four multilateral export control regimes and apply to all members. In addition, the Department of State recently issued a temporary final rule revising its licensing policy for Cyprus in § 126.1 (Prohibited exports, imports and sales to or from certain countries) (of the International Traffic in Arms Regulations) (85 FR 60698, 9/28/20). As a result, this final rule adds Cyprus to Country Group A:6. This rule does not remove “Xs” in Columns CB1, NS1, MT1, RS1, RS2 and CC1 for Cyprus in the Commerce Country Chart.

Impact of the Amendments in this Rule

Ukraine

Placing Ukraine in Country Group B and removing it from Country Group D, combined with Ukraine’s existing Country Groups A:2, A:3, and A:4 status, makes certain license exceptions available for Ukraine, when applicable conditions are met, and the restrictions in §

740.2 do not apply. The available license exceptions are: Shipments of limited value (LVS)(§ 740.3); Temporary imports, exports, reexports, and transfers (in-country) (TMP)(§ 740.9); Servicing and replacement of parts and equipment (RPL) (§ 740.10); Gift parcels and humanitarian donations (GFT)(§ 740.12); Baggage (BAG)(§ 740.14); Aircraft and vessels (AVS)(§ 740.15); Additional permissive reexports (APR)(§ 740.16); and Encryption, commodities, software, and technology (ENC)(§ 740.17).

As noted earlier, License Exceptions Shipments to Country Group B countries (GBS) (§ 740.4) and Technology and software under restriction (TSR) (§ 740.6) will not be available for exports to Ukraine. Therefore, in this rule, BIS made conforming amendments in §§ 740.4 and 740.6 to clearly set forth that license exceptions GBS and TSR are available for Country Group B countries except Ukraine.

These changes also allow a less restrictive licensing policy for the export and reexport to Ukraine of items listed on the CCL and controlled for national security reasons. Also as a result of the amendments in this rule, applications to export and reexport to Ukraine items listed on the CCL and controlled for national security reasons will no longer be subject to the case-by-case licensing policy in § 742.4(b)(2), and now will be subject to a licensing policy of approval per § 742.4(b)(1)(i). The restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Country Group D:1, pursuant to § 744.17, (Restrictions on certain exports, reexports, and transfers (in-country) of microprocessors and associated “software” and “technology” for ‘military end uses’ and to ‘military end users’) also no longer apply to Ukraine. Furthermore, § 744.7 (Restrictions on certain exports to and for the use of certain foreign vessels or aircraft) restrictions on certain exports and reexports to vessels and aircraft, located in Ukrainian ports or registered in Ukraine no longer apply to that destination. Finally, by removing Ukraine from Country Group D:1, the § 736.2(b)(3), General Prohibition Three, licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Ukraine no longer apply.

These amendments are intended to serve U.S. national security and foreign policy interests toward Ukraine. This rule does not change the status of the Crimea Region of Ukraine under the EAR.

Mexico

With the addition of Mexico to Country Group A:6, License Exception Strategic Trade Authorization (STA) is available for exports, reexports and transfer (in-country) of lesser sensitivity items controlled for NS reasons only as set forth in § 740.20(c)(2). This new Country Group status is in addition to Mexico's existing Country Group B status which includes the availability of License Exceptions GBS and TSR.

Cyprus

Adding Cyprus to Country Group A:6 makes License Exception STA available for exports, reexports and transfer (in-country) of lesser sensitivity items controlled for NS reasons only as set forth in § 740.20(c)(2). This new Country Group status is in addition to Cyprus' existing Country Group B status which includes the availability of License Exceptions GBS and TSR. As Cyprus also is in Country Group D:5 (U.S. Arms Embargoed Countries), however, consideration of license exceptions must include particular review and compliance with the restrictions on items in a 9x515 or "600 series" ECCN as set forth in paragraphs (a)(12) and (13) of §740.2.

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. 4801-4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to

August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

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 a “significant regulatory action,” although not economically significant, 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, this rule recognizes: 1) the Government of Ukraine’s continuing engagement with regional and international export control authorities; 2) Mexico’s multilateral export control regime memberships and national security approaches and interests compatible with the United States; and 3) Cyprus’ European Union membership and like-minded export controls. These changes to the EAR serve U.S. foreign policy and national security interests. 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. The 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 decrease slightly or have limited impact on the existing estimates. Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, should be sent within 30 days of publication of this notice to <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

List of Subjects in

15 CFR Part 740

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

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

PART 740 – LICENSE EXCEPTIONS

1. The authority citation for part 740 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. 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.

2. Section 740.4 is revised to read as follows:

§ 740.4 Shipments to Country Group B countries (GBS).

License Exception GBS authorizes exports and reexports to Country Group B (see Supplement No. 1 to part 740), except Ukraine, of those commodities where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by “GBS - Yes” on the CCL. See §743.1 of the EAR for reporting requirements for exports of certain commodities under License Exception GBS.

3. Section 740.6 is amended by revising paragraph (a) introductory text to read as follows:

§ 740.6 Technology and software under restriction (TSR).

(a) *Scope.* License Exception TSR permits exports and reexports of technology and software where the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) indicates a license requirement to the ultimate destination for national security reasons only and identified by “TSR - Yes” in entries on the CCL, provided the software or technology is destined to Country Group B, except Ukraine. (See Supplement No. 1 to part 740.) A written assurance is required from the consignee before exporting or reexporting under this License Exception.

* * * *

4. Supplement No. 1 to part 740 is amended by

a. In the Country Group A table, adding “Cyprus” and “Mexico” in alphabetical order to Column A:6.

b. In the Country Group B table, adding “Ukraine” in alphabetical order;

c. In the Country Group D table, removing the entry for “Ukraine”;

Matthew S. Borman

Deputy Assistant Secretary for Export Administration

[FR Doc. 2020-26552 Filed: 12/23/2020 8:45 am; Publication Date: 12/28/2020]