

## Questions Regarding Bureau of Industry and Security Regulation on Burma Published on October 24, 2007

### 1. What does BIS's new regulation on Burma do?

The regulation creates new section 744.22 in the Export Administration Regulations (EAR). This section is consistent with Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007, and the Trade Sanctions Reform and Export Enhancement Act, Title IX of Pub. L. 106-387 (TSRA). It imposes a license requirement for exports, reexports or transfers of items subject to the EAR to persons listed in or designated pursuant to Executive Order 13310 or Executive Order 13448. The license requirement does not apply to agricultural commodities, medicine, or medical devices that are classified as EAR99 and are destined for entities (i.e., non-natural persons) that are listed in or designated pursuant to those orders. The regulation also moves Burma from Country Group B to Country Group D:1 and from Computer Tier 1 to Computer Tier 3. Burma will remain in Country Group D:3.

BIS is taking these measures in response to the Government of Burma's continued repression of the democratic opposition in that country.

### 2. From whom should I seek a license for an export to a person listed in or designated pursuant to one of the Executive Orders?

The Department of the Treasury's Office of Foreign Assets Control (OFAC) is the primary licensing agency for persons listed in or designated pursuant to Executive Orders 13310 and 13448. To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person listed in or designated pursuant to these Executive Orders of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person listed in or designated pursuant to these Executive Orders, no separate authorization from BIS is necessary.

However, U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person listed in or designated pursuant to these Executive Orders of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 that are destined for entities listed in or designated pursuant to those orders), but not subject to regulations maintained by OFAC. In addition, non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person listed in or designated pursuant to these Executive Orders of any item subject to the EAR except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to these orders.

### 3. What is the review policy for license applications for items to persons listed in or designated pursuant to Executive Orders 13310 or 13448?

All applications for the export, reexport or transfer of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices classified as EAR99 and destined for entities listed in or designated pursuant to these orders) to such persons will generally be denied.

4. May I use a License Exception to export, reexport or transfer an item subject to the EAR to a person in Burma listed in or designated pursuant to either of the two Executive Orders?

No. There are no License Exceptions available for exports, reexports, or transfers of items subject to the EAR to such a person.

5. What are the consequences of moving Burma from Country Group B to Country Group D:1?

The primary consequence of this move is that exports to Burma will be eligible for fewer License Exceptions. Among the License Exceptions no longer available for export, reexport or transfer to Burma are LVS (Shipments of Limited Value), GBS (Shipments to Country Group B Countries), and TSR (Technology and Software under Restriction). Items on the Commerce Control List (CCL) that were once eligible for export, reexport or transfer to Burma under these License Exceptions will now require an individual license. Please consult part 740 of the EAR for the eligibility requirements of all License Exceptions.

6. What are the consequences of moving Burma from Computer Tier 1 to Computer Tier 3?

Countries in Computer Tier 1 are eligible to receive exports of high-performance computers (HPCs) controlled under Export Control Classification Number (ECCN) 4A003 without an individual license under License Exception APP (Computers). As a member of Computer Tier 3, the export, reexport or transfer to Burma of HPCs controlled under ECCN 4A003 will not be eligible for License Exception APP; a license will be required for such transactions.

Additional requirements now apply in the context of deemed exports made to Burmese foreign nationals in the United States. Such nationals are eligible to receive without a license deemed exports of “development” and “production” technology and source code for computers with an adjusted peak performance (APP) of less than or equal to 0.1 Weighted TeraFLOPS (WT) and “use” technology and source code for computers with an APP of less than or equal to 0.75 WT under License Exception APP. However, such releases are subject to the Foreign National Review requirements of section 740.7(d) (4). The Foreign National Review requirements apply as a consequence of the combination of two changes, namely, that Burma is now in Computer Tier 3 and is no longer in Country Group B. Prior to the issuance of this rule, deemed exports to Burmese foreign nationals in the United States were not subject to such requirements, as Burma was in Country Group B and in Computer Tier 1.