

(2) The furnishing of assistance, including training or consulting, to foreign persons, regardless of whether a defense article is involved, as described in USML Category IX(s)(2) or (3) in § 121.1 of this subchapter.

Note to paragraph (a): For military training previously described in this paragraph, see paragraph (a)(1) and USML Category IX(s)(2) and (3).

(b) [Reserved]

PART 121—THE UNITED STATES MUNITIONS LIST

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 5. Amend § 121.1, by revising the heading to Category IX, revising paragraph (e), and adding new paragraph (s) to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category IX—Military Training Equipment, Intelligence Defense Services, and Military Defense Services

* * * * *

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter):

(1) Directly related to the defense articles enumerated in paragraphs (a) and (b) of this category; or

(2) Directly related to the software and associated databases enumerated in paragraph (b)(4) of this category even if no defense articles are used or transferred.

* * * * *

(s) Defense Services, as follows:

(1) [Reserved]

(2) Assistance, including training or consulting, to a foreign government, unit, or force, or their proxy or agent, that creates, supports, or improves intelligence activities, including through planning, conducting, leading, providing analysis for, participating in, evaluating, or otherwise consulting on such activities, for compensation, except for the following types of assistance:

(i) Furnishing of medical, translation, financial, insurance, legal, scheduling, or administrative services, or acting as a common carrier;

(ii) Participation as a member of a regular military force of a foreign nation by a U.S. person who has been drafted into such a force (see also § 124.2(b) of this subchapter);

(iii) Training and advice that is entirely composed of general scientific,

mathematical, or engineering principles commonly taught in schools, colleges, and universities;

(iv) Information technology services that support ordinary business activities not specific to a particular business sector;

(v) Any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States or of a territory, possession, State, or District of the United States, including political subdivisions thereof; or

(vi) Maintenance or repair of a commodity or software.

(3) Assistance, including training or consulting, to a foreign government, unit, or force, or their proxy or agent, that creates, supports, or improves the following, other than as specified in paragraph (s)(3)(iv) of this category:

(i) The organization or formation of military or paramilitary forces; (ii) Military or paramilitary operations, by planning, leading, or evaluating such operations; or

(iii) Military or paramilitary capabilities through advice or training, including formal or informal instruction.

(iv) Assistance in paragraphs (s)(3)(i) through (iii) of this category does not include: (A) Furnishing of medical, translation, financial, insurance, legal, scheduling, or administrative services, or acting as a common carrier;

(B) Participation as a member of a regular military force of a foreign nation by a U.S. person who has been drafted into such a force (see also § 124.2(b) of this subchapter); or

(C) Training and advice that is entirely composed of general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities.

The Under Secretary, Arms Control and International Security, Bonnie D. Jenkins, having reviewed and approved this document, has delegated the authority to electronically sign this document to Zachary A. Parker, Director, Office of Directives Management, for purposes of publication in the **Federal Register**.

Zachary A. Parker,

*Director, Office of Directives Management,
Department of State.*

[FR Doc. 2024–16501 Filed 7–25–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 740, and 744

[Docket No. 240712–0193]

RIN 0694–AJ43

End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users

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

ACTION: Proposed rule, with request for comments.

SUMMARY: The Department of Commerce, Bureau of Industry and Security (BIS), seeks public comment on proposed changes to existing restrictions under the Export Administration Regulations (EAR) on military and intelligence end uses and end users and related U.S. persons activities controls, as well as the proposed addition of a military-support end-user control. These proposed revisions and additions to the EAR's end-use, end-user, and "U.S. persons" activity controls would implement expanded Export Control Reform Act of 2018 (ECRA) authority to control certain "U.S. persons" activities under the EAR. Specific to the EAR's "U.S. persons" activities controls, BIS is proposing amendments to control 'support' furnished by "U.S. persons" to military end users and military-production activities, as well as intelligence end users that are not otherwise already regulated under or prohibited by U.S. law. In addition, BIS is proposing to revise the definition of 'support' set forth in the EAR's "U.S. person" activity control provision in response to requests by the public for clarification. The revisions and additions, along with clarifications, to end use, end user, and "U.S. persons" activity controls under the EAR, would further the national security and the foreign policy of the United States.

DATES: Comments must be received by BIS no later than September 27, 2024.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The *regulations.gov* ID for this rule is: BIS–2024–0029. Please refer to RIN 0694–AJ43 in all 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 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." 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 <https://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: For questions contact Sharron Cook, Senior Export Policy Analyst in the Regulatory Policy Division of the Bureau of Industry and Security at Sharron.cook@bis.doc.gov or Phone: (202) 482-4890. Please refer to RIN 0694-AJ43 in the subject line of emails.

SUPPLEMENTARY INFORMATION:

Background

Section 5589(b) of the December 2022 National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117-263, NDAA for FY 2023) amended section 1753(a)(2)(F) of the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4812(a)(2)(F)) by providing the Bureau of Industry and Security (BIS) with the statutory authority to impose controls on "the activities of United States persons, wherever located, relating to specific foreign military, security, or intelligence services." Consistent with this statutory amendment, BIS proposes to revise the "U.S. persons" activities control in § 744.6 on military-intelligence end-use and end-user activities and expand existing part 744 restrictions to encompass activities of "U.S. persons" in connection with defined military end users, military-production activities (an

end use proposed by this rule), and intelligence end users. BIS also proposes to clarify the definition of 'support' in the "U.S. persons" activities control provision. Consistent with section 1754(d)(1) of ECRA (50 U.S.C. 4813(d)(1)), BIS proposes to regulate the "U.S. persons" activities described above only to the extent not subject to a license requirement or general prohibition administered by another Federal department or agency. BIS is proposing amendments to the EAR on foreign-security end user controls, and controls that would restrict U.S. persons' support of such end users, in a separate rule published concurrently with this rule.

Furthermore, also in accordance with ECRA, as expanded by the NDAA for FY 2023, BIS proposes to add to part 744 new controls on defined military-support end users, as well as revise existing controls on military-intelligence, and military end users and end uses. These revisions and additions to end-use and end-user controls under the EAR would further the national security and foreign policy of the United States.

On November 14, 1994, Executive Order 12938 (E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950) directed BIS to continue to regulate the activities of "U.S. persons" to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction. This control, which is set forth in § 744.6 of the EAR, imposes licensing requirements on assistance furnished by "U.S. persons" in connection with activities of proliferation concern, even when such assistance does not involve any items subject to the EAR or any foreign entities subject to specified restrictions under the EAR (e.g., persons whose export privileges have been denied under the EAR). Subsequently, with the enactment of ECRA as part of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232), Congress authorized in ECRA section 4812(a)(2)(F) the control of "U.S. persons" activities related not only to weapons of mass destruction and their means of delivery, but also to specific "foreign military intelligence services." Accordingly, in January 2021, BIS amended § 744.6 of the EAR to add a new restriction on the activities of "U.S. persons" in support of certain military-intelligence end uses and end users and also created a new § 744.22 that targeted exports, reexports, and transfers (in-country) destined for certain military-intelligence end uses or end users (86 FR 4865 (Jan. 15, 2021)).

Through the NDAA for FY 2023's amendment to ECRA, section

1753(a)(2)(A-F) of ECRA (50 U.S.C. 4812(a)(2)(A-F)) 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 services, foreign intelligence services, and foreign security services. Additionally, § 1754(d) of ECRA (50 U.S.C. 4813(d)) directs the Secretary of Commerce to require U.S. persons to apply to BIS for authorization to engage in the aforementioned activities except to the extent that those activities are already authorized by a statute or regulation administered by a Federal department or agency other than the Department of Commerce.

As described below, BIS proposes amending § 744.6 of the EAR to add additional controls on specific activities of "U.S. persons" consistent with ECRA authority as expanded pursuant to the NDAA for FY 2023 related to military and intelligence services. Controls related to security services consistent with the NDAA for FY 2023 will be proposed in a separate rule. Specifically, in this rule, BIS proposes modifying the existing prohibition on "U.S. persons" 'support' to military-intelligence end users and end uses in § 744.6(b)(5) to apply to military end users. In addition, BIS proposes to add two new prohibitions in § 744.6(b)(6) and (7) corresponding to 'military-production' activities and intelligence end users, respectively. Furthermore, also consistent with its expanded ECRA authority, BIS proposes to add additional end-use and end-user controls in connection with the U.S. person 'support' activities subject to the EAR's general prohibitions (paragraph in § 744.6(b)(1) through (7)). Specifically, BIS proposes the following changes: (1) revising § 744.21 (Restrictions on certain 'military end uses' or 'military end users'); (2) moving § 744.22 (Restrictions on exports, reexports, and transfers (in-country) to certain military-intelligence end uses or end users) to § 744.24 and renaming it as (Restrictions on certain intelligence end users); and (3) adding a new § 744.22 (Restrictions on certain military-support end users). For some of these controls, BIS proposes new end use and/or end user definitions and new item and country scopes. Each control is described more fully in the preamble below, in order of appearance in the EAR.

I. Revisions to U.S. Person Restrictions

Consistent with new ECRA authority to control certain “U.S. persons” activities under the EAR, BIS is proposing amendments to control “U.S. persons” support for certain military end users, military support end users, and military production activities, as well as certain intelligence end users. BIS anticipates proposing new controls on security end users and support for foreign maritime nuclear projects in a separate rule. Related to all these controls, BIS proposes adding specific exclusions to the definition of ‘support’ that is set forth in § 744.6 (Restrictions on certain activities of “U.S. persons”).

First, BIS proposes to relocate the current definition of ‘support’ from paragraph (b)(6) to new paragraph (a)(1)(i). The definition of ‘support’ remains unchanged, although certain exclusions from the definition are proposed. First, this rule proposes that this definition not include activities relating to items that are not subject to the EAR as specified in § 734.3(b). This exclusion renders explicit BIS’s longstanding policy that restrictions on “U.S. persons” activities do not apply to activities relating to items not subject to the EAR that are specified in § 734.3(b). Due to the expansion of the scope of “U.S. person” controls that is proposed in this rule, this clarification of BIS policy will ensure that the regulated public is aware of the intended scope of the proposed controls and reaffirm that the EAR’s “U.S. person” controls, including as proposed to be expanded, are consistent with the policy objectives underlying the various exclusions set forth in § 734.3(b). For example, activities involving items that are not subject to the EAR because they are, *e.g.*, published, released by instruction in a catalog course or associated teaching laboratory of an academic institution, or “software” or “technology” arising during or resulting from fundamental research (§ 734.3(b)(3) of the EAR), are not intended to be restricted under these expanded “U.S. persons” activities controls.

Second, as a general matter, BIS proposes to regulate those activities of U.S. persons that support the end users and end users set forth in § 744.6(b) to the extent they are not subject to control by the State Department’s Directorate of Defense Trade Controls (DDTC) or another Federal department or agency and are not specifically excluded from control by BIS in proposed new § 744.6(a)(1)(ii). While this approach is already explained in existing § 744.6(a), to add additional clarity, this rule would amend § 744.6 to state explicitly

that prohibited “U.S. persons” ‘support’ does not include any activity undertaken with respect to defense articles listed on the United States Munitions List (USML) (22 CFR 121.1) or on the United States Munitions Import List (USMIL) (27 CFR 447.21), to the extent such activities are subject to control under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The ITAR controls a wide range of activities including development, production, maintenance, repair, and brokering, when such activities involve not only defense articles listed on the USML, but also defense articles listed on the USMIL, including when such USMIL defense articles are also enumerated on the Commerce Control List, Supp. No. 1 to part 774 of the EAR (CCL) (*e.g.*, in the case of most semi-automatic firearms). As an illustrative example, BIS does not propose to regulate the brokering of semi-automatic firearms by “U.S. persons,” an activity that is subject to ITAR licensing requirements (22 CFR 129.1(b)). An explicit statement referring to this exclusion from coverage under the EAR of ITAR-related activities is proposed to be added to § 744.6(a)(1)(ii), and a related note is proposed to be added to § 744.6(a) to advise “U.S. persons” to review ITAR licensing requirements and submit a commodity jurisdiction determination request if any doubt exists as to whether specific activities are subject to control under the ITAR or the EAR.

Third, this rule would exclude from regulation certain activities of “U.S. persons” that do not extend beyond administrative services. The proposed exclusion incorporates language used in an exclusion from the ITAR’s definition of brokering activities (22 CFR 129.2(b)(2)(iv)) that is already familiar to the regulated industry. BIS anticipates that using existing regulatory terminology will facilitate compliance by industry and will effectively and accurately describe the intended scope of the exclusion under the EAR.

Fourth, also drawing on language from exclusions to the ITAR’s brokering registration requirements (22 CFR 129.3(b)(2)), BIS proposes excluding commercial activities related to the movement of goods by common carriers from the EAR’s definition of ‘support’ solely with respect to the expanded controls proposed in this rule to implement new ECRA authority (*i.e.*, the restrictions in § 744.6(b)(5) through (7)). The purpose of this exclusion is to permit “U.S. persons” continued involvement in transportation, shipping, and/or transferring items as part of routine business activities of companies

such as freight forwarders and shipping lines. This proposed exclusion is intended to ensure that the EAR’s “U.S. persons” ‘support’ controls do not adversely impact the basic business operations of shipping lines and air carriers, companies that are generally not involved in arranging underlying transactions involving the sale of the items at issue. However, to the extent a “U.S. person” undertakes shipping, transmitting, and transferring activities involving items not subject to the EAR with “knowledge” that such items will support certain military end users, military-production activities, military-support end users, and intelligence end users remain controlled activities under § 744.6 of the EAR. BIS intends that these controls apply to “U.S. persons” involved in the sale or supply of items not subject to the EAR with “knowledge” that such items will be used by the military- and intelligence-related end uses and end users described above, such as “U.S. persons” abroad who procure or sell such items for such end uses or end users. Moreover, BIS is excluding the routine business activities of common carriers only with respect to the new military- and intelligence-related activity controls proposed in this rule pursuant to ECRA for consistency with a similar exclusion in complementary ITAR defense services controls proposed in a separate rule in this issue of the **Federal Register**. In 1991, when BIS implemented restrictions on specific activities of “U.S. persons” as part of the Enhanced Proliferation Control Initiative (EPCI), BIS specifically restricted activities, including transportation, in connection with the proliferation of nuclear weapons, missiles, and chemical or biological weapons (56 FR 40500, August 15, 1991). Because restrictions on transportation, including by common carriers, applied to the activity controls related to the proliferation of weapons of mass destruction and their means of delivery implemented under E.O. 12938, BIS does not propose to eliminate those longstanding controls.

Fifth, BIS would exclude certain activities that are conducted for, on behalf of, or in connection with the U.S. Government, including specified programs or agreements executed by a U.S. Government department or agency. Specifically, this exclusion draws upon and references three paragraphs of EAR License Exception GOV (Section 740.11(b)(2)), which authorize exports, reexports, and transfers (in-country) made for or on behalf of a department or agency of the U.S. Government to

agencies of the U.S. Government and certain shipments by the Department of Defense (15 CFR 740.11(b)(2)(iii)(B), (C) and (D)). This new exclusion exempts from the licensing requirements of § 744.6 those activities that would meet the conditions for the use of these three provisions of License Exception GOV if conducted with respect to items subject to the EAR.

This rule also proposes several revisions to the end uses and end users set forth in § 744.6(b), with respect to which “U.S. persons” activities are restricted. First, this rule proposes to remove the existing restrictions in § 744.6(b)(5) on military-intelligence end uses and end users in connection with a related proposed change (explained further in section IV of this preamble), that would characterize military-intelligence end users as a subset of a new, broader category of defined intelligence end users proposed to be subject to EAR controls. In place of these military-intelligence end use and end user restrictions, this rule proposes to set forth in § 744.6(b)(5) new controls on ‘military end users,’ which are defined in § 744.21(f)(2) of the EAR, as described further in section II of this preamble.

Sixth, this rule proposes to add paragraph (b)(6) to § 744.6 to control “U.S. persons” ‘support’ of ‘military-production activity,’ and sets forth a section-specific definition of this term distinct from ‘military end use,’ as defined in § 744.21(f)(1) of the EAR, for the reasons described further in section II. of this preamble.

Seventh, this rule proposes to add paragraph (b)(7) to § 744.6 to control “U.S. person” ‘support’ of ‘intelligence end users,’ as described further in section IV of this preamble.

As conforming changes, BIS proposes to ensure that references to “U.S. persons” controls throughout the EAR reflect the expanded scope of such controls, including by making necessary revisions to the following sections of the EAR to ensure that they reference not only proliferation-related controls implemented under E.O. 12938, but also broader “U.S. persons” activity controls implemented under expanded ECRA authority (section 4812(a)(2)(F) of ECRA): §§ 730.5(d), 732.1(d)(1)(viii) and (d)(3), 732.3(j)(1), 734.4(a)(7), 734.5, and 736.2(b)(7).

Consistent with the current version of § 744.6, paragraph (c) would continue to set forth additional prohibitions on “U.S. persons” informed by BIS that their activities could involve support to the end uses or end users described in paragraphs (b)(1) through (7). BIS proposes to add a note to paragraph (b)

that explains that General Order 6 of supplement no. 1 to part 736 authorizes the activities described in paragraph (b) when such activities are required for the performance of defense services subject to control under the ITAR that have been authorized by DDTC. This new General Order 6 is intended to ensure “U.S. persons” who have received a DDTC authorization to engage in defense services are not required to seek additional authorization from BIS to perform services subject to the license requirements of § 744.6 of the EAR, if such services are required in furtherance of the DDTC-authorized defense services. As an illustrative example, if a “U.S. person” is authorized by DDTC to assist a foreign defense contractor in integrating a foreign-origin thermal imaging camera that is not subject to the EAR but meets the parameters of ECCN 6A003 into a USML Category VII(a)(2) combat vehicle destined to the armed forces of a D:5 country, that “U.S. person” may rely on General Order 6 to satisfy the BIS licensing requirement that would otherwise apply pursuant to § 744.6(b)(6) of the EAR to the facilitation of the sale of that foreign-origin 6A003-equivalent thermal camera to the same foreign defense contractor to be installed on the Category VII(a)(2) vehicle, as authorized by DDTC.

Finally, paragraph (e) specifies that applications for licenses submitted pursuant to § 744.6(b)(5) through (7) will be reviewed in accordance with the license review policies set forth in the corresponding end-use and end-user controls set forth in §§ 744.21, 744.22, and 744.24, respectively.

II. Military End Users and End Uses

A. End-Use and End-User Controls

BIS proposes amending § 744.21 (Restrictions on certain ‘military end uses’ or ‘military end users’) to expand and clarify which military end uses and end users are subject to this control. This rule proposes to update the definition of ‘military end user’; expand the provision’s end-use and end-user controls to apply to all items subject to the EAR (rather than only the items specified in supplement no. 2 to part 744, which this rule proposes to remove and reserve); and expand the country scope of these end-use and end-user controls to apply to all countries identified in Country Group D:5, as well as Macau. Additionally, this rule proposes a new licensing policy under which license applications would be reviewed. No other changes to § 744.21 are being proposed at this time, although BIS welcomes comment on all

requirements set forth in § 744.21 to assess their effectiveness.

In paragraph (a), BIS would revise the current general prohibition set forth in (a)(1) to apply to the export, reexport, and in-country transfer of all items subject to the EAR (currently only items specified in supplement number 2 to part 744 and in connection with only six countries) if at the time of such action a person has “knowledge” as defined in the EAR that the item is intended for (1) a ‘military end use’ that occurs in Macau or a D:5 country or the product of which is destined to Macau or a country listed specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR, or (2) a ‘military end user’ wherever located, of Macau or a D:5 country.

Through this proposed rule, BIS is expanding the prohibition’s scope to cover countries or destinations subject to a policy of denial for exports of defense articles and defense services, as identified by the Department of State. These countries or destinations are listed in 22 CFR 126.1(d) of the ITAR and incorporated by reference in the footnote of Country Group D:5. This grouping includes, but is broader than, the six countries currently subject to MEU controls. BIS believes that using a Country Group reference instead of a specific list of countries or destinations promotes ease of regulatory compliance and reduces regulatory complexity. BIS is also including Macau, which is not listed in Country Group D:5 but is a Special Administrative Region of the People’s Republic of China (PRC), which is listed in Country Group D:5. As a general matter, BIS has ensured that all new controls under the EAR applicable to the PRC apply equally to Macau (88 FR 2821 (Jan. 17, 2023); 88 FR 54875 (Aug. 11, 2023)).

BIS also proposes to streamline the text in paragraph (b) and render it consistent with the standard text for additional prohibitions that apply to persons informed by BIS that is found in other end use/user sections in part 744.

As a result of this rule’s proposed revisions, all of the end users on the Military End-User List in supplement no. 7 to part 744 would be moved to the Entity List in supplement no. 4 to part 744 with a license requirement that applies to all items subject to the EAR. The removal of entities from supplement no. 7 to part 744 and their corresponding addition to supplement no. 4 to part 744 would be implemented in a separate, final rule published in the **Federal Register**, which would also remove and reserve supplement no. 7 to part 744. Should the revisions to

§ 744.21 proposed in this rule be implemented in final form, this action will be a necessary conforming change, as the Military End-User List differs primarily from the Entity List in that the Military End-User List's license requirements apply only to items specified in supplement no. 2 to part 744. In addition, the license review policy column of the Entity List will point to § 744.21(e), which will be an indicator that the entity is considered a military end user. If the license requirement for 'military end users' is expanded to all items subject to the EAR, as proposed in this rule, 'military end users' will be more appropriately listed on the Entity List, which generally provides for a broader license requirement.

The license review standards currently set forth in paragraphs (e)(1) through (3) are proposed to be combined and consolidated in one paragraph (e). Applications to export, reexport, or transfer (in-country) items for a 'military end use' or to a 'military end user' as described in revised and expanded paragraph (a) or paragraph (b) in connection with Burma, China, Cuba, Iran, Macau, North Korea, Syria, and Venezuela, will be reviewed with a presumption of denial. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications, including those involving Cambodia (currently listed in § 744.21 of the EAR) will be reviewed under a case-by-case review policy, consistent with United States policies set forth in § 126.1 of the ITAR.

BIS also proposes to merge the definitions of military end use and military end user currently located in paragraphs (f) and (g), respectively, into a revised paragraph (f). In addition, a general statement about the purpose and use of the definitions in paragraph (f) would be added to the introduction text of paragraph (f). This rule does not propose to amend the definition of 'military end use.' It only makes a technical correction by removing the phrase "or items classified under ECCNs ending in 'A018'" in two places, because these ECCNs do not currently control items and are only used to point to "600 series" ECCNs.

The definition of 'military end user' is proposed for revision by removing from its scope the "national police, government intelligence or reconnaissance organizations (excluding those described in § 744.22(f)(2)), or any person or entity whose actions or functions are intended to support 'military end uses' as defined in paragraph (f) of this section." These

categories of entities are instead proposed as new types of end users in this rule, *i.e.*, 'military-support end users,' and 'intelligence end users,' or, in the case of national police previously included in the definition of 'military end user,' are expected to be proposed as 'security end users' in a separate rule.

Lastly, this rule proposes to expand the scope of this provision's definition of 'military end user' by adding "any person or entity performing the functions of a 'military end user,' including mercenaries, paramilitary, or irregular forces." This expansion is intended to capture private companies, non-state actors, or parastatal entities that engage in combat or other activities akin to those of traditional armed forces, other than the kinds of activities described below in connection with 'military-support end users,' which generally involves the design, development, production, installation, maintenance, repair, overhaul, or refurbishing of military items. The term 'military end users' would include entities designated with a footnote 3 (Russian or Belarusian military end users) or 5 (Military End Users (other than Russia or Belarus and not subject to the foreign direct product rule set forth in § 734.(g))) on the Entity List in supplement no. 4 to this part.

B. "U.S. Persons" Activity Control

Consistent with the proposed revisions to the military end-use controls in § 744.21 of the EAR, BIS also proposes to control specific activities of "U.S. persons" that assist defined military end users (as proposed for revision, as described above). In paragraph (b)(5) of Section 744.6, BIS proposes restrictions on "U.S. persons" supporting military end users as defined in proposed § 744.21(f)(2), including military end users listed on the Entity List with a footnote 3 or 5 designation. As noted above, this restriction (along with the other restrictions set forth in Section 744.6) applies only to the extent the underlying activities are not regulated by DDTC as defense services (see a complementary rule published elsewhere in this issue of the **Federal Register** in which DDTC proposes to regulate as ITAR defense services assistance that creates, supports, or improves the organization or formation of military or paramilitary forces or operations). Illustrative examples of activities that, depending upon the specific facts of each case, may be subject to this proposed "U.S. persons" activity control include:

(1) Facilitating a military end user's acquisition or procurement of foreign-origin items, which if located in the

United States would be subject to the EAR (*i.e.*, not USML defense articles) and also not enumerated on the USMIL.

(2) Performing basic repair or maintenance services with respect to items owned or employed by a military end user, which if located in the United States would be subject to the EAR.

Note: BIS does not propose to regulate "U.S. persons" engaging in combat or other military operations as a member of, or on behalf of, a foreign military force or paramilitary organization. BIS notes that such activities may be subject to licensing requirements by other U.S. government agencies, or to prohibitions under U.S. criminal statutes.

In addition to the proposed "U.S. persons" activity controls with respect to military end users, BIS proposes to add to § 744.6(b)(6) controls on "U.S. persons" support to 'military-production activities.' BIS is proposing a new section-specific definition of 'military-production activities,' (distinct from the § 744.21(f)(1) definition of 'military end use') to provide greater clarity for the regulated public and avoid creating a misimpression that the agency is regulating under the EAR services regulated by DDTC under the ITAR. Specifically, the proposed definition of 'military-production activities' differs from Section 744.21(f)(1)'s definition of 'military end use' in two key aspects. First, the 'military-production activities' definition excludes activities directly related to USML defense articles, as such activities are defense services subject to the ITAR. While BIS controls the export, reexport, or transfer (in-country) of items subject to the EAR that will be incorporated abroad into defense articles (see, *inter alia*, § 744.21 of the EAR), BIS does not control services directly related to the underlying incorporation of such items subject to the EAR into defense articles. DDTC regulates activities related to "600 series" items to the extent these activities are ITAR defense services regulated by the ITAR. Second, the new 'military-production activities' definition includes activities related to dual-use items which if located in the United States would be subject to the EAR. Consequently, "U.S. persons" developing or producing such items for 'military end users' in targeted countries must receive authorization from BIS. Illustrative examples of activities that, depending upon the specific facts of each case, may be subject to this proposed "U.S. persons" activity control include:

(1) Assisting a defense contractor in a targeted country in producing an ECCN OA606.a armored vehicle;

(2) Assisting a defense contractor in a targeted country in installing an ECCN 8A002.g light system in an ECCN 8A620.a submersible vessel; and

(3) Assisting an electronics company in a targeted country in developing ECCN 3A001 integrated circuits that have been ordered by the armed services of a targeted country.

III. 'Military-Support End Users'

A. End-User Control

BIS proposes moving the contents of current § 744.22 "Restrictions on certain military-intelligence end user(s)" to § 744.24, and adding a new section, "Restrictions on certain military-support end users," to § 744.22, directly following § 744.21 "Restrictions on certain military end uses and end users." Since the establishment of the military end-use and end-user controls in the EAR, BIS has received numerous questions about the applicability of these controls to persons or entities that provide assistance to military end users and end uses. These 'military-support end users' warrant a separate section in part 744, to clarify that BIS seeks to control exports, reexports, and in-country transfers to these entities by subjecting them to a narrower license requirement, as described below. Separate controls are warranted for these entities in recognition of the various types and roles of end users that fall into this category.

Under this proposed new control, a license would be required only to export, reexport, or transfer (in-country) to 'military-support end users' items subject to the EAR that are specified on the CCL. This license requirement would apply when a person has "knowledge," as defined in part 772 of the EAR, that the item is intended, entirely or in part, for a 'military-support end user,' as defined in § 744.22(f), in Macau or a D:5 country, or wherever located when identified on the Entity List in supplement no. 4 to part 744 of the EAR and identified with a footnote 6 designation.

As in § 744.21, there would also be a license requirement when BIS informs a person either individually by specific notice or through a notice published in the **Federal Register** that a license is required for specific exports, reexport, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military-support end user.' Only License Exception GOV (specifically, the paragraph authorizing certain exports, reexports, or transfers (in-country) by or involving agencies or departments of the U.S. Government) of the EAR (§ 740.11(b)(2)) would

overcome the license requirements in § 744.22 of the EAR.

The license review policy for applications submitted pursuant to this section would be the same as under § 744.21. Specifically, applications to export, reexport, or transfer (in-country) items for a 'military-support end user' in connection with Burma, China, Cuba, Iran, Macau, North Korea, Syria, and Venezuela, will be reviewed with a presumption of denial. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications, including those involving Cambodia (currently listed in § 744.21) will be reviewed under a case-by-case review policy, consistent with United States policies set forth in § 126.1 of the ITAR.

The definition of 'military-support end user' would be set forth in § 744.22(f) of the EAR and is proposed to mean any person or entity whose actions or functions support 'military end uses,' as defined in § 744.21(f). In addition, the term would include entities designated with a footnote 6 on the Entity List in supplement no. 4 to this part, as BIS will add these types of entities to the Entity List.

B. "U.S. Persons" Activity Control

With this rule, BIS does not propose to add a "U.S. persons" activity control that corresponds directly to the proposed new control on certain exports, reexports, and transfers (in-country) involving 'military support end users.' However, in § 744.6(b)(5), BIS proposes that controls on "U.S. persons" support to 'military end users' will extend to entities listed on the Entity List and designated with a footnote 6, which is applicable to certain 'military support end users.' As a result, while "U.S. persons" need to exercise due diligence to ensure they are not providing 'support' without a BIS license to certain 'military end users,' as defined in § 744.21(f)(2) regardless of whether such 'military end users' are designated with a footnote 3 or 5 on the Entity List, for purposes of the activity controls in § 744.6(b)(5), "U.S. persons" do not need to determine whether their 'support' activities assist a 'military-support end user' as defined in § 744.22(f) of the EAR. Instead, "U.S. persons" only need to identify whether contemplated 'support' assists a 'military-support end user' that is specifically identified on the Entity List with a footnote 6 designation. However, "U.S. persons" still need to exercise due diligence to ensure their activities do not involve 'support' for 'military-production activities' described in

§ 744.6(b)(6), regardless of whether the foreign party the "U.S. person" is supporting is listed on the Entity List with a footnote 6 designation. Because the license requirement for footnote 6 entities may be limited to CCL items as specified in § 744.22, or as provided in such entities' entries on the Entity List, BIS also proposes to add a note to § 744.6(b) to clarify that, unlike for other footnote-designated entities subject to a broader restriction on "U.S. persons" 'support' activities, for footnote 6 entities, "U.S. persons" should consult the license requirement of such entities' entries on the Entity List. Restrictions on "U.S. persons" 'support' to 'military-support end users' are limited to activities with respect to items described in the footnote 6 entity's license requirement column on the Entity List, or their foreign-origin equivalents.

IV. 'Intelligence End User'

A. End-User Control

To harmonize with section 4812(a)(2)(F) of ECRA, this rule would revise the term 'military-intelligence end user' by dropping the qualifier "military," resulting in the term 'intelligence end user.' This revision would expand the scope of controls to all intelligence end users of the covered countries, instead of only intelligence end users that are part of the armed services or national guard of the covered countries. As a result of this revision, an 'intelligence end user' would encompass not only military, but also other governmental (e.g., civilian) intelligence and reconnaissance organizations. As noted above, BIS proposes to move current § 744.22 "Restrictions on export, reexports, and transfers (in-country) to certain military-intelligence end uses or end users" to § 744.24 and rename the section to reflect the new term, 'intelligence end user'. Within new § 744.24, BIS proposes to revise definitions, license requirements, and license review policy. In particular, as detailed below, BIS proposes the following revisions:

- (1) Updating the definition of 'intelligence end users';
- (2) Establishing that the control applies to all items subject to the EAR and to the countries identified in Country Groups D and E that are not also listed in Country Groups A:5 and A:6; and
- (3) Establishing a new license application review policy.

The country scope of the license requirement would be revised from the current language, which reads as follows: "Belarus, Burma, Cambodia,

the People's Republic of China (China), Russia, or Venezuela; or a country specified in Country Groups E:1 or E:2 (see supplement no. 1 to part 740 of the EAR)" and expanded to include all countries or destinations specified in Country Groups D or E that are not also identified in Country Group A:5 or A:6 of supplement no. 1 to part 740 of the EAR. Country Group D comprises countries of national security, nuclear, chemical and biological, and missile technology concerns, along with those subject to U.S. arms embargoes. Country Group E identifies countries that are terrorist-supporting (E:1) or subject to a unilateral embargo (E:2). Country Groups A:5 and A:6 are composed of countries that maintain strong export controls cooperation with the United States. The 45 Country Group D and E countries that are not also identified in Country Group A:5 or A:6 are as follows: Afghanistan, Armenia, Azerbaijan, Bahrain, Belarus, Burma, Cambodia, Central African Republic, People's Republic of China (China), Democratic Republic of Congo, Cuba, Egypt, Eritrea, Georgia, Haiti, Iran, Iraq, Jordan, Kazakhstan, North Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Moldova, Mongolia, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Somalia, South Sudan, Sudan, Syria, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, Venezuela, Vietnam, Yemen, and Zimbabwe. BIS assesses that the imposition of a license requirement on exports, reexports, and transfers (in-country) for 'intelligence end users' in these covered countries would enhance U.S. national security by allowing prior U.S. government review of contemplated transactions involving intelligence or reconnaissance organizations located in these countries.

As in §§ 744.21 and 744.22, there would also be a license requirement when BIS informs a person either individually by specific notice, or through a notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of diversion to a 'foreign-intelligence end user.' Only License Exception GOV set forth in § 740.11(b)(2) of the EAR would overcome the license requirements in § 744.24 of the EAR.

The license review policy for applications submitted pursuant to this section would be the same as under §§ 744.21 and 744.22 of the EAR. Specifically, applications to export, reexport, or transfer (in-country) items for a 'intelligence end user' in connection with Burma, China, Cuba, Iran, Macau, North Korea, Syria, and

Venezuela, will be reviewed with a presumption of denial. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications will be reviewed under a case-by-case review policy, consistent with United States policies set forth in § 126.1 of the ITAR.

Finally, as noted above, the definition of an 'intelligence end user' set forth in paragraph (f) would cover "any government intelligence or reconnaissance organization and other entities performing functions on behalf of such entities." BIS intends that this would include entities performing intelligence functions such as planning and directing, processing and exploiting, analyzing and producing, disseminating and integrating, surveilling, and evaluating and providing feedback. This definition is intended to cover traditional espionage and economic espionage activities. Also included in the definition of 'intelligence end users' would be Entity List entities designated with footnote 7. Consistent with the separation of the terms military and intelligence in ECRA as a consequence of the amendment to ECRA in the NDAA for FY 2023, BIS is proposing to remove the term 'military-intelligence end use' and the related definition of this term from this provision. Moreover, as a policy matter, with the expansion of 'military end use' controls to apply to all items subject to the EAR and in light of the expansion of the definition of 'intelligence end user' to include not only civilian government intelligence and reconnaissance organizations, but also private sector entities that perform certain functions on behalf of such entities, BIS does not believe that controls on 'military-intelligence end uses' continue to be warranted. Transactions previously subject to 'military-intelligence end use' controls will now be subject to either 'military end use' controls in § 744.21 of the EAR, or controls on entities performing functions on behalf of government intelligence or reconnaissance organizations in § 744.24 of the EAR.

B. "U.S. Persons" Activity Control

Consistent with the proposed revisions to the end-user control in § 744.24 described above, BIS proposes to add new paragraph (b)(7) to § 744.6 to impose controls on "U.S. persons" 'support' for 'intelligence end users' of the 45 Country Group D and E countries not also listed in Country Groups A:5 or A:6. As with all § 744.6 controls on specific activities of "U.S. persons," such controls only apply to the extent

the underlying activities are not subject to a license requirement or general prohibition administered by another Federal department or agency. In a complementary rule published elsewhere in this issue of the **Federal Register**, DDTC proposes to revise the definition of defense services under the ITAR (22 CFR parts 120—through 130) and to create a specific USML defense service entry to control certain assistance that creates, supports, or improves intelligence activities, regardless of whether such assistance involves the use of a defense article. DDTC proposes several exclusions to the scope of its controls, many of which align with exclusions in proposed § 744.6(a)(1)(ii) of the EAR, which would also not be subject to BIS control.

However, BIS does propose to regulate, with respect to D and E countries not also listed in A:5 or A:6 the types of "U.S. person" 'support' for 'intelligence end users,' which DDTC proposes to exclude from the scope of defense services controls and which BIS does not exclude from control under § 744.6(a)(1)(ii). Accordingly, as illustrative examples, "U.S. persons" will need to seek authorization from BIS prior to performing the following types of activities with respect to 'intelligence end users' of the targeted countries or destinations:

(1) Maintenance, repair, overhaul, or refurbishing of items which if located in the United States would be subject to the EAR that are owned by or will be used by or to support 'intelligence end users'; and

(2) Information technology services to support ordinary business activities that are not specific to a particular business field.

V. Entity List and Section 744.11

Consistent with to the proposed revisions to §§ 744.6, 744.21, 744.22, and 744.24, BIS proposes amending § 744.11 "License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States" by adding entities that are 'military end users,' 'military-support end users,' and 'intelligence end users' to the Entity List in supplement no. 4 to part 744, designating them by specific footnote, and adding license requirements for these entities to § 744.11 of the EAR. Changes to the Entity List would be made in a separate final rule.

BIS proposes amending § 744.11 by revising the heading for paragraph (a)(2) from "Entity List foreign-direct product" (FDP) license requirements, review policy, and license exceptions"

to “Entities designated by specified footnotes,” because not all Entity List entities or footnote designated entities have license requirements that include foreign-produced items subject to the EAR pursuant to a foreign-direct product rule in § 734.9 of the EAR. This rule also proposes to redesignate paragraph (a)(2)(ii) as (a)(2)(iii) and to set forth license requirements for footnote 3 entities—Russian and Belarusian ‘military end users’ in paragraph (a)(2)(ii). To set forth license requirements in § 744.11 for footnote designated entities, this rule proposes to add paragraph (a)(2)(iv) footnote 5 entities—‘military-end users’; paragraph (a)(2)(v) footnote 6 entities—‘military-support end users’; and paragraph (a)(2)(vi) footnote 7 entities—‘intelligence end users.’

This rule also proposes to add introductory text to paragraph (a)(2) to clarify that the “standards-related activities” exclusion to the license requirements set forth in paragraph (a)(1) applies to all the footnote designated entities described in paragraph (a)(2).

VI. Conforming Changes

BIS proposes revising § 744.1(a)(1) to update the descriptions of sections in part 744.

Request for Comments on This Proposed Rule

This rule is being issued in proposed form because while it is in the foreign policy and national security interests of the United States to impose these new end-use and end-user controls with the earliest possible effective date, BIS also seeks to provide the interested public with an opportunity to submit comments in order to avoid any unnecessary disruption to supply chains, ensure that the controls are drafted to be as effective as possible, and that the provisions of the controls are clear and unambiguous for ease of compliance by exporters, reexporters, and transferors. BIS continues to evaluate the scope of items subject to this rule, the scope of the end users covered by this rule, and the potential for complementary end-use controls and welcomes comments on these issues.

Therefore, as part of this rule BIS is soliciting public comment on the proposed revisions and additions to the proposed revisions to the military end-use and end-user controls in § 744.21 and the foreign-intelligence end-user controls in § 744.24; the proposed additions of new § 744.22 (Restrictions on certain foreign-military-support end users); and any of the other revisions in this rule. Comments may be submitted

in accordance with the DATES and ADDRESSES sections of this rule. BIS will review and, if appropriate, address such comments through a related rulemaking process.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for FY 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). On December 23, 2022, the President signed into law the National Defense Authorization Act for FY 2023 (NDAA, Pub. L. 117–263) section 5589(b) of which amended section 4812(a)(2)(F) of ECRA. 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 Order 12866, as amended by Executive Orders 13563 and 14094, directs 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, distributed impacts, and equity). This rule has been designated a “significant regulatory action” by the Office and Information and Regulatory Affairs under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is 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 collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. This rule increases the estimated number of submissions by 150 which is not expected to exceed the current approved estimates.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this

action is exempt from the Administrative Procedure Act (5 U.S.C. 553) (APA) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is independently exempt from those APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Notwithstanding this determination, for the policy reasons set forth in Section VI. above, BIS is seeking public comment on this proposed rule.

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

15 CFR Part 730

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

15 CFR Part 732

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

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 736

Exports.

15 CFR Part 740

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

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 730, 732, 734, 736, 740, and 744 of the Export Administration Regulations (15 CFR parts 730–774) are proposed to be amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR 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 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023); Notice of May 8, 2024, 89 FR 40355 (May 9, 2024).

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

§ 730.5 Coverage of more than exports.

* * * * *

(d) “*U.S. person*” activities. The EAR restrict specific activities of “U.S. persons,” wherever located, as described in § 744.6 of the EAR.

PART 732—[AMENDED]

■ 3. The authority citation for 15 CFR part 732 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.*; 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. Section 732.1 is amended by revising paragraphs (d)(1)(vii) and (d)(3), to read as follows:

§ 732.1 Steps overview.

* * * * *

(d) * * *

(1) * * *

(vii) General Prohibition Seven (Support of proliferation activities and certain military end users, military-production activities, and intelligence end users (“U.S. person” activities)).

* * * * *

(3) *Controls on activities.* Steps 12 through 18 refer to General Prohibitions Four through Ten. Those general prohibitions apply to all items subject to the EAR, not merely those items listed on the CCL in part 774 of the EAR. For example, they refer to the general prohibitions for persons denied export privileges, prohibited end uses and end users, countries subject to a

comprehensive embargo (*e.g.*, Cuba, Iran, North Korea and Syria), prohibited activities of “U.S. persons” in support of proliferation of weapons of mass destruction and certain military and intelligence end users and military-production activities, prohibited unloading of shipments, compliance with orders, terms, and conditions, and activities when a violation has occurred or is about to occur.

* * * * *

■ 5. Section 732.3 is amended by revising paragraph (j)(1) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(j) * * *

(1) Review the scope of activity prohibited by General Prohibition Seven (“U.S. person” activities) (§ 736.2(b)(7) of the EAR) as that activity is described in § 744.6 of the EAR. Keep in mind that such activity is not limited to exports, reexports, or transfers (in-country). “U.S. persons” activities extend to services and shipping or transmitting certain wholly foreign-origin items, or facilitating such shipments or transmissions, in ‘support’ of the specified weapons of mass destruction and military and intelligence end users and military-production activities and are not limited to items subject to the EAR. See § 744.6(a)(1) of the EAR for the full definition of ‘support,’ which includes, *inter alia*, ordering, storing, using, selling, loaning, disposing, servicing, financing, transporting, freight forwarding, or conducting negotiations to facilitate such activities.

* * * * *

PART 734—[AMENDED]

■ 6. The authority citation for 15 CFR part 734 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.*; 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 1, 2023, 88 FR 75475 (November 3, 2023).

■ 7. Section 734.4 is amended by revising paragraph (a)(7) to read as follows:

§ 734.4 De minimis U.S. content.

(a) * * *

(7) Under certain rules issued by the Office of Foreign Assets Control, certain exports from abroad by U.S.-owned or controlled entities may be prohibited notwithstanding the *de minimis*

provisions of the EAR. In addition, the *de minimis* rules do not relieve “U.S. persons” of the obligation to refrain from supporting the proliferation of weapons of mass destruction, their means of delivery, military and intelligence end uses, and military-production activities as provided in § 744.6 of the EAR.

* * * * *

■ 8. 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.

* * * * *

(a) Specific activities of “U.S. persons,” wherever located, related to the proliferation of nuclear explosive devices, “missiles,” chemical or biological weapons, and whole plants for chemical weapons precursors; and to certain military and intelligence end users and military-production activities described in § 744.6 of the EAR.

* * * * *

PART 736—[AMENDED]

■ 9. The authority citation for 15 CFR 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 1, 2023, 88 FR 75475 (November 3, 2023); Notice of May 8, 2024, 89 FR 40355 (May 9, 2024).

■ 10. Section 736.2 is amended by revising paragraph (b)(7) introductory text to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(7) *General Prohibition Seven—Support of proliferation activities and certain military and intelligence end uses and end users (“U.S. person” activities).* A “U.S. person,” with “knowledge” and wherever located, may not without a license ‘support,’ as defined in § 744.6(a), proliferation activities specified in § 744.6, *e.g.*, nuclear explosive or unsafeguarded activities; rocket systems (including ballistic missiles, space launch vehicles and sounding rockets); unmanned aerial vehicle (including cruise missiles, target drones and reconnaissance drones) end uses; chemical (including chemical precursors) or biological weapons end uses; a ‘military end user’ or ‘military-production activity,’ as defined in § 744.6(b)(6) of the EAR; or an

'intelligence end user,' as defined in § 744.24(f) of the EAR.

* * * * *

■ 11. Supplement no. 1 to part 736 is amended by adding paragraph f to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(f) General Order No. 6:

General Order No. 6 of [DATE EFFECTIVE] authorizes "U.S. persons" to perform services that require a license pursuant to § 744.6(b) of the EAR if required for the performance of defense services subject to control under the ITAR and authorized by the Department of State, Directorate of Defense Trade Controls (DDTC).

* * * * *

PART 740—[AMENDED]

■ 12. The authority citation for 15 CFR 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.

■ 13. Section 740.11 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 740.11 Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station (GOV).

* * * * *

(b) * * *
(2) * * *

(ii) *Exports, reexports, and transfers (in-country) made by or consigned to a department or agency of the U.S. Government.* This paragraph authorizes exports, reexports, and transfers of items when made by or consigned to a department or agency of the U.S. Government, solely for its official use, including for use in any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States or of a territory, possession, State, or District of the United States, including political subdivisions thereof, or for carrying out any U.S. Government program with foreign governments or international organizations 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 make any export, reexport, or transfer 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 purpose of this provision means those persons who provide administrative, managerial, scientific or technical support under contract to a U.S. Government department or agency (e.g., contractor employees of Federally Funded Research Facilities or Systems Engineering and Technical Assistance contractors). The term 'contractor support personnel' for purposes of this paragraph (b)(2)(ii) is limited to those individuals who are providing such support within a U.S. Government owned or operated facility or under the direct supervision of a U.S. government employee (i.e., an individual directly employed by the U.S. Government). Private security contractors are not 'contractor support personnel' for purposes of this paragraph (b)(2)(ii) because although they may work within a U.S. Government owned or operated facility, such contractors do not provide administrative, managerial, scientific or technical support under contract to the U.S. Government. This authorization is not available when a department or agency of the U.S. Government acts as a transmittal agent on behalf of a non-U.S. Government person, either as a convenience or in satisfaction of security requirements.

* * * * *

PART 744—[AMENDED]

■ 14. The authority citation for 15 CFR part 744 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.*; 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 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

■ 15. Section 744.1 is amended by revising paragraph (a)(1) 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 (in-country) to certain end users and end uses, as well as certain

"U.S. person" activities, as described in General Prohibitions Five (End use/End users), Seven ("U.S. person" activities), and Nine (Orders, Terms, and Conditions), unless authorized by BIS. It should also be noted that part 764 of the EAR prohibits exports, reexports and certain transfers (in-country) of items subject to the EAR to denied parties.

* * * * *

■ 16. Section 744.6 is amended by:

- a. Revising paragraph (a);
- b. Revising paragraphs (b)(4) through (6);
- c. Adding paragraph (b)(7);
- d. Revising paragraph (c)(1);
- e. Revising paragraphs (d) introductory text and (d)(2); and
- f. Revising paragraph (e)(2).

The revisions and additions read as follows:

§ 744.6 Restrictions on specific activities of "U.S. persons."

(a) *Scope and order of review.* 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.

(1) *Definition of support*—(i) Support means:

(A) 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 (7) of this section, including the sending or taking of such item to or from foreign countries in any manner;

(B) 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 (7) of this section;

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

(D) 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 (7) 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 to facilitate such activities.

(ii) *Exclusions.* Support does not include:

(A) Activities related to items described in § 734.3(b) of the EAR;

(B) Activities related to items enumerated on the USML or on the United States Munitions Import List (USMIL) (27 CFR 447.21), to the extent such activities are subject to control under the ITAR.

(C) Activities limited to administrative services, such as providing or arranging office space and equipment, hospitality, advertising, or clerical, visa, or translation services, collecting product and pricing information to prepare a response to a request for proposal, generally promoting company goodwill at trade shows, or activities by an attorney that are limited to the provision of legal advice;

(D) With respect to the end uses and end users in paragraphs (b)(5) through (7) only, commercial activities related to the movement of goods by common carriers; or

(E) Activities conducted for, on behalf of, or in connection with:

(1) A department or agency of the U.S. Government, including any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States or of a territory, possession, State, or District of the United States, including political subdivisions thereof;

(2) Any U.S. Government cooperative program, project, agreement, or arrangement with a foreign government or international organization or agency that is authorized by law and subject to control by the President, as further described in § 740.11(b)(2)(iii)(B) of the EAR;

(3) Any U.S. Government foreign assistance or sales program authorized by law and subject to the control of the President as further described in § 740.11(b)(2)(iii)(C) of the EAR; or

(4) An Acquisition and Cross Servicing Agreement (ACSA) that is executed at the direction of the U.S. Department of Defense as further described in § 740.11(b)(2)(iii)(D).

(2) [Reserved]

Note 1 to paragraph (a): Activities subject to ITAR licensing requirements, including as defense services (see 22 CFR 120.32 and the United States Munitions List (USML) (22 CFR 121.1)) or brokering (see 22 CFR part 129) are not subject to EAR licensing requirements pursuant to § 744.6(a) of the EAR. Particularly in the case of “support” to ‘military end users,’ ‘military-production activities,’ and ‘intelligence end users,’ “U.S. persons” should be aware that their activities may be subject to ITAR licensing requirements and conduct their review accordingly. For a formal determination as to whether a specific “U.S. person” activity is subject to the ITAR or the EAR, you may submit a commodity jurisdiction request to the Department of State, consistent with the procedures in 22 CFR 120.12.

(b) * * *

(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);

(5) A ‘military end user,’ as defined in § 744.21(f)(2), in or from a destination specified in Country Group D:5 or Macau, including, but not limited to, ‘military end users’ designated with a footnote 3 or 5 on the Entity List in supplement no. 4 to this part, and only those ‘military-support end users’ designated with a footnote 6 on the Entity List in supplement no. 4 to this part;

(6) A ‘military-production activity,’ when such activity occurs in or the product of such activity is destined to a country listed in Country Group D:5 or Macau. The term ‘military-production activity’ means incorporation into the following types of items or any other activity that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production” of the following types of items:

(i) “600 series” items, including foreign-origin items not subject to the EAR; or

(ii) Any other item that is either described on the Commerce Control List in other than a “600 series” ECCN, or designated EAR99, including foreign-origin items not subject to the EAR, that you “know” is ultimately destined to or for use by a ‘military end user,’ as defined in § 744.21(f)(2); or

(7) An ‘intelligence end user,’ as defined in § 744.24(f), wherever located, from a destination specified in Country Group D or E, but not also listed in Country Group A:5 or A:6 (see supplement no. 1 to part 740 of the EAR for Country Groups), including, but not limited to, ‘intelligence end users’ designated with a footnote 7 on the Entity List in supplement no. 4 of this part.

Note 2 to paragraph (b): General Order No. 6 authorizes “U.S. persons” to perform activities subject to the license requirements of paragraph (b) of this section, when required for the performance of defense services subject to control under the ITAR and authorized by the Department of State, Directorate of Defense Trade Controls (see supplement no. 1 to part 736 of the EAR).

Note 3 to paragraph (b): Restrictions on ‘support’ to entities designated with a footnote 6 on the Entity List in supplement no. 4 of this part only apply when the support activities relate to items described in the license requirement column of the entity’s entry in supplement no. 4 of this part, or their foreign-origin equivalents.

* * * * *

(c) * * *

(1) 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 (a)(1) of this section) to the end uses or end users described in paragraphs (b)(1) through (7) of this section. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary or Deputy Assistant Secretary or their designee. 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 and exclusions.* No license exceptions apply to the prohibitions described in paragraphs (b)(1) through (7) or paragraph (c)(2) of this section.

* * * * *

(2) *Exclusion to paragraphs (b)(5) through (7) and (c)(2)(iii) of this section.* Notwithstanding the prohibitions in paragraphs (b)(5) through (7) and

(c)(2)(iii) of this section, "U.S. persons" who are employees of a department or agency of the U.S. Government may 'support' a 'military-production activity,' 'military end user,' a 'military support end user,' or an 'intelligence end user,' as described in paragraphs (b)(5) through (7) and (c)(2)(iii) of this section, 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 (d)(2) 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) * * *

(2) Applications for a "U.S. person" to 'support' an end use or end user as described in paragraphs (b)(5) through (7) of this section will be reviewed consistent with the applicable policies described in §§ 744.21, 744.22, and 744.24.

* * * * *

- 17. Section 744.11 is amended by:
- a. Revising the heading of paragraph (a)(2) and adding introductory text;
- b. Redesignating paragraph (a)(2)(ii) as paragraph (iii); and
- c. Adding paragraphs (a)(2)(ii) and (iv) through (vi).

The revisions and additions read as follows:

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

* * * * *

(a) * * *

(2) *Entities designated by specified footnotes.* With the exception of "standards-related activities" described in paragraph (a)(1) of this section, license requirements are set forth for footnote designated entities as described in this paragraph (a)(2).

* * * * *

(ii) *Footnote 3 entities.* You may not export, reexport, or transfer (in-country) any item subject to the EAR, including

foreign-produced items that are subject to the EAR under § 734.9(g) of 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 Russian or Belarusian 'military end user,' as defined in § 744.21(f)(2), wherever located that is listed on the Entity List in supplement no. 4 to this part with a footnote 3 designation. See §§ 744.21 and 746.8 of the EAR for license review policy, and restrictions on license exceptions. See § 744.6(b)(5) for restrictions on specific activities of "U.S. persons" related to such entities.

* * * * *

(iv) *Footnote 5 entities.* 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 end user,' wherever located, that is listed on the Entity List in supplement no. 4 to this part with a footnote 5 designation. See § 744.21. See also § 744.6(b)(5) for restrictions on specific activities of "U.S. persons" related to such entities.

(v) *Footnote 6 entities.* You may not export, reexport, or transfer (in-country) any item subject to the EAR specified in the license requirement column of the corresponding entry in supplement no. 4 to this part 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-support end user,' wherever located, that is listed on the Entity List in supplement no. 4 to this part with a footnote 6 designation. See § 744.22. See also § 744.6(b)(5) for restrictions on specific activities of "U.S. persons" related to such entities.

(vi) *Footnote 7 entities.* 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 an 'intelligence end user,' wherever located, that is listed on the Entity List in supplement no. 4 to this part with a footnote 7 designation. See § 744.24. See also § 744.6(b)(7) for restrictions on specific activities of "U.S. persons" related to such entities.

* * * * *

■ 18. Section 744.21 is revised to read as follows:

§ 744.21 Restrictions on certain 'military end uses' and 'military end users.'

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774), you may not export, reexport, or transfer (in-country) any item subject to the EAR without a license if, at the time of the export, reexport, or transfer (in-country), you have "knowledge," as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for:

(1) A 'military end use,' as defined in paragraph (f)(1) of this section, when the 'military end use' occurs in, or the product of the 'military end use' is destined to Macau or a country specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR; or

(2) A 'military end user,' as defined in paragraph (f)(2) of this section, wherever located, of Macau or a country specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR.

(b) *Additional prohibition on those informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for a specific export, reexport, or transfer (in-country) because there is an unacceptable risk of use in, or diversion to a 'military end use,' or 'military end user,' from or in Macau or a country specified in Country Group D:5. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary or Deputy Assistant Secretary or their designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements in paragraph (a) of this section.

(c) *License exception.* Despite 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 provisions of License Exception GOV set forth in § 740.11(b)(2) 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 § 744.21 ("Restrictions

on certain ‘military end uses’ and ‘military 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 end use(r)(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 described in paragraphs (a) and (b) of this section will be reviewed with a presumption of denial for Burma, China, Cuba, Iran, Macau, Nicaragua, North Korea, Syria, and Venezuela. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications will be reviewed under a case-by-case review policy, consistent with United States policies articulated in § 126.1 of the ITAR.

(f) *Definitions.* For purposes of this section or references to this section, the following definitions apply:

(1) *Military end use* means incorporation occurring outside the United States into a defense article described on the U.S. Munitions List (USML) (22 CFR 121.1, International Traffic in Arms Regulations); incorporation into items classified under Export Control Classification Numbers (ECCNs) under “600 series” ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of defense articles described on the USML, or items classified under ECCNs under “600 series” ECCNs.

(2) *Military end user (MEU)* means the national armed services (army, navy, marine, air force, or coast guard), the national guard, or any person or entity performing the functions of a ‘military end user,’ including mercenaries, paramilitary, or irregular forces. MEU also includes entities designated with a footnote 3 or 5 on the Entity List in supplement no. 4 of this part.

■ 19. Section 744.22 is revised to read as follows:

§ 744.22 Restrictions on certain ‘military-support end users.’

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774), you may not export, reexport, or transfer (in-country) any item subject to the EAR specified in any ECCN on the CCL without a license if, at the time of the

export, reexport, or transfer (in-country), you have “knowledge,” as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a ‘military-support end user,’ as defined in paragraph (f) of this section, in Macau or a country specified in Country Group D:5 in supplement no. 1 to part 740 of the EAR, or wherever located if identified on the Entity List in supplement no. 4 of this part 744 with a footnote 6 designation.

(b) *Additional prohibition on those informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade or their designee. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary or Deputy Assistant Secretary. However, the absence of any such notification does not excuse persons from compliance with the license requirements in paragraph (a) of this section.

(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 provisions of License Exception GOV set forth in § 740.11(b)(2) 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 (Restrictions on certain ‘military-support 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-support end users’ 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 described in

paragraphs (a) and (b) of this section will be reviewed with a presumption of denial for Macau and countries described in in ITAR § 126.1(d)(1), with the exception of Russia and Belarus. Applications involving Belarus and Russia will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications will be reviewed under a case-by-case review policy, consistent with United States policies articulated in § 126.1 of the ITAR.

(f) *Definition.* For purposes of this section, references to this section, or references to the terms in this paragraph, the following definitions apply:

Military-support end user (MSEU) means any person or entity whose actions or functions support ‘military end uses,’ as defined in § 744.21(f) of this section. MSEU also includes entities designated with a footnote 6 on the Entity List in supplement no. 4 to this part.

■ 20. Add § 744.24 to read as follows:

§ 744.24 Restrictions on certain intelligence end users.

(a) *General prohibitions.* In addition to the license requirements for items specified on the Commerce Control List (CCL) (supplement no. 1 to part 774 of the EAR), 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 an ‘intelligence end user,’ wherever located, that is from a country or destination specified in Country Group D or E, but not also listed in A:5 or A:6 in supplement no. 1 to part 740 of the EAR.

(b) *Additional prohibition for those informed by BIS.* BIS may inform persons, either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notification published in the **Federal Register**, that a license is required for a specific export, reexport, or transfer (in-country), including to a certain end user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary or Deputy Assistant Secretary or their

designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements in paragraph (a) of this section.

(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) 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 § 744.24 (Restrictions on exports, reexports, and transfers (in-country) to certain intelligence 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 intelligence 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 described in paragraphs (a) and (b) of this section will be reviewed with a presumption of denial for Macau and countries in ITAR § 126.1(d)(1), with the exception of Russia and Belarus. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications will be reviewed under a case-by-case review policy, consistent with United States policies articulated in § 126.1 of the ITAR.

(f) *Definition.* For the purposes of this section, references to this section, or references to the term in this paragraph, the following definition applies:

Intelligence end user (IEU) means any foreign government intelligence, surveillance, or reconnaissance organizations or other entities performing functions on behalf of such organizations. IEU includes entities designated with a footnote 7 on the Entity List in supplement no. 4 of this part.

Supplement No. 2 to Part 744 [Removed and Reserved]

- 21. Supplement No. 2 to part 744 is removed and reserved.
- 22. Supplement No. 4 to part 744 is amended by adding Footnotes 5 through 7, to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

⁵ For this ‘military end user,’ (MEU) as defined in § 744.21(f) of this part, entity, see §§ 744.6, 744.11(a)(2)(iv), and 744.21 for related license requirements and license review policy.

⁶ For this ‘military-support end user,’ (MSEU) as defined in § 744.22(f) of the EAR, entity, see §§ 744.6, 744.11(a)(2)(v), and 744.22 for related license requirements and license review policy.

⁷ For this ‘intelligence end user,’ (IEU) as defined in § 744.24(f) of the EAR, entity, see §§ 744.6, 744.11(a)(2)(vi), and 744.24 for related license requirements and license review policy.

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2024–16496 Filed 7–25–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 744, and 774

[Docket No. 240712–0191]

RIN 0694–AI35

Export Administration Regulations: Crime Controls and Expansion/Update of U.S. Persons Controls

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

ACTION: Proposed rule, with request for comments.

SUMMARY: The Department of Commerce, Bureau of Industry and Security (BIS), seeks public comments on proposed amendments to the Export Administration Regulations (EAR) in support of U.S. national security and foreign policy interests. To build upon existing controls, BIS proposes establishing certain Foreign-Security End User (FSEU) and “U.S. persons” activities controls and Commerce Control List-based (CCL) controls. The proposed additions of the foreign-security end user control and “U.S. persons” activity controls would implement expanded authority under the Export Control Reform Act of 2018 (ECRA), as amended, to control certain “U.S. persons” activities under the EAR. Specific to the EAR’s “U.S. persons” activities controls, BIS is proposing amendments to control “support” furnished by “U.S. persons” to identified foreign-security end users. In addition, BIS is proposing to add to the Commerce Control List two new

unilateral item controls on facial recognition technology.

DATES: Comments must be received by BIS no later than September 27, 2024.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The regulations.gov ID for this rule is: BIS–2023–0006. Please refer to RIN 0694–AI35 in all 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 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.” 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 <https://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: For questions specific to the human rights or foreign-security end-user provisions set forth in proposed § 744.25, contact Anthony Christino, Director, Human Rights and Embargoes Division, Anthony.Christino@bis.doc.gov, Phone: (202) 482–3241. For general questions, contact Hillary Hess, Director, Regulatory Policy Division, rp2@bis.doc.gov. Include, “Human Rights End Users” on subject line of emails. Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Export Control Reform Act of 2018 (ECRA), the Bureau