

DEPARTMENT OF COMMERCE**Bureau of Industry and Security****15 CFR Parts 736, 738, 740, 742, 744, and 772**

[Docket No. 051020273-5273-01]

RIN [0694-AD61]

Revision of License Requirements and Licensing Policy, and Increased Availability of License Exceptions for Certain North Atlantic Treaty Organization (NATO) Member States**AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Final rule.

SUMMARY: This final rule amends certain provisions of the Export Administration Regulations (EAR) that affect Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. These amendments provide consistent treatment to all NATO member states with respect to national security-based license requirements, national security licensing policy, availability of certain License Exceptions, and certain in-transit transactions.

DATES: Effective date: November 7, 2005.

ADDRESSES: Comments concerning this rule may be sent by e-mail to rpd2@bis.doc.gov, by fax to 202 482 3355 or to the Regulatory Policy Division, Bureau of Industry and Security, Room H2017, U.S. Department of Commerce, Washington, DC 20230. Please refer to RIN 0694-AD47 in all comments. Comments regarding the Paperwork Reduction Act burden estimates or any other aspect of the collection of information affected by this rule may be sent to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to 202 395 7285; with a copy to the Regulatory Policy Division, Bureau of Industry and Security at one of the addresses above.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services at warvin@bis.doc.gov or 202 482 2440.

SUPPLEMENTARY INFORMATION:**Background**

On June 28, 2004, the Bureau of Industry and Security (BIS) published an amendment to the EAR to remove certain regional stability and crime control license requirements to new NATO member countries. Seven countries acceded to NATO on March

29, 2004: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia. This final rule amends the EAR to provide for these newer NATO member states and for three other NATO member states, Hungary, Iceland, and Poland, treatment consistent with all other NATO member states respect to national security license requirements (§ 742.2(a)) and Supplement No. 1 to part 738 (Country Chart)). This final rule also removes Bulgaria, Estonia, Latvia and Lithuania from General Prohibition Eight, which concerns certain in-transit transactions, (§ 736.2(b)(8)), and removes restrictions on License Exceptions related to crime control from Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland, Romania, Slovakia, and Slovenia (§ 740.2). This final rule adds Bulgaria, Estonia, Latvia, Lithuania and Romania to Country Group B, and removes them from Country Group D:1 (Supplement No. 1 to part 740). Exports to these countries are now eligible for certain license exceptions set forth in part 740, and the national security licensing policy set forth in § 742.2(b) for Country Group D:1 countries no longer applies. The Czech Republic, Iceland, Poland, Slovakia and Slovenia have been included in Country Group B since it was created in 1996. Finally, this final rule makes certain technical and conforming amendments to other provisions of the EAR that refer to NATO member states or to individual countries that are now NATO member states. Specific amendments made by this final rule are described below.

Amendments to General Prohibition Eight

General Prohibition Eight (§ 736.2(b)(8) of the EAR) requires a license for items that transit listed countries if the items would require a license to be exported or reexported to those countries and no license exception would authorize the export or reexport. This rule removes NATO member states Bulgaria, Estonia, Latvia, and Lithuania from the list of countries in General Prohibition Eight.

Amendments to National Security License Requirements

Section 742.4(a) of the EAR sets forth the license requirements for items listed on the Commerce Control List (CCL) with "National Security" indicated as a reason for control. Prior to publication of this rule, § 742.4(a) required a license for export or reexport "to all destinations except Country Group A:1 and cooperating countries" of any item in an Export Control Classification Number (ECCN) that included "NS

Column 2" in its "License Requirements" section. This rule adds Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia to the destinations excepted from the "NS Column 2" license requirement in § 742.4(a). All other NATO member states other than the United States are already exempt from this license requirement because they are listed in Country Group A:1. Country Group A:1 is at Supp. No. 1 to Part 740 of the EAR.

To reflect the changes made to § 742.4(a), this rule also amends Supplement No. 1 to part 738 of the EAR by removing the "X" from the column labeled "NS 2" on the Country Chart in the rows for Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Poland, Romania, Slovakia and Slovenia.

Amendments to Restrictions on Use of License Exceptions

Section 740.2 of the EAR imposes certain restrictions on the use of License Exceptions. Paragraph (a)(4) of that section imposes restrictions on the use of License Exceptions when exporting or reexporting commodities controlled for crime control reasons. This rule replaces the phrase "Iceland, New Zealand or countries listed in Country Group A:1" in paragraph (a)(4) of § 740.2, with the phrase "Australia, Japan, New Zealand or a NATO member state." The effect of this change is to eliminate the restrictions imposed by paragraph (a)(4) on exports and reexports to Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Poland, Romania, Slovakia and Slovenia. Although Iceland is no longer mentioned by name in paragraph (a)(4), it will continue to be exempt from the restrictions imposed by paragraph (a)(4) because it is a NATO member state. Although Country Group A:1 is no longer mentioned by name, all of its members will continue to be exempt, either because they are NATO member states or because they are now mentioned by name in paragraph (a)(4).

Amendments to Country Groups B and D:1 Affecting License Exception Eligibility and Licensing Policy

Supplement No. 1 to Part 740 contains several tables of "Country Groups" that are used to identify, among other things, License Exception eligibility and licensing policy. This rule adds Bulgaria, Estonia, Latvia, Lithuania, and Romania to Country Group B and removes them from Country Group D:1.

Effects of the Amendments to Country Group B

License Exceptions found in § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR) are available only if the destination is in Country Group B. This change makes Bulgaria, Estonia, Latvia, Lithuania, and Romania eligible destinations for exports and reexports that are authorized by License Exceptions LVS, GBS and TSR. All other NATO member states other than the United States continue to be eligible destinations for these License Exceptions because they are already in Country Group B.

Effects of the Amendments to Country Group D:1

License Exceptions found in § 740.9, Temporary imports, exports and reexport (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); and § 740.15, Aircraft and vessels (AVS) all contain limitations or restrictions on their use for exports or reexports to destinations in Country Group D:1. Those limitations and restrictions no longer apply to exports and reexports authorized by License Exceptions TMP, GFT, BAG and AVS to Bulgaria, Estonia, Latvia, Lithuania, or Romania. Other NATO member states continue to be exempt from those limitations and restriction because they are not in Country Group D:1.

Section 742.4(b)(1) of the EAR states the licensing policy for export and reexport of national security controlled items to destinations outside Country Group D:1. That licensing policy "is to approve * * * unless there a significant risk that the items will be diverted to a country in Country Group D:1." Applications to export national security controlled items to Bulgaria, Estonia, Latvia, Lithuania, or Romania are now subject to this licensing policy. Applications to export or reexport national security controlled items to other NATO member states continue to be subject to this policy because they are not in Country Group D:1.

Section 742.4(b)(2) of the EAR states the licensing policy for export and reexport of national security controlled items to destinations in Country Group D:1. That licensing policy is "to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the

military potential of the country of destination that would prove detrimental to the national security of the United States." Applications to export or reexport national security controlled items to Bulgaria, Estonia, Latvia, Lithuania, or Romania are no longer subject to this licensing policy. Applications to export or reexport national security controlled items to other NATO member states continue not to be subject to this policy because they are not in Country Group D:1.

Technical and Conforming Changes

Sections 740.15(c)(1), 740.15(c)(2), 744.7(b)(1) and 744.7(b)(2) each contain reference to conditions that apply to most countries in Country Group D:1. Section 740.15(c) deals with the use of License Exception AVS to supply U.S. or Canadian vessels, airplane or airline installations or agents. Section 744.7 requires a license for exports and reexports to service aircraft if the item being exported or reexported would require a license the country where the vessel or aircraft is located, in which it is registered or by which it is controlled, leased or chartered. Paragraph (b) provides certain exceptions for U.S. or Canadian carriers. Prior to publication of this rule, each of those references excluded Romania by name from the conditions that apply to most Country Group D:1 countries. By removing Romania from Country Group D:1, this rule eliminates the need to exclude Romania by name. Therefore, this rule also eliminates the references to Romania from §§ 740.15(c)(1), 740.15(c)(2), 744.7(b)(1) and 744.7(b)(2).

Section 742.4(b)(5) lists certain Country Group D:1 countries that, because of their efforts to adopt safeguard measures for exports and reexports, are "accorded enhanced favorable consideration licensing treatment." Three of the countries that were listed in § 742.4(b)(5) prior to publication of this rule, Bulgaria, Latvia and Lithuania, are removed from Country Group D:1 by this rule. The removal of those countries from Country Group D:1 eliminates the need to list them in § 742.4(b)(5). Therefore this rule removes those three countries from § 742.4(b)(5).

This rule also removes Bulgaria, Estonia, Latvia, Lithuania and Romania from the definition of "Controlled Country" in § 772.1 to make that definition consistent with the removal of those countries from Country Group D:1.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001

Comp., p. 783 (2002)) as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor 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 contains a collection approved by the OMB under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS expects that this rule will eliminate the need for approximate 56 BIS-748 submissions per year.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. 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.

List of Subjects

15 CFR Parts 736, 738 and 772

Exports.

15 CFR Part 740

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

15 CFR Part 742

Export, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; 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, May 13, 2004; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 2. In § 736.2, revise paragraph (b)(8)(ii) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *
(b) * * *
(8) * * *

(ii) *Country scope.* This General Prohibition Eight applies to Albania, Armenia, Azerbaijan, Belarus, Cambodia, Cuba, Georgia, Kazakhstan, Kyrgyzstan, Laos, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

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PART 738—[AMENDED]

■ 3. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

Supplement No. 1 to Part 738—[Amended]

■ 4. In Supplement No. 1 to part 738, the Country Chart, remove the “X” from the NS 2 column for Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland Romania, Slovakia, and Slovenia.

PART 740—[AMENDED]

■ 5. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 6. In § 740.2 revise paragraph (a)(4) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *
(4) The commodity you are shipping is a specially designed crime control and detection instrument or equipment described in § 742.7 of the EAR and you are not shipping to Australia, Japan, New Zealand, or a NATO member state (see definition of NATO in § 772.1 of the EAR), unless the shipment is authorized under License Exception BAG, § 740.14(e) of this part (shotguns and shotgun shells).

* * * * *

§ 740.15 [Amended]

■ 7. In § 740.15, remove the phrase “and Romania” from paragraph (c)(1), introductory text and from paragraph (c)(2), introductory text.

Supplement No. 1 to Part 740—[Amended]

■ 8. In Supplement No. 1 to Part 740: ■ Add to the table labeled “Country Group B—Countries” in alphabetical order Bulgaria, Estonia, Latvia, Lithuania, and Romania; and ■ Remove Bulgaria, Estonia, Latvia, Lithuania, and Romania from the table labeled “Country Group D.”

PART 742—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub.L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 10. In § 742.4, revise the third sentence of paragraph (a) and revise paragraph (b)(5) to read as follows:

§ 742.4 National security.

(a) *License requirements.* * * * A license is required to all destinations

except Country Group A:1 and cooperating countries (see Supplement No. 1 to part 740), Bulgaria, Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia for all items in ECCNs on the CCL that include NS Column 2 in the Country Chart column of the “License Requirements” section.

* * *
(b) * * *

(5) In recognition of efforts made to adopt safeguard measures for exports and reexports, Kazakhstan, Mongolia, and Russia are accorded enhanced favorable consideration licensing treatment.

* * * * *

PART 744—[AMENDED]

■ 11. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; 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. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; 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 November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 744.7 [Amended]

■ 12. In § 744.7, remove the phrase “and Romania” from paragraph (b)(1) introductory text and paragraph (b)(2) introductory text.

PART 772—[AMENDED]

■ 13. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

§ 772.1 [Amended]

■ 14. In § 772.1, remove “Bulgaria,” “Estonia,” “Latvia,” “Lithuania,” and “Romania,” from the second sentence of the definition of “Controlled Country.”

Dated: November 1, 2005.

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

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