

[3510-33-P]



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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 730, 734, 736, and 744

[Docket No. 210112-0007]

RIN 0694-AI38

### Expansion of Certain End-Use and End-User Controls and Controls on Specific Activities of U.S. Persons.

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

**ACTION:** Interim final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS), Department of Commerce, is issuing this interim final rule to implement the provisions of the Export Control Reform Act of 2018 by: imposing additional license requirements under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country), as well as specific activities of U.S. persons, in connection with certain military-intelligence end uses and end users; clarifying that license requirements under the EAR for specific activities of U.S. persons apply even when the items at issue are not subject to the EAR; establishing restrictions on transactions intended to circumvent license requirements for listed entities; and expanding the scope of activities subject to chemical and biological weapons and rocket systems and unmanned aerial vehicles end-use controls.

**DATES:** *Effective date:* This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. *Comment date:* Comments must be received by BIS no later than **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments on this rule may be submitted to the Federal rulemaking portal ([www.regulations.gov](https://www.regulations.gov)). The regulations.gov ID for this rule is: BIS-2020-0044 or RIN 0694-

AI38. All relevant comments (including any personally identifying information) will be made available for public inspection and copying. Follow the instructions for submitting comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and also provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION:** Philip Johnson, Senior Advisor, Export Enforcement, Bureau of Industry and Security, Phone: (202) 482-3685, [Philip.Johnson@bis.doc.gov](mailto:Philip.Johnson@bis.doc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

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). ECRA directs the President to control exports, reexports, and transfers (in-country); as well as the activities of U.S. persons in connection with nuclear,

chemical, and biological weapons; whole plants for chemical weapons precursors; missiles; foreign maritime nuclear projects; and foreign military intelligence services. Accordingly, BIS is amending parts 730, 734, 736, and 744 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) to implement such controls. BIS is also making certain revisions to enhance existing end-use and end-user controls under the EAR, including their enforceability.

#### *Restrictions on specific Activities of U.S. Persons*

Section 1753(a)(2) of ECRA (50 U.S.C. 4812(a)(2)) directs the President to impose controls on the activities of U.S. persons, wherever located, relating to specific nuclear explosive devices, missiles, chemical or biological weapons, whole plants for chemical weapons precursors, foreign maritime nuclear projects, and foreign military intelligence services. Additionally, section 1754(d) of ECRA (50 U.S.C. 4813(d)) directs the Secretary of Commerce to require U.S. persons to apply for and receive a license to engage in specific activities in connection with nuclear explosive devices, missiles, chemical or biological weapons, whole plants for chemical weapons precursors, and foreign maritime nuclear projects, regardless of whether such activities occur in connection with an export, reexport, or transfer (in-country) of items subject to the EAR. Although section 1754(d)(2) of ECRA (50 U.S.C. 4813(d)(2)) does not specifically direct the Secretary of Commerce to impose a license requirement on the activities of U.S. persons in connection with foreign military intelligence services, section 1754(a)(16) of ECRA (50 U.S.C. 4813(a)(16)) authorizes the Secretary to undertake any other action not otherwise prohibited by law to carry out the authorities granted to the President in section 1753 of ECRA (50 U.S.C. 4812), which includes restrictions on U.S. person activities in connection with foreign military intelligence services (section 1753(a)(2)(F) of ECRA (50 U.S.C. 4812(a)(2)(F))).

The EAR already restrict specific activities of U.S. persons in connection with nuclear explosive devices, missiles, chemical and biological weapons, and whole plants for chemical

weapons precursors. In accordance with ECRA, BIS is expanding these existing restrictions to encompass activities of U.S. persons in connection with certain military-intelligence end uses and end users. Specifically, BIS is revising §§ 730.5 and 734.5(a) of the EAR to reflect the expanded scope of U.S. person activities subject to the EAR, as described below, which include activities supporting certain military-intelligence end uses and end users.

The general categories of exports, reexports, and transfers (in-country), as well as activities of U.S. persons, which are prohibited absent a license from BIS are summarized in the “General Prohibitions” found in § 736.2 of the EAR. Specifically, § 736.2(b)(7) of the EAR describes the types of U.S. person WMD proliferation activity subject to a license requirement under the EAR. In this rule, BIS is revising § 736.2(b)(7) by harmonizing the definition of “U.S. person” in that section with the definition of that term as set forth in § 772.1 of the EAR. Furthermore, BIS is revising § 736.2(b)(7) to broaden the prohibition, absent a license from BIS, to include specific activities of U.S. persons in support of certain military-intelligence end uses and end users pursuant to sections 1753(a)(2)(F) and 1754(a)(16) of ECRA (50 U.S.C. 4812(a)(2)(F) and 4813(a)(16)).

The license requirements that apply to specific activities of U.S. persons are described in § 744.6 of the EAR. Section 744.6 currently contains restrictions on exports, reexports, and transfers (in-country), as well as activities unrelated to exports (e.g., contracts, services, and employment), when connected with certain nuclear explosive, missile, or chemical or biological weapons-related activities, or whole plants for chemical weapons precursors. Section 1754(d)(1)(A) of ECRA (50 U.S.C. 4813(d)(1)(A)) specifies that controls on the activities of U.S. persons apply even when the items at issue “are not subject to control under this subchapter,” (i.e., are not “subject to the EAR”). Therefore, BIS is revising § 744.6 to replace the terms “export” and “reexport” with the acts of shipping or transmitting to ensure that the

controls set forth in that section apply to foreign-origin items not subject to the EAR, as set forth in ECRA.

Furthermore, BIS is revising § 744.6 to provide an illustrative list of the types of activities unrelated to the shipment, transmission, or transfer (in-country) of items that are subject to a license requirement when undertaken by U.S. persons in connection with the end uses or end users enumerated in that section. This list is derived from the list of “Specific Unlawful Acts” set forth in section 1760(a)(2)(E) of ECRA (50 U.S.C. 4819(a)(2)(E)). BIS is also revising § 744.6 to impose a license requirement on such activities when a U.S. person knows the activity(ies) “will support,” as opposed to “will directly assist,” any of the end uses or end users listed in that section of the EAR. BIS is making this change in accordance with section 1754(d)(1)(B) of ECRA (50 U.S.C. 4813(d)(1)(B)), which authorizes the Secretary to implement controls on “activities that may support” the end uses described in section 1754(d)(2) of ECRA (50 U.S.C. 4813(d)(2)); and in accordance with section 1754(a)(16) of ECRA (50 U.S.C. 4813(a)(16)), which authorizes the Secretary to “undertake any other action as necessary to carry out this subchapter that is not otherwise prohibited by law,” which includes implementing controls on the end uses and end users described in section 1753(a)(2) of ECRA (50 U.S.C. 4812(a)(2)).

In accordance with sections 1753(a)(2)(F) and 1754(a)(16) of ECRA (50 U.S.C. 4812(a)(2)(F) and 4813(a)(16)), BIS is also adding to § 744.6 of the EAR a new restriction on the activities of U.S. persons in support of certain military-intelligence end uses and end users. The scope of military-intelligence end uses and end users subject to control is defined in § 744.22, as explained below. In addition, BIS is expanding the destinations with respect to which the activities of U.S. persons are restricted in connection with nuclear explosive devices to include any country not listed in supplement no. 3 to part 744, for consistency with the restrictions on exports, reexports, and transfers (in-country) of items for use in nuclear explosive

activities, as set forth in § 744.2(a)(1) of the EAR. Likewise, BIS is expanding the destinations with respect to which the activities of U.S. persons are restricted in connection with certain “missile” end uses pursuant to § 744.6 to include Cuba, a unilaterally-embargoed country listed in Country Group E:2 (see supplement no. 1 to part 740 of the EAR), but not also listed in Country Group D:4.

ECRA directs the Secretary of Commerce to impose a license requirement on specific activities of U.S. persons, “except to the extent authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce” (50 U.S.C. 4813(d)(1)). To avoid overlapping license requirements across U.S. government agencies, BIS is adding to § 744.6 of the EAR a provision defining the scope of U.S. person activities requiring a license from BIS pursuant to that section to exclude any activity subject to a license requirement or general prohibition administered by another federal department or agency, to include the Departments of Energy, State, or the Treasury.

The Department of Energy administers controls on the transfer of unclassified nuclear technology and assistance to foreign atomic energy activities within the United States or abroad. Pursuant to Department of Energy regulations at 10 CFR part 810, implementing section 57.b(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2077(b)), persons may engage, directly or indirectly, in the production or development of special nuclear material outside the United States upon authorization by the Secretary of Energy.

The Department of State administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) pursuant to the Arms Export Control Act (AECA) (22 U.S.C. 2778). The ITAR include controls on defense articles (22 CFR 120.6), which are described on the U.S. Munitions List (USML) (22 CFR 121.1). In addition, the ITAR control the performance of defense services (22 CFR 120.9), which may include the furnishing of military training to foreign units and forces, as well as the furnishing of assistance pertaining to defense articles to foreign persons, or the furnishing to foreign persons of any controlled technical data

(22 CFR 120.10). The ITAR also regulate brokering activities (see 22 CFR part 129), which include any action undertaken on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service enumerated on the USML and those items designated in the U.S. Munitions Import List (USMIL) (27 CFR 447.21). The USML includes, *inter alia*, nuclear weapons-related articles (Category XVI), missiles (Category IV), unmanned aerial vehicles (Category VIII), and toxicological agents and associated equipment (Category XIV). The USMIL includes, *inter alia*, nuclear weapons design and test equipment (Category XVI), missiles (Category IV), and toxicological agents and equipment (Category XIV).

The Department of the Treasury, through the Office of Foreign Assets Control (OFAC), administers economic sanctions programs governing transactions involving U.S. persons in connection with certain sanctioned countries or entities pursuant to a number of statutes and executive orders (see, *inter alia*, 31 CFR parts 500 through 599).

Section 744.6 of the EAR does not, and is not intended to, control the activities of U.S. persons subject to the regulatory controls administered by other federal departments and agencies, to include the Department of Energy, the Department of State, and the Department of the Treasury. The purpose of § 744.6 is to control those activities of U.S. persons in connection with the end uses and end users enumerated in that section, only if those activities are not already subject to other federal regulatory controls.

Finally, other U.S. laws, including criminal statutes, may prohibit the performance of certain activities by a person subject to the jurisdiction of the United States in connection with the end uses and end users described in § 744.6 even if that person has obtained a BIS license. The issuance of a BIS license does not authorize “U.S. persons” to engage in any conduct that is otherwise prohibited by U.S. law, including any criminal statute.

While § 744.6 of the EAR imposes license requirements on certain transactions of items not subject to the EAR, and certain support activities, where a U.S. person is involved, BIS also

notes that controls on exports, reexports, and transfers (in-country) of items subject to the EAR to nuclear-, missile-, chemical and biological weapons-, and military-intelligence-related end uses and end users are set forth in other sections of part 744, to include §§ 744.2, 744.3, 744.4, and 744.22. Certain activities of U.S. or foreign persons that facilitate exports, reexports, and transfers (in-country) that require a license pursuant to those sections, where no such license has been issued, are prohibited pursuant to § 764.2 of the EAR.

*Restrictions on military-intelligence end uses and end users*

This rule adds a new § 744.22 to the EAR, which imposes supplemental license requirements on the export, reexport, or transfer (in-country) of all items subject to the EAR to military-intelligence end uses and end users in China, Russia, or Venezuela; and countries listed in Country Groups E:1 and E:2 (see supplement no. 1 to part 740 of the EAR). As previously discussed, section 1753(a)(2)(F) of ECRA (50 U.S.C. 4812(a)(2)(F)) directs the President to establish controls on the activities of U.S. persons with respect to foreign military intelligence services. This rule implements such controls by revising § 744.6 of the EAR as described above. Consistent with these restrictions on the activities of U.S. persons, and in accordance with the authority granted to the President in section 1753(a)(1) of ECRA (50 U.S.C. 4812(a)(1)) and exercised by the Secretary of Commerce pursuant to section 1754(a)(2) and (a)(16) of ECRA (50 U.S.C. 4813(a)(2) and (a)(16)), BIS believes it is appropriate to impose a license requirement on exports, reexports, and transfers (in-country) of all items subject to the EAR to the same military-intelligence end uses and end users. Specifically, BIS believes controls on U.S. person activities related to military-intelligence end uses and end users described in § 744.6 of the EAR would be of limited effect if not implemented in tandem with a corresponding license requirement for exports, reexports, and transfers (in-country). Although § 744.21 of the EAR already imposes a license requirement on certain exports, reexports, and transfers (in-country) to military end uses and military end users, to include government intelligence and reconnaissance organizations, in China, Russia, or Venezuela, the restrictions in § 744.21(a) of the EAR apply

only to items identified in supplement no. 2 to part 744 of the EAR, not to all items subject to the EAR. Accordingly, the addition of § 744.22 is warranted.

Paragraphs (a) and (b) of § 744.22 set forth license requirements applicable to certain military-intelligence end uses and end users, paragraph (c) of that section provides for the use of License Exception GOV (§ 740.11(b)(2)(ii) of the EAR), and paragraphs (d) and (e) outline the application procedures and review policy that apply to license applications submitted pursuant to that section. Section 744.22(f)(1) defines a “military-intelligence end use” and § 744.22(f)(2) defines a “military-intelligence end user” and sets forth an illustrative list of military-intelligence end users subject to the license requirements outlined in § 744.22. The imposition of a license requirement on exports, reexports, and transfers (in-country) for a military-intelligence end use or end user in the specified countries enhances U.S. national security by allowing prior U.S. government review of transactions involving military intelligence or reconnaissance organizations in countries subject to existing military end-use and end-user controls, sanctions, or embargoes.

*Corresponding Change to Existing ‘Military End Use’ and ‘Military End User’ Controls.*

‘Military-intelligence end users,’ as defined in new § 744.22(f)(2) of the EAR are a subset of the “government intelligence and reconnaissance organizations” already included in the definition of ‘military end user’ in § 744.21(g) of the EAR. However, the license requirement in § 744.21(a) only applies with respect to items listed in supplement no. 2 to part 744 of the EAR, as opposed to all items subject to the EAR, as set forth in § 744.22(a). Accordingly, § 744.22 establishes a broader license requirement for this subset of ‘military end users’ already subject to license requirements under § 744.21. To avoid duplicate license requirements and facilitate compliance, BIS is amending the definition of ‘military end user’ in § 744.21(g) to exclude intelligence or reconnaissance organizations of the armed forces or national guard. Such intelligence or reconnaissance organizations will be subject to the broader license requirements

of § 744.22; however, other government intelligence or reconnaissance organizations, which are not part of the armed services or national guard, will remain subject to the license requirements of § 744.21 of the EAR.

*Restrictions on certain Chemical and Biological Weapons End Uses.*

Section 744.4 of the EAR sets forth restrictions on exports, reexports, and transfers (in-country) to chemical and biological weapons end uses anywhere in the world. BIS is revising § 744.4 of the EAR, consistent with sections 1753(a)(2)(D) and 1754(d)(2)(D) of ECRA (50 U.S.C. 4812(a)(2)(D) and 4813(d)(2)(D)), to include restrictions on exports, reexports, and transfers (in-country) of any item subject to the EAR for use in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a whole plant for chemical weapons precursors specified in export control classification number (ECCN) 1C350, which controls certain precursor chemicals listed in Schedules 2 and 3 of the Chemical Weapons Convention and/or subject to control by the Australia Group. The terms “development” and “production” are defined in § 772.1 of the EAR. This expansion of controls advances U.S. WMD nonproliferation policy, as set forth in ECRA.

*Activities associated with Use*

The term “use” is defined in § 772.1 of the EAR as “operation, installation (including on-site installation, maintenance (checking), repair, overhaul, and refurbishing.” Sections 744.3 and 744.4 of the EAR, respectively, impose license requirements on all items subject to the EAR when an exporter, reexporter, or transferor (in-country) knows such items will be used in the “design, ‘development,’ ‘production,’ or use” of certain rocket systems or unmanned aerial vehicles; or in the “design, ‘development,’ ‘production,’ stockpiling, or use” of chemical or biological weapons. Likewise, § 744.6 imposes a license requirement on specific activities of U.S. persons in support of the “design, ‘development,’ ‘production,’ or use” of nuclear explosive devices and rocket systems or unmanned aerial vehicles; or the “design, ‘development,’

‘production,’ stockpiling, or use” of chemical or biological weapons. The definition of “use” in § 772.1 of the EAR, which appears in general technology notes on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), resulted in a requirement for a WMD end use to involve all of the activities listed in that definition in order to trigger a “use”-based license requirement under §§ 744.3, 744.4, or 744.6 of the EAR. This is inconsistent with section 1754(d)(1)(B) of ECRA (50 U.S.C. 4813(d)(1)(B)), which lists the component activities of the EAR definition of “use” as separate and individually-sufficient activities for end-use control purposes. Accordingly, BIS is revising each of those sections of the EAR to replace the word “use” with a list of its component activities, i.e., “operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing,” to ensure that any one of those activities individually triggers a license requirement under the relevant sections of the EAR, when connected with certain WMD end uses.

*Additional Prohibition on Persons Informed by BIS of Transactions Intended to Circumvent Entity List License Requirements*

The Entity List (supplement no. 4 to part 744 of the EAR) imposes a supplemental license requirement, to the extent specified in each entry on the Entity List, for exports, reexports, or transfers (in-country) in which a listed entity is a party to the transaction as described in § 748.5(c) through (f) of the EAR. Entities may be added to the Entity List in accordance with the procedures set forth in supplement no. 5 to part 744 of the EAR if there is reasonable cause to believe the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities contrary to U.S. national security or foreign policy interests.

Although Entity List license requirements generally only apply to listed entities, BIS has posted guidance on its website in the form of frequently asked questions (FAQs) advising increased due diligence when proceeding with transactions involving parties co-located with, or

which are subsidiaries, parent companies, or sister companies of, listed entities. In such cases, exporters, reexporters, and transferors should assess whether such entities are acting as an agent, front, or a shell company for a listed entity in order to facilitate transactions that would otherwise not be permissible, and whether the items intended for export, reexport, or transfer (in-country) may ultimately be destined to a listed entity.

In certain cases, BIS may have information indicating that a specific transaction, although not directly involving a listed entity, nevertheless poses an unacceptable risk of diversion to a listed entity. Likewise, BIS may have information that a specific entity, although not itself listed on the Entity List, is acting on behalf of a listed entity, or otherwise assisting a listed entity, in circumventing Entity List license requirements. In such cases, BIS may wish to inform an exporter, reexporter, or transferor that a license is required based on an unacceptable risk that the items in question will ultimately be used by, or diverted to, a listed entity. This is consistent with other provisions of part 744 of the EAR (i.e., §§ 744.2(b), 744.3(b), 744.4(b), 744.9(b), 744.17(b), 744.21(b), and 744.22(b)), which authorize BIS to inform exporters, reexporters, or transferors of a license requirement based on an unacceptable risk of use in, or diversion to, specified end uses or end users.

Furthermore, section 1754(a)(2) and (a)(15) of ECRA (50 U.S.C. 4813(a)(2) and (a)(15)) specifically authorize the Secretary of Commerce to not only establish and maintain lists of foreign persons determined to be a threat to the national security and foreign policy of the United States, but also to inform persons, either individually by specific notice, or through amendment to the EAR, that a license is required for specific transactions. Accordingly, BIS is adding a new paragraph (c) to § 744.11 of the EAR, which authorizes BIS to inform persons that a license is required for specified transactions, or for transactions with specific parties, based on an unacceptable risk that the items in question will be ultimately used by, or diverted to, a listed entity.

### *Conforming changes.*

BIS is also making conforming changes to § 744.1(a)(1) of the EAR to reflect the expanded scope of U.S. person controls in § 744.6, as well as new military-intelligence end-use and end-user controls in § 744.22, as implemented in this rule. In addition, BIS is adding to § 744.1(a)(1) a description of existing end-use and end-user controls in §§ 744.9, 744.17, and 744.18 of the EAR. Finally, BIS is revising § 744.1(b)(2) of the EAR to reference all provisions of part 744 that set forth “additional prohibitions on persons informed by BIS,” to include new §§ 744.6(c), 744.11(c), and 744.22(b), as well as existing §§ 744.9(b), 744.17(b), and 744.21(b), which were not previously listed in that section.

### *Request for comments*

BIS welcomes comments on the impact of this interim final rule. Instructions for the submission of comments, including comments that contain business confidential information, are found in the ‘Addresses’ section of this interim final rule.

## **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. 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 interim final rule has been designated a “significant regulatory action,” although not economically significant under section 3(f) of Executive Order 12866. Although this rule is a significant regulatory action, it is a regulation where the analysis demonstrates that the primary, direct benefit is national security and is, thus, exempt from the provisions of Executive Order 13771. This interim final rule will support the national security and foreign policy objectives of the United States by implementing controls on exports, reexports, and transfers (in-country) related to whole plants for chemical weapons precursors and certain military-intelligence end uses and end users, as well as the activities of U.S. persons, with respect to such military-intelligence end uses and end users. These controls are consistent with ECRA and allow the U.S. government prior review of such transactions and activities to determine whether they would be contrary to U.S. national security and foreign policy interests. Furthermore, this rule advances U.S. national security and foreign policy by expanding existing controls on U.S. person activities in support of certain nuclear explosive devices, missiles, and chemical and biological weapons to apply to items not subject to the EAR, as directed in ECRA. This rule also supports U.S. national security and foreign policy by allowing prior U.S. government review of a broader range of transactions that may be destined to various activities related to the use of rocket systems or unmanned aerial vehicles, or chemical or biological weapons. Finally, this rule allows the U.S. government to review transactions that post an unacceptable risk of use by, or diversion to, entities acting contrary to U.S. national security and foreign policy interests.

2. 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 of information 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 42.5 minutes for a manual or electronic submission. BIS expects this rule will increase the number of license applications required to be submitted to BIS each year by imposing licensing requirements on certain exports, reexports, and transfers (in-country), as well as activities of U.S. persons not previously subject to a licensing requirement. BIS estimates the total number of additional license applications will not exceed 40 per year, for a total increase in public burden under OMB control number 0694-0088 of no more than 29 hours per year.

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

#### **Administrative Procedure Act and Regulatory Flexibility Act Requirements**

Pursuant to section 4821 of ECRA (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.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act 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**

*15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, General information, Reporting and recordkeeping requirements, Strategic and critical materials.

*15 CFR Part 734*

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology, Scope of the Export Administration Regulations.

*15 CFR Part 736*

Exports, General prohibitions.

*15 CFR Part 744*

End-user and end-use based control policy, Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 730, 734, 736, and 744 of the EAR (15 CFR parts 730 through 774) are amended as follows:

**Part 730 – General Information**

1. The authority citation for part 730 is revised 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. 2151 note; 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. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O.

13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020); Notice of May 7, 2020, 85 FR 27639.

2. Section 730.5 is amended by revising paragraph (d) to read as follows:

**§ 730.5 Coverage of more than exports.**

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(d) “*U.S. person*” activities. The EAR restrict specific activities of “U.S. persons,” wherever located, related to the proliferation of nuclear explosive devices, “missiles,” chemical or biological weapons, whole plants for chemical weapons precursors, and certain military-intelligence end uses and end users, as described in § 744.6 of the EAR.

**Part 734 – Scope of the Export Administration Regulations**

3. The authority citation for part 734 is revised 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.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

4. Section 734.5 is amended by revising paragraph (a) to read as follows:

**§ 734.5 Activities of U.S. and foreign persons subject to the EAR.**

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(a) Specific activities of “U.S. persons,” wherever located, related to the proliferation of nuclear explosive devices, “missiles,” chemical or biological weapons, whole plants for chemical

weapons precursors, and certain military-intelligence end uses and end users as described in § 744.6 of the EAR.

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### **Part 736 –General Prohibitions**

5. The authority citation for part 736 is revised 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.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 12, 2020, 85 FR 72897 (November 13, 2020); Notice of May 7, 2020, 85 FR 27639.

6. Section 736.2 is amended by revising paragraphs (b)(7) introductory text and (7)(i) and (ii) to read as follows:

#### **§ 736.2 General prohibitions and determination of applicability.**

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(b) \*\*\*

(7) General Prohibition Seven – Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities) –

(i) Support of proliferation activities and certain military-intelligence end uses and end users (“U.S. person” activities).

(A) If you are a “U.S. person,” as that term is defined in § 772.1 of the EAR, you may not engage in any activities prohibited by § 744.6(b) or (c) of the EAR, which prohibit, without a license from BIS, the shipment, transmission, or transfer (in-country) of items not subject to the

EAR; facilitating such shipment, transmission, or transfer (in-country); or the performance of any contract, service, or employment (including, but not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, or transporting, freight forwarding, or conducting negotiations in furtherance of) that you know or are informed by BIS will support:

(1) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of nuclear explosive devices in or by any country not listed in supplement no. 3 to part 744 of the EAR;

(2) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of “missiles” in or by a country listed in Country Groups D:4 or E:2;

(3) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or destination worldwide;

(4) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, shipment, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in or by countries other than those listed in Country Group A:3 (Australia Group); or

(5) A ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in § 744.22(f) of the EAR, in the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

(ii) [Reserved]

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7. The authority citation for part 744 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; 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. 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 September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

8. Section 744.1 is amended by revising paragraphs (a)(1) and (b)(2) to read as follows:

**§ 744.1 General provisions.**

(a) \*\*\*

(1) *Introduction.* In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part contains prohibitions against exports, reexports, and selected transfers to certain end users and end uses as introduced under General Prohibitions Five (End use/End users) and Nine (Orders, Terms, and Conditions), unless authorized by BIS. Sections 744.2, 744.3, and 744.4 prohibit exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear, missile, and chemical and biological weapons proliferation activities. Section 744.5 prohibits exports, reexports, and transfers (in-country) of items subject to the EAR to defined nuclear maritime end-uses. Consistent with General Prohibition Seven (Support of Proliferation Activities and certain Military-Intelligence End Uses and End Users (“U.S. person” activities)), § 744.6 prohibits specific activities by U.S. persons in support of certain nuclear, missile, chemical and biological weapons end uses, and whole plants for chemical weapons precursors, as well as certain military-intelligence end uses and military-intelligence end users.

Section 744.7 prohibits exports and reexports of certain items for certain aircraft and vessels.

Section 744.8 prohibits exports and reexports without authorization to certain parties who have been designated as proliferators of weapons of mass destruction or as supporters of such proliferators pursuant to Executive Order 13382. Section 744.9 sets forth restrictions on exports, reexports, and transfers (in-country) of certain cameras, systems, or related components. Section 744.10 prohibits exports and reexports of any item subject to the EAR to Russian entities, included in supplement no. 4 of this part. Section 744.11 imposes license requirements, to the extent specified in supplement no. 4 to this part on entities listed in supplement no. 4 to this part for activities contrary to the national security or foreign policy interests of the United States. Sections 744.12, 744.13, and 744.14 prohibit exports and reexports of any item subject to the EAR to persons designated as Specially Designated Global Terrorists, Specially Designated Terrorists, or Foreign Terrorist Organizations, respectively. Section 744.15 sets forth the conditions for exports, reexports, and transfers (in-country) to persons listed on the Unverified List (UVL) in supplement no. 6 to this part, the criteria for revising the UVL, as well as procedures for requesting removal or modification of a listing on the UVL. Section 744.16 sets forth the license requirements, policies and procedures for the Entity List. Section 744.17 sets forth restrictions on exports, reexports, and transfers (in-country) of microprocessors and associated “software” and “technology” for military end uses and to military end users. Section 744.18 sets forth restrictions on exports, reexports, and transfers to persons designated in or pursuant to Executive Order 13315. Section 744.19 sets forth BIS's licensing policy for applications for exports or reexports when a party to the transaction is an entity that has been sanctioned pursuant to any of three specified statutes that require certain license applications to be denied. Section 744.20 requires a license, to the extent specified in supplement no. 4 to this part, for exports and reexports of items subject to the EAR destined to certain sanctioned entities listed in supplement no. 4 to this part. In addition, these sections include license review standards for export license applications submitted as required by these sections. It should also be noted

that part 764 of the EAR prohibits exports, reexports and certain transfers of items subject to the EAR to denied parties. Section 744.21 imposes restrictions for exports, reexports and transfers (in-country) of items on the CCL for a military end use or military end user in the People's Republic of China (PRC or China), Russia, or Venezuela. Section 744.22 imposes restrictions on exports, reexports, and transfers (in-country) for a military-intelligence end use or military-intelligence end user in China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

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(b) \*\*\*

(2) *Determine Applicability.* Second, determine whether any of the end-use and end-user prohibitions described in this part are applicable to your planned export, reexport, shipment, transmission, transfer (in-country) or other activity. See supplement no. 1 to part 732 for guidance. For exports, reexports, shipments, transmissions, or transfers (in-country) that are in transit at the time you are informed by BIS that a license is required in accordance with §§ 744.2(b), 744.3(b), 744.4(b), 744.6(c), 744.9(b), 744.11(c), 744.17(b), 744.21(b), or 744.22(b) of the EAR, you may not proceed any further with the transaction unless you first obtain a license from BIS (see part 748 of the EAR for instructions on how to apply for a license). The provisions of § 748.4(d)(2) of the EAR shall not apply to license applications submitted pursuant to a notification from BIS that occurs while an export, reexport, or transfer (in-country) is in transit.

9. Section 744.3 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (d)(2)(ii), and (d)(2)(v) to read as follows:

**§ 744.3 Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses.**

(a) \*\*\*

(1) Will be used in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of rocket systems or unmanned aerial vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of supplement no. 1 to part 740 of the EAR.

(2) Will be used anywhere in the world except by governmental programs for nuclear weapons delivery of NPT Nuclear Weapons States that are also members of NATO, in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of rocket systems or unmanned aerial vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of any rocket systems or unmanned aerial vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

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(d) \*\*\*

(2) \*\*\*

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of certain rocket systems or unmanned aerial vehicles;

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(v) The types of assurances or guarantees against design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing for certain rocket system or unmanned aerial vehicle delivery purposes that are given in a particular case; and

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10. Section 744.4 is amended by revising paragraphs (a), (d)(1), (d)(2)(ii), and (d)(2)(iv) to read as follows:

**§ 744.4 Restrictions on certain chemical and biological weapons end-uses.**

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer (in-country) you know that the item will be used in the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or destination, worldwide; or in the design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of a whole plant to make chemical weapons precursors specified in ECCN 1C350 in or by countries other than those listed in Country Group A:3 (Australia Group) (see supplement no. 1 to part 740 of the EAR).

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(d) \*\*\*

(1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer (in-country) would make a material contribution to the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking),

repair, overhaul, or refurbishing of chemical or biological weapons. When an export, reexport, or transfer (in-country) is deemed to make such a contribution, the license will be denied.

(2) \*\*\*

(ii) The significance of the export, reexport, or transfer in terms of its contribution to the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons;

\* \* \*\*

(iv) The types of assurances or guarantees against the design, “development,” “production,” stockpiling, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons; and

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11. Section 744.6 is revised to read as follows:

**§ 744.6 Restrictions on specific activities of “U.S. persons.”**

(a) *Scope.* The general prohibitions in this section apply only to the extent that the underlying activities are not subject to a license requirement or general prohibition administered by another federal department or agency, see, for example, Assistance to Foreign Atomic Energy Activities regulations (10 CFR part 810), administered by the Department of Energy; International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130), administered by the Department of State; and certain sanctions regulations (to include, but not limited to, 31 CFR parts 500 through 599), administered by the Department of the Treasury. Accordingly, “U.S. persons” are required to seek a license from BIS only for the activities described in this section that are not subject to a license requirement or general prohibition administered by the Department of Energy, Department of State, Department of the Treasury, or other federal department or agency. The issuance of a license by BIS, or any other federal department or agency, does not authorize

“U.S. persons” to engage in any activity that is otherwise prohibited by law, including criminal statutes.

(b) *General prohibitions.* No “U.S. person” may, without a license from BIS, ‘support’:

(1) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of nuclear explosive devices in or by any country not listed in supplement no. 3 to this part;

(2) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of “missiles” in or by a country listed in Country Groups D:4 or E:2;

(3) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of chemical or biological weapons in or by any country or destination worldwide;

(4) The design, “development,” “production,” operation, installation (including on-site installation), maintenance (checking), repair, overhaul, refurbishing, shipment, or transfer (in-country) of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in or by countries other than those listed in Country Group A:3 (Australia Group); or

(5) A ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as defined in § 744.22(f) of the EAR, in the People’s Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2.

(b)(6) ‘Support’ means:

(i) Shipping or transmitting from one foreign country to another foreign country any item not subject to the EAR you know will be used in or by any of the end uses or end users described in paragraphs (b)(1) through (5) of this section, including the sending or taking of such item to or from foreign countries in any manner;

(ii) Transferring (in-country) any item not subject to the EAR you know will be used in or by any of the end uses or end users described in paragraphs (b)(1) through (5) of this section;

(iii) Facilitating such shipment, transmission, or transfer (in-country); or

(iv) Performing any contract, service, or employment you know may assist or benefit any of the end uses or end users described in paragraphs (b)(1) through (5) of this section, including, but not limited to: ordering, buying, removing, concealing, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations in furtherance of.

(c) *Additional prohibitions on “U.S. persons” informed by BIS.* BIS may inform “U.S. persons,” either individually by specific notice, through amendment to the EAR published in the *Federal Register*, or through a separate notice published in the *Federal Register*, that a license is required because an activity could involve the types of ‘support’ (as defined in paragraph (b)(6) of this section) to the end uses or end users described in paragraphs (b)(1) through (5) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse the “U.S. person” from compliance with the license requirements of paragraph (b) of this section.

(d) *Exceptions.* (1) No License Exceptions apply to the prohibitions described in paragraphs (b)(1) through (4) of this section.

(2) Notwithstanding the prohibitions in paragraph (b)(5) of this section, U.S. persons who are employees of a department or agency of the U.S. Government may ‘support’ a ‘military-intelligence end use’ or a ‘military-intelligence end user,’ as described in paragraph (b)(5), if the ‘support’ is provided in the performance of official duties in furtherance of a U.S. Government program that is authorized by law and subject to control by the President by other means. This

paragraph does not authorize a department or agency of the U.S. Government to provide

‘support’ that is otherwise prohibited by other administrative provisions or by statute.

‘Contractor support personnel’ of a department or agency of the U.S. Government are eligible for this authorization when in the performance of their duties pursuant to the applicable contract or other official duties. ‘Contractor support personnel’ for the purposes of this paragraph (d)(2) has the same meaning given to that term in § 740.11(b)(2)(ii) of the EAR. This authorization is not available when a department or agency of the U.S. Government acts as an agent on behalf of a non-U.S. Government person.

(e) *License review standards.* (1) Applications for a U.S. person to ‘support’ (as defined in paragraph (b)(6) of this section) any of the end uses or end users described in paragraphs (b)(1) through (4) of this section will be denied if such support would make a material contribution to the end uses and end users described in paragraphs (b)(1) through (4) of this section.

(2) Applications for a U.S. person to ‘support’ (as defined in paragraph (b)(6) of this section) a ‘military-intelligence end use’ or a ‘military-intelligence end user’ as described in paragraph (b)(5) of this section will be reviewed with a presumption of denial.

12. Section 744.11 is amended by adding a new paragraph (c) to read as follows:

**§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.**

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(c) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for:

(1) A specific export, reexport, or transfer (in-country) because there is an unacceptable risk that the export, reexport, or transfer (in-country) is intended to circumvent the license requirement imposed on an entity listed in supplement no. 4 to this part; or

(2) The export, reexport, or transfer (in-country) of specified items to a certain party because there is an unacceptable risk that the party is acting as an agent, front, or shell company for an entity listed in supplement no. 4 to this part, or is otherwise assisting that listed entity in circumventing the license requirement set forth in that entity's entry in supplement no. 4 to this part.

13. Section 744.21 is amended by revising paragraph (g) to read as follows:

**§ 744.21 Restrictions on certain ‘military end use’ or ‘military end user’ in the People’s Republic of China, Russia, or Venezuela.**

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(g) *Military end user.* In this section, the term ‘military end user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations (excluding those described in § 744.22(f)(2) of the EAR), or any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (f) of this section.

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14. Section 744.22 is added to read as follows:

**§ 744.22 Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users.**

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any item subject to the EAR without a license from BIS if, at the time of the export, reexport, or transfer (in-country), you have “knowledge” that the item is intended, entirely or in part, for a ‘military-

intelligence end use' or a 'military-intelligence end user' in the People's Republic of China, Russia, or Venezuela; or a country listed in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the *Federal Register*, or through a separate notice published in the *Federal Register*, that a license is required for specific exports, reexports, or transfers (in-country) of any item subject to the EAR because there is an unacceptable risk of use in, or diversion to, a 'military-intelligence end use' or a 'military-intelligence end user' in the People's Republic of China, Russia, or Venezuela; or a country listed in Country Group E:1 or E:2 (see supplement no. 1 to part 740 of the EAR).

(c) *License exception.* Notwithstanding the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provision of License Exception GOV set forth in § 740.11(b)(2)(ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the "additional information" block of the application that "this application is submitted because of the license requirement in § 744.22 of the EAR (Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users). In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the military-intelligence end use(s) or end user(s) of the item(s). If you submit an attachment with your license application, you must reference the attachment in the "additional information" block of the application.

(e) *License review policy.* Applications to export, reexport, or transfer (in-country) items requiring a license pursuant to paragraphs (a) or (b) of this section will be reviewed with a presumption of denial.

(f) *Definitions.* (1) ‘Military-intelligence end use’ means the design, “development,” “production,” use, operation, installation (including on-site installation), maintenance (checking), repair, overhaul, or refurbishing of, or incorporation into, items described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations), or classified under ECCNs ending in “A018” or under “600 series” ECCNs, which are intended to support the actions or functions of a ‘military-intelligence end user,’ as defined in this section.

(2) ‘Military-intelligence end user’ means any intelligence or reconnaissance organization of the armed services (army, navy, marine, air force, or coast guard); or national guard. For license requirements applicable to other government intelligence or reconnaissance organizations in China, Russia, or Venezuela, see § 744.21 of the EAR. Military-intelligence end users subject to the license requirements set forth in this § 744.22 include, but are not limited to, the following:

(i) *Cuba.* Directorate of Military Intelligence (DIM) and Directorate of Military Counterintelligence (CIM).

(ii) *China, People’s Republic of.* Intelligence Bureau of the Joint Staff Department.

(iii) *Iran.* Islamic Revolutionary Guard Corps Intelligence Organization (IRGC-IO) and Artesh Directorate for Intelligence (J2).

(iv) *Korea, North.* Reconnaissance General Bureau (RGB).

(v) *Russia.* Main Intelligence Directorate (GRU).

(vi) *Syria.* Military Intelligence Service.

(vii) *Venezuela.* General Directorate of Military Counterintelligence (DGCIM).

Matthew S. Borman

Deputy Assistant Secretary for Export Administration

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