

RECORD OF COMMENTS

Authorization to Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States (RIN 0694-AD82)

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[72 F. Reg. 31005](#)

Comments Due: August 6, 2007

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structure interface are not submerged in fuel, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Measure Electrical Resistance/Corrective & Other Specified Actions

(f) Within 60 months after the effective date of this AD: Measure the electrical resistance of the bond between the No. 2 fuel transfer pump adapter surface of the fuel tank and the fuel transfer pump housing flange in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10-28-250 or MD11-28-129, both dated July 26, 2006, as applicable.

(1) If the resistance measurement is 2.5 milliohms or less: No further action is required by this paragraph.

(2) If the resistance measurement is more than 2.5 milliohms: Before further flight, electrically bond the fuel tank No. 2 fuel transfer pump housing surfaces in accordance with the service bulletin.

(3) Before further flight thereafter, do an electrical resistance bonding test to verify the electrical resistance between the fuel transfer pump housing and the structure is 2.5 milliohms maximum. If that electrical resistance is not achieved, rework the electrical bond until the electrical resistance is achieved. Do the actions in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles Aircraft Certification Office (LAACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E7-10756 Filed 6-4-07; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 772

[Docket No. 0612243150-63150-01]

RIN 0694-AD82

Authorization To Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations) provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited. This proposed rule would expand the scope of reasons for which BIS may add parties to the Entity List. This proposed rule would also amend the Export Administration Regulations (EAR) to state explicitly that a party listed on the Entity List has a right to request that its listing be removed or modified and would set procedures for addressing such requests.

DATES: Comments concerning this rule must be received by BIS no later than August 6, 2007.

ADDRESSES: Comments on this rule may be submitted to the Federal eRulemaking Portal at <http://www.regulations.gov> (follow the instructions for submitting comments) by e-mail directly to BIS at publiccomments@bis.doc.gov (refer to regulatory identification number 0694-AD82 in the subject line), by fax at (202) 482-3355, or on paper to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Refer to Regulatory Identification Number (RIN) 0694-AD82 in all comments.

FOR FURTHER INFORMATION CONTACT: Mike Rithmire, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, e-mail mrithmir@bis.doc.gov, tel. (202) 482-6105.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the EAR) provides notice to the public of the identity of certain parties whose presence as a recipient of items subject to the Export Administration Regulations (EAR) can impose a license requirement in an export or reexport transaction. The reasons for which BIS may place an entity on the Entity List are stated in §§ 744.2, 744.3, 744.4, 744.6, 744.10 and 744.20 of the EAR.

In addition to those reasons, this proposed rule would create a new § 744.11 to authorize BIS to add to the Entity List entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or those acting on behalf of such entities. This new section would not be used to add to the Entity List entities that are U.S. persons (as defined in § 772.1 of the EAR). This new section also would not be used to add to the Entity List entities for which the EAR already impose a license requirement because those entities are already listed on the List of Specially Designated Nationals and Blocked Persons published by the Treasury Department, Office of Foreign Assets Control.

Reason for the Changes Proposed by This Rule

BIS is proposing to take this action to focus its export control efforts more closely on problematic potential recipients of items that are subject to the EAR, but who do not meet the criteria currently set forth in §§ 744.2, 744.3, 744.4, 744.6, 744.10 or 744.20. With this rule, the United States government would be able to conduct prior review and make appropriate licensing decisions regarding proposed exports and reexports to such recipients to the degree necessary to protect its interests. BIS would be able to tailor license requirements and availability of license exceptions for exports and reexports to parties who have taken, are taking, or will take actions that are contrary to United States national security or foreign policy interests without imposing additional license requirements that apply broadly to entire destinations or items. BIS believes that such targeted application of license requirements would provide the flexibility to deter use of items that are subject to the EAR in ways that are inimical to the interests of the United States with minimal costs to and

disruption of legitimate trade. As export controls continue to focus not just on countries, but also on individual customers or entities, BIS believes it is important to provide more information to the public about entities of concern. Implementation of this rule will provide additional information to the public to enhance the ability to screen potential recipients of items subject to the EAR.

In addition, this proposed rule would simplify the EAR by reducing the need to issue general orders to impose license requirements on specific parties.

License requirements currently imposed on specific entities through general orders would, under this rule, be imposed by adding such entities to the Entity List. Such an action would reduce the number of EAR provisions that the public would have to review to determine license requirements under the EAR.

Summary of the Changes Proposed by This Rule

This proposed rule would authorize BIS to impose foreign policy export and reexport license requirements, limit the availability of License Exceptions, and set license application review policy for exports and reexports of items subject to the EAR to entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States or those acting on behalf of such entities. This proposed rule would not require that such activities involve items or activities that are subject to the EAR.

This proposed rule lists five types of conduct, in addition to the grounds set forth in §§744.2, 744.3, 744.4, 744.6 or 744.20, that BIS could determine are contrary to U.S. national security or foreign policy interests. They are: (i) Supporting persons engaged in acts of terror; (ii) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism; (iii) Transferring, developing, servicing, repairing, or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, development, service, repair or production by supplying parts, components, technology, or financing for such activity; (iv) Deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Department of State, Directorate

of Defense Trade Controls by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated; and (v) Engaging in conduct that poses a risk of violating the EAR and raises sufficient concern that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

These criteria are illustrative of conduct that could be contrary to the national security or foreign policy interests of the United States. A party could be added to the Entity List if specific and articulable facts provided reasonable cause to believe that it is involved in, has been involved in, or poses a significant risk of being or becoming involved in one of the five listed illustrative activities or other activities that are contrary to U.S. national security or foreign policy interests.

This proposed rule also would authorize BIS to modify the license requirements, license exception availability or license application review policy that applies to any entity placed on the Entity List pursuant to this rule.

This proposed rule would not be used to add to the Entity List a party to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of the EAR. Those sections impose license requirements because of the presence of certain parties on the List of Specially Designated Nationals and Blocked Persons published by the U.S. Department of the Treasury, Office of Foreign Assets Control. This proposed rule would not authorize placing U.S. persons, as defined in § 772.1 of the EAR, on the Entity List.

All impositions of license requirements or statements of license application review policy or any modification thereof made pursuant to this rule would be required to be made by publishing an amendment to the Entity List found at Supplement No. 4 to part 744 of the Export Administration Regulations. Under this proposed rule, license exceptions are not available for any entity added to the Entity List pursuant to this rule unless specifically authorized in the entry for the entity.

This proposed rule would explicitly set forth the ability of a party who is listed on the Entity List to request that its listing be removed or modified. Such requests, including reasons therefor, would have to be made in writing, and BIS would be required to provide a

written response that would be the final agency decision on the request. Such requests would be reviewed by the Departments of Commerce, State, Defense, and Energy and, if appropriate in a particular case, the Treasury. The interagency decision, as communicated to the requesting entity by BIS, would be the final agency action on such a request.

This proposed rule would make a conforming change to the definition of U.S. person in § 772.1 by adding § 744.11 to the list of sections to which that definition applies.

The license requirements proposed by this rule would be an expansion of foreign policy export controls that would require a report to Congress in accordance with section 6 of the Export Administration Act. BIS will submit the appropriate report to Congress before implementing any such expanded controls.

Request for Comments

BIS is seeking public comments on this proposed rule and will consider all comments received on or before August 6, 2007 in developing any final rule. Comments received after that date will be considered if possible, but their consideration cannot be assured. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0953 for assistance.

Rulemaking Requirements

1. This rule has been determined to be a significant rule pursuant to 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 rule involves a collection of information that has been 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. Additionally, this rule contains a new collection of information subject to review and approval by OMB under the Paperwork Reduction Act. This collection will be submitted to OMB for approval. This rule proposes a procedure for a listed party to request removal or modification of its listing, as set forth in proposed § 744.16. BIS estimates that this new collection will involve an annual burden of 15 hours.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at david_rostker@omb.eop.gov or by fax to (202) 395-7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as this 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. However, to obtain the benefit of a variety of viewpoints before issuing any final rule, BIS is issuing this rule in proposed form with a request for comments.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 772

Exports.

Accordingly, parts 744 and 772 of the Export Administration Regulations (15 CFR parts 730-774) are amended as follows:

PART 744—[AMENDED]

1. 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 August 3, 2006, 71 FR 44551 (August 7, 2006); Notice of October 27, 2006, 71 FR 64109 (October 31, 2006).

2. In § 744.1(a)(1), a new sentence immediately following the current sixth sentence and a new sentence immediately following the current tenth sentence are added, to read as follows:

§ 744.1 General provisions.

(a)(1) * * * Section 744.11 imposes license requirements, to the extent specified in Supplement No. 4 of this part on entities listed in Supplement No. 4 of this part for activities contrary to the national security or foreign policy interests of the United States. * * * Section 744.16 sets forth the right of a party listed in Supplement No. 4 of this part to request that its listing be removed or modified.

3. Section § 744.11 is added to read as follows:

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

BIS may impose foreign policy export and reexport license requirements and limitations on availability of license exceptions and may set license application review policy based on the criteria in this section. Such requirements, limitations and policy are in addition to those set forth elsewhere in the EAR. License requirements, limitations on use of license exceptions and license application review policy will be imposed under this section by adding an entity to the Entity List with a reference to this section and by stating on the Entity List the license requirements and license application review policy that apply to that entity. BIS may remove an entity from the Entity List if it is no longer engaged in the activities described in paragraph (b) of this section and is unlikely to engage in such activities in the future. BIS may modify the license exception limitations and license application review policy

that applies to a particular entity to implement the policies of this section. Any modification to the Entity List proposed to be made pursuant to this section will be reviewed by the Departments of Commerce, State, and Defense, and Energy and the Treasury as appropriate.

(a) *License Requirement, Availability of License Exceptions, and License Application Review Policy.* A license is required, to the extent specified on the Entity List, to export or reexport any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section. License Exceptions may not be used unless authorized in that entry. Applications for licenses required by this section will be evaluated as stated in that entry in addition to any other applicable review policy stated elsewhere in the EAR.

(b) *Criteria for revising the Entity List.* Entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section. This section may not be used to place on the Entity List any party to which exports or reexports require a license pursuant to §§ 744.12, 744.13, 744.14 or 744.18 of this part. This section may not be used to place on the Entity List any party if exports or reexports to that party of items that are subject to the EAR are prohibited by or require a license from another U.S. government agency. This section may not be used to place any U.S. person, as defined in § 772.1, on the Entity List. Examples of activities that could be contrary to the national security or foreign policy interests of the United States include:

- (1) Supporting persons engaged in acts of terror;
- (2) Actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism;
- (3) Transferring, developing, servicing, repairing or producing conventional weapons in a manner that is contrary to United States national security or foreign policy interests or enabling such transfer, service, repair, development, or production by supplying parts, components, technology, or financing for such activity;

(4) Deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State, by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated; or

(5) Engaging in conduct that poses a risk of violating the EAR and raises sufficient concern that BIS believes that prior review of exports or reexports involving the party and the possible imposition of license conditions or license denial enhances BIS's ability to prevent violations of the EAR.

4. Section 744.16 is added to read as follows:

§ 744.16 Procedure for requesting removal or modification of an Entity List Entity.

Any entity listed on the Entity List may request that its listing be removed or modified.

(a) All such requests, including reasons therefor, must be in writing and sent to: (Address to be added in final rule).

(b) BIS will review such requests in conjunction with the Departments of Defense, State and Energy, and if appropriate in a particular case, the Treasury.

(c) The Chair of the End User Review Committee will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

PART 772—[AMENDED]

5. The authority citation for part 772 continues 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 3, 2006, 71 FR 44551 (August 7, 2006).

6. In § 772.1 the definition of U.S. person is amended by revising paragraph (a) introductory text to read as follows:

§ 772.1 Definition of terms as used in the Export Administration Regulations (EAR).

* * *

U.S. Person. (a) For purposes of §§ 744.6, 744.10, 744.11, 744.12, 744.13, and 744.14 of the EAR, the term U.S. person includes:

* * * * *

Dated: May 29, 2007.

Christopher A. Padilla,
Assistant Secretary for Export
Administration.

[FR Doc. E7-10788 Filed 6-4-07; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AC35

[Public Notice 5797]

Exchange Visitor Program—College and University Students, Student Interns

AGENCY: Department of State.

ACTION: Proposed rule with request for comments.

SUMMARY: The Department is hereby proposing to revise its regulations concerning College and University Students. The proposed Rule, if adopted, will create a new subcategory of the College and University Student category—"Student Interns". Participation in this new sub-category is open to foreign students enrolled and pursuing full-time studies at a post-secondary educational institution outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level.

DATES: The Department will accept comments on the proposed regulation from the public up to August 6, 2007.

ADDRESSES: You may submit comments identified by any of the following methods:

- *Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: <http://www.regulations.gov/index.cfm>.*

- *Mail (paper, disk, or CD-ROM submissions):* U.S. Department of State, Office of Exchange Coordination and Designation, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547

- *E-mail: jexchanges@state.gov.* You must include the RIN (1400-xxxx) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA-44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at jexchanges@state.gov.

SUPPLEMENTARY INFORMATION: The Department of State (Department) designates U.S. government, academic and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended (Fulbright-Hays Act). Under this authority, designated program sponsors facilitate the entry into the United States of more than

300,000 exchange participants each year.

The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the Department, have promulgated regulations governing the Exchange Visitor Program that are set forth at 22 CFR 62. Regulations governing exchange visitor college and university students appear at 22 CFR 62.23.

The Department plans to publish an Interim Final Rule relating to exchange visitor trainees and interns (see 22 CFR 62.22). This Interim Final Rule creates a new exchange visitor category—the Intern—for private sector organizations sponsoring individuals who are currently enrolled in and pursuing studies at a degree- or certificate-granting post-secondary academic institution outside the United States or have graduated from such an institution no more than 12 months prior to his/her exchange visitor program begin date, and who enters the United States to participate in a structured and guided work-based internship program in his/her specific academic field.

This Proposed Rule is promulgated to make the use of a similar intern category available to American college and university Exchange Visitor Program designated sponsors. Generally speaking, the proposed regulations governing the new student intern category track the internship regulations applicable to training program sponsors.

The new student intern sub-category is available to foreign students enrolled in accredited post-secondary educational institutions outside the United States. Student interns may participate in a student internship program for up to 12 months at each degree level. For example, if a student comes to the United States to participate in a student internship program at the equivalent of a baccalaureate program, he/she could remain in the United States for up to 12 months. The same individual would be permitted another student internship program up to 12 months at the next higher degree level, such as a masters degree program, or students changing majors and obtaining a new degree.

Selection criteria for the new student intern sub-category must include the following requirements: The student must be accepted to participate in an internship by the post-secondary educational institution listed as the sponsor on his or her Form DS-2019 and is primarily in the United States to engage in a student internship program rather than to engage in employment or provide services to an employer; the student intern must be in good

ICOTT INDUSTRY COALITION ON TECHNOLOGY TRANSFER

1700 K Street, N.W., Washington, D.C. 20006 (202) 282-5994

August 3, 2007

VIA E-MAIL AND FIRST CLASS MAIL

Regulatory Policy Division
Office of Exporter Services
Bureau of Industry and Security
Room H2705
U.S. Department of Commerce
14th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Attn: Mike Rithmire

RIN 0694-AD82

Re: Proposed Rule: Authorization to Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States (72 Fed. Reg. 31005, June 5, 2007)

Dear Mr. Rithmire:

The Industry Coalition on Technology Transfer ("ICOTT") appreciates the opportunity to comment on the above-referenced proposed rule (the "Proposed Rule"), which would expand the scope of reasons for which BIS may add parties to the Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations.). Specifically, the Proposed Rule would authorize BIS to add entities (and those acting on their behalf) to the Entity List where BIS has "reasonable cause to believe, based on specific and articulable facts" that the entities "have been, are, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States."

ICOTT and its member associations recognize the importance of protecting the national security and foreign policy interests of the United States and support reasonable and effective export controls. The many companies represented by ICOTT's member associations are on the frontline of the U.S. export control process and devote considerable time, effort and expense to assure that export transactions comply with applicable export regulations. It is from this vantage point that we comment on the Proposed Rule.

At the outset, ICOTT applauds the overall regulatory approach of the Proposed Rule, which seeks to address emerging threats to U.S. national security or foreign policy interests by identifying, targeting and listing individual entities that require further scrutiny, rather than

establishing new controls (e.g., country controls) of a broader nature. This targeted, entity-based approach is better suited to the global nature of many of the national security and other threats facing the United States than are broader, country-based controls. Additionally, this approach has the potential to employ more efficiently the limited export enforcement and compliance resources of the government and the private sector by focusing such resources on entities for which there may be a basis for enhanced concern. Adding new entities to the existing Entity List should cause relatively minimal disruption to private sector compliance programs that already screen transactions against that list. In this regard, the approach of the Proposed Rule is superior to that of other recent proposals, including the recently announced controls on certain exports to China, which require very substantial revisions to the export screening and compliance programs of numerous exporters and re-exporters. ICOTT urges BIS to give serious consideration to replacing such broader-based controls with targeted entity-based controls in areas in which these more focused controls would be more appropriate and effective and less burdensome to the private sector.

While ICOTT generally supports the entity-based approach reflected in the Proposed Rule, we do have a number of serious concerns about the proposal and the exceedingly broad authority that it would grant to BIS. We urge BIS to address these concerns in any final rule.

The Proposed Rule would grant BIS extremely broad authority to add new entities to the Entity List and to tailor license requirements and the availability of license exceptions for such entities. The five types of conduct listed in the Proposed Rule as bases for listing on the Entity List are worded very broadly. For example, "conduct that poses a risk of violating the EAR" can be a basis for listing. Additionally, the Proposed Rule makes clear that these listed examples are only "illustrative" of the types of conduct that could be a basis for listing. Further, the Proposed Rule would permit BIS to list entities on the basis of conduct or concerns that do not involve items or activities that are subject to the EAR.

In view of its broad reach and language, the Proposed Rule is likely to cause considerable confusion for exporters unless BIS makes certain changes in the proposal and provides, in the regulation and elsewhere, clearer and narrower limits on the reach of the rule as well as further specific information about how the rule will be applied. We set out a number of specific issues and concerns below:

- 1. The Listing Process.** It is important that BIS provide more information on the process that will be employed in determining whether to add entities to the Entity List. For instance, what process will BIS employ in determining whether non-EAR-related activities would provide a basis for adding entities to the Entity List? Who will determine the national security and foreign policy interests of the United States in this context? How will other agencies be consulted in these regards? At what levels will these consultations take place? Who within BIS will make these determinations, particularly with respect to non-EAR-related activities? What checks will be in place—particularly given the open-ended nature of the potential reasons for listing—to assure that lower-level BIS officials will not apply their own notions as to the national security or foreign policy interests of the United States?

Although we appreciate that some of the specific information that would form the basis for determinations under the Proposed Rule could involve confidential sources and methods, we do believe that exporters and others should have more detail on the overall outlines of the listing process. Among other things, a more complete description of the listing process would be vital to those seeking *removal* from the Entity List, particularly in the case of persons listed on the basis of inaccurate or incomplete information. Given the broad outlines of the Proposed Rule and its potential to use EAR requirements to address concerns about non-EAR items and activities, it is also critical that listing decisions be made in a coordinated manner and at an appropriately senior level.

2. The Illustrative Examples. We further believe that it is crucial to provide significantly more guidance on the types of conduct that may provide a basis for adding a party to the Entity List. For example, the fifth listed example – "engaging in conduct that poses a risk of violating the EAR ..." – is exceedingly broad, and should be replaced in the rule with more specific illustrations of the conduct of concern to BIS. There are a wide range of activities that pose a risk of violating the EAR, and many of these are minor. BIS must spell out in more detail, those types of EAR violation risks that cause it concern. If this example is retained, some form of materiality standard should be added, and further illustrations should be provided. An example might be "engaging in conduct that poses a substantial risk of imminent and serious violation of the EAR"

3. Removal Process. As noted, the Proposed Rule would provide very broad bases for listing a party on the Entity List, including conduct that does not relate to the EAR and conduct that poses foreign policy risks. In view of these far-reaching criteria, it is important that senior-level officials have a greater role in the removal process. In this regard, we strongly recommend that persons seeking removal have the express right to appeal to a senior Department official any denial of their removal request by the interagency end user review committee.

4. End Use Checks. The Proposed Rule lists "deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS" or other agencies as a basis for listing. We are aware of instances of parties who have not been notified that they have been deemed to fail end use checks—either because they hadn't failed such checks or because the checks never even had been attempted. Accordingly, it is important that the Proposed Rule, as applied, include steps to ensure that such parties are not added to the Entity List in these circumstances.

5. VEU Coordination. BIS should take appropriate steps to coordinate any expanded Entity List with its new Verified End User process. For example, it should consider making the VEU process available to all entities that are not included on the Entity List, or should establish presumptions that a party not included on the list should be eligible, in the absence of other specific and articulable facts, for VEU status.

6. Contract Sanctity. The Proposed Rule should include a contract sanctity exception. Absent extraordinary circumstances, parties should be able to complete transactions that were entered into before the date that BIS determined that there were specific and articulable facts that required the listing of a party on the Entity List.

7. Identification of Listed Parties. Listed entities and, insofar as possible, their business locations, should be identified clearly. Moreover, the rule should make clear that only listed entities—and not, for example, unlisted affiliates, subsidiaries, or sister entities—are covered. This applies not only to companies but to institutes and universities.

8. Clarity of Coverage. Proposed § 744.11(b) should include “744.20” in its list of EAR provisions. Otherwise there is the danger of duplication between parties listed pursuant to § 744.20 and those listed under § 744.11. More broadly, each provision of Part 744 that relates to the Entity List should contain at least a cross reference to Supplement 4, and each entry on the Entity List should specify the provision of Part 744 that supplies the basis for listing the entity in question.

* * *

Founded in 1983, ICOTT is a group of major trade associations whose hundreds of individual member firms export controlled goods and technology from the United States. ICOTT's principal purposes are to advise U.S. Government officials of industry concerns about export controls, and to inform ICOTT's member trade associations (and in turn their member firms) about U.S. Government export control activities.

Sincerely,*



Eric L. Hirschhorn
Executive Secretary

From: <WARoot@aol.com>
To: <publiccomments@bis.doc.gov>
Date: Sat, Aug 4, 2007 1:03 PM
Subject: June 7, 2007, Proposed Rule on Entity List RIN 0694-AD83

William A. Root
Export Control Consultant
419 Russell Avenue #214
Gaithersburg MD 29877

August 4, 2007

publiccomments@bis.doc.gov (mailto:publiccomments@bis.doc.gov) RIN
0694-AD82

Comments on June 5, 2007, Proposed Rule on Entity List

I suggest adding 744.20 to the proposed 744.11(b) list of 744.12, .13, .14, or .18 sections to which 744.11 may not be used and requiring State Department concurrence in the listing of any entity under 744.11 for foreign policy reasons. Otherwise, the result might be inclusion in the EAR of differences of opinion between Commerce and State as to which entities were 744.20 or otherwise of foreign policy concern.

The first paragraph of the Background states that the reasons for which BIS may place an entity on the 744 Supp.4 Entity List are stated in 744.2, .3, .4, .6, .10, and .20. However, only 744.10 and 744.20 now refer to Supp 4 and Supp. 4 makes no reference to any of the 744 sections. It is therefore suggested that 744.2(b), 744.3(b), 744.4(b), 744.6(b), and proposed 744.11 refer to 744 Supp. 4 and that a column be added to Supp.4 to identify which 744 section is applicable to each listed entity.

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August 6, 2007

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room H2705
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Attention: RIN 0694-AD82

RE: Comments on Proposed Rule – Authorization to Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States

Dear Sir or Madam,

The Wisconsin Project on Nuclear Arms Control submits the following comments in response to the Bureau of Industry and Security's June 5, 2007, Proposed Rule (72 Fed. Reg. 31005), which proposes to expand the scope of reasons for which BIS may add parties to the Entity List.

The Project is a non-profit organization that conducts outreach and public education to inhibit the proliferation of mass destruction weapons and their means of delivery. For more than twenty years, the Project has pursued its mission by advocating strong and effective export and transit controls worldwide. The Project commends the Commerce Department for considering measures to strengthen the Entity List, and supports the proposed change in principle. However, additional actions are necessary to ensure that the List serves its original, intended function as a key nonproliferation tool in the U.S. dual-use export control system.

In the Proposed Rule, BIS seeks authorization to add to the Entity List entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States, or those acting on behalf of such entities. This would be a broad and beneficial control, allowing BIS to conduct more prior reviews of exports to risky end-users. In particular, BIS should use the proposed new Section 744.11 to impose export license requirements on entities that have been targeted for nonproliferation-related reasons by other agencies of the U.S. government, and by foreign governments, in cases where other sections in Part 744 do not already allow inclusion of such entities on the Entity List. This approach would become another tool allowing BIS to work with its counterparts within and outside the U.S. government to ensure that entities of proliferation concern worldwide are denied access to controlled goods and technologies.

In publishing the proposal, BIS seeks to aid the exporting public by simplifying the EAR and providing more information about entities of concern. But in pursuit of stronger, more effective and efficient export controls, BIS should go beyond this proposal, and implement additional measures, most under authorities already in effect.

BIS should institutionalize the practice of supplying as much information as possible in entries on the Entity List – including all known aliases and contact information. This would provide the public with effective notice regarding entities of concern, and make it more difficult for such entities to evade export controls. Existing entries should be systematically reviewed, revised and enriched to be maximally useful to exporters. Some of these existing entries are now outdated, as the entities in question have changed their names and/or affiliations. And since many entries on the List have only a name to identify the entity, the public no longer has notice of the risky end-user once its name is changed.

BIS has stated that it cannot supply the Chinese names of entities on the List, because the Federal Register cannot accommodate their publication. To bypass this technical limitation, BIS should publish on its website, as guidance for exporters, an augmented version of the List including also the names of listed entities in their original alphabets. This vital information would allow industry to investigate properly potential customers for controlled goods.

BIS should also provide clear guidance to exporters on how to deal with entities related to those on the List. Some language regarding subordinates was included in the "Frequently Asked Questions Regarding the Entity List" on the BIS website, but the relevant section was recently removed. Many entities on the List have numerous subsidiaries and other related companies that constitute a diversion risk. BIS should explicitly state the extent to which license restrictions on listed entities extend to their relatives. All related entities so affected should be listed, as well.

In the interest of informing exporters more fully about diversion risk, BIS should include additional information about why entities are added to the list, and do so more clearly. BIS now describes, in Federal Register notices and accompanying press releases, the risk posed by each entity when it is added to the List. But the List itself only indirectly suggests the nature of the risk presented by each entity, by pointing to a section in Part 744 for license review policy. This indirect explanation would be further diluted in the case of the proposed Section 744.11, which contains a very broad basis for designation. The Japanese Ministry of Economy, Trade and Industry provides a useful model in this regard, by indicating WMD programs of concern directly on its warning list, for each entity. Such one-stop public education would allow industry to make efficient and informed decisions about prospective end-users, commodities and transactions.

BIS should also consider more systematic use of Section 744.20, which allows imposition of license requirements on entities sanctioned by the State Department. These sanctions are applied under various legal authorities against foreign individuals, private entities, and governments that engage in proliferation activities. All of these inherently risky end-users should be added to the Entity List after they are sanctioned, and should remain on the List even if the statutory term of the sanction has expired, unless the End-User Review Committee (ERC) determines that the entity is no longer a risk.

The Proposed Rule would establish a process by which a listed entity could request that it be removed from the List or that its listing be modified. It is not clear why BIS is seeking to formalize the procedure. But this change underscores the need for the ERC to conduct systematic reviews of entries on the List, to ensure that the entries are current and complete. These reviews should always be undertaken in conjunction with the intelligence community. Therefore, the proposed Section 744.16 should be changed to reflect the inclusion of the intelligence community in the review process. Also, private companies are often the recipients of information (such as suspicious purchase requests) suggesting that a particular entity is a risky end-user. BIS should afford the public an opportunity to supply such information to the ERC, which would aid the Committee's deliberations. It would therefore be prudent for BIS to allow a public comment period before the removal or modification of an Entity List entry at the request of the entity itself.

BIS has recently announced that it is planning a draft proposal that would introduce a standard format for all U.S. Government screening lists, with the objective of having a "more complete continuum of information ... available for exporters to use in screening potential customers." Indeed, such a standard format could be a great help for industry. It could also benefit national security, by allowing smaller businesses to screen their transactions more efficiently and effectively. But this standard format would need to present complete information in a clear fashion. We look forward to working with BIS and other interagency partners on that forthcoming proposal, and hope that the suggestions herein will be helpful then, as well.

We are grateful for the opportunity to present our views.

Respectfully submitted,

Arthur Shulman
General Counsel
Wisconsin Project on Nuclear Arms Control

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August 6, 2007

VIA E-MAIL TO <http://www.regulations.gov>
AND TO publiccomments@bis.doc.gov

Regulatory Policy Division
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Bureau of Industry and Security
Attn: Mr. Mike Rithmire
Room H2705
U.S. Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Rithmire:

Re: Comments on Proposed Rule: Authorization to Impose
License Requirements for Exports and Re-exports to
Entities Acting Contrary to the National Security
or Foreign Policy Interests of the United States at
[72 FR 31105 of June 5, 2007]
Regulatory Identification Number (RIN) 0694-AD82

We are pleased to comment upon this proposed rule.

We are in support of the underlying principles which created the original Enhanced Proliferation Control Initiative (EPCI), the U.S. end-use/end-user control. Under EPCI, items listed as EAR99 in the EAR are subject to license requirements if the U.S. exporter knows or is informed that a license is required for certain WMD and WMD-related activities (Sections 744.2, 744.3, 744.4, and 744.6). Sections 744.12, 744.13, and 744.14 focus on those transactions to specifically designated global terrorists, specifically designated terrorists, and foreign terrorist organizations. These end-use/end-user controls comport with those in three non-proliferation regimes (the Nuclear Suppliers Group, the Missile Technology Control Regime, and the Australia Group), as well as the catch-all control requirement in Operating Paragraph 3 of U.N. Security Council Resolution 1540 that requires all members of the U.N.

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to have in place an effective export control regime as well as catch-all controls and other non-proliferation measures.

The Wassenaar Arrangement (WA) on Export Controls for Conventional Arms and Dual-Use Goods and Technologies as of 2003 has a catch-all control known as the Statement of Understanding (SOU) on the Control of Non-Listed Dual-Use items. According to the SOU, participating states are to take appropriate measures to require authorization for the transfer of non-listed dual-use items to destinations subject to a binding U.N. Security Council arms embargo, any relevant regional arms embargo either binding on a Participating State or to which a Participating State has voluntarily consented to adhere, if the non-listed item is intended or may be intended, entirely or in part for a military end-use. The U.S. government response to the WA conventional military catch-all morphed into Section 744.21, Restrictions on Certain Military End-Uses in the People's Republic of China, outside the parameters of the SOU as there is no binding arms embargo against China. (*Please see our response to the China Rule at the BIS website.*)

In short, we believe the proposed rule to expand the Entity List is seriously flawed and imprecise, offering a dubious process, which could more effectively be handled by existing mechanisms available under the Export Administration Regulations (EAR). Our concerns focus on specific, and in our opinion, fatal vagaries in key terms of the initiative and descriptions of the offensive conduct or activity which would result in a party being placed on Supplement 4 of Part 744 (the Entity List) and trigger a license requirement for export or re-export and/or restriction to license exceptions or modifications to certain license requirements.

While we are concerned for the national security and foreign policy interests of the United States, we believe the harm visited upon legitimate U.S. economic interests in a global economy warrant precise and transparent procedures to block or stop commerce upon merely anecdotal information without providing the exporter or the foreign entity a process to respond to secret allegations of potential conduct.

Vague Criteria for Revising the Entity List

The proposed rule provides the Bureau of Industry and Security (BIS) with the authority to add entities to the Supplement 4

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of Part 744 (the Entity List) at will and without notice where BIS has "reasonable cause to believe, based on specific and articulable facts" that the entity "has been, are, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to this section." There are five new types of conduct - only some of them sounding in U.S. national security -- which can trigger application of this section. We will discuss our concerns with each type of conduct below. But first, we will review the basis upon which BIS, ostensibly in concert with the interagency partners, will list a party which is "supporting persons", "actions that could enhance the military capability...", or "enabling" certain activities inimical to a wide variety of U.S. national security, foreign policy or political interests.

Specific and Articulable Facts

It is not clear from the proposed rule whether the "specific and articulable facts" include intelligence reporting about an entity believed to be involved in such activities or are acting on behalf of such entities. The plain meaning of the words "specific" and "articulable" mean "definite" and "clear and distinct", respectively. (Random House, College Dictionary). What will be the source of these "facts"? What role will classified intelligence have in this review process?

If intelligence reporting is to be included in the description of the activities of the entity under review, will this intelligence be current (no more than two years old) and actionable? Clearly, it should be certified by the Director of National Intelligence and not be the product of weekend reservists clipping articles for D TSA, as was the case in the past. Based on years of experience as Chairman of the interagency Operating Committee, we witnessed the use of dated, inaccurate "intelligence" in the dual-use licensing process as a basis of denial. Generally, as OC Chairman I found the quality of intelligence reporting and analysis on prospective parties to a dual-use transaction decline during those years. Moreover, the focus of the lead intelligence agency in the dual-use licensing review process, at least since the early 1990's, had been on the proliferation of weapons of mass destruction. Changes in the global marketplace, which raised concerns that touched on national

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security or foreign policy interests other than the proliferation of WMD and related materials, were ignored by the lead intelligence agency, which unilaterally refused to provide intelligence on such issues to the interagency process.

After September 11, 2001, the lead intelligence agency further narrowed its focus, because it believed certain industry sectors such as telecommunications in critical foreign markets had no importance to the proliferation of WMD. At the same time the Defense Intelligence Agency (DIA) the Defense Technology Security Administration (DTSA) stepped in to provide intelligence reports and analysis of questionable accuracy when compared with other information gathered from open and proprietary sources or from the parties themselves.

To list an entity on the Entity List carries serious economic and diplomatic consequences. For that reason alone, the "specific and articulable facts", including intelligence reporting and analysis, should be current and accurate. Moreover, both the U.S. exporting community and the entity in question should be immediately informed that it is under review before the review is completed in order to give all affected parties the opportunity to state their position and provide additional information about the activities of concern before BIS and interagency reviewers conclude that the entity should be placed upon the List. Moreover, there should be a transparent and rational process which allows the interested parties and the entity in question to not only oppose its inclusion on the list, but also to have itself removed from the list in a transparent and timely fashion. Failure to have provided for such a process in this new list not only creates a "black hole" -- where mere allegation means perpetual damnation -- but it also raises serious issues under the national treatment provisions of the WTO Treaty in light of the foreign policy and political aspects of its operation, as discussed below.

The Five New Types of Conduct Triggering Listing Are Vague and Overly Broad

Proposed Section 744.11(b) describes several types of conduct which can result in a party being placed on the Entity List and trigger a license requirement for export and re-exports. Each of these five types of conduct raises concerns because of the lack of specificity concerning the activity, which would

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trigger review and possible listing.

In Section 744.11(b)(1), what does "supporting persons engaged in acts of terror" mean? Will BIS provide guidance as to what is meant by "supporting persons"? What types of exports or re-exports are these restrictions intended to capture? What is an "act of terror" if there is still no internationally agreed definition of what is "terrorism"? We already understand from international responses, including that of the United States, that one person's freedom fighter is another person's terrorist.

Section 772.11(b)(2)

Section 772.11(b)(2) as currently written is not clear whether the "actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designed by the Department of State..." applies only to those governments, which State has designated as supporters of international terrorism. Or does the first clause of this item addresses actions described in new Section 744.21, part of the new China Rule? It would appear that this item should be more clearly written to have the Department of State specify the foreign government in question and tie in the conduct that enhances the military capability of that government designated as supporting international terrorism. This would avoid confusion in the exporting community, avoid capricious interagency behavior, and prevent commercial mischief.

Section 744.11(b)(3)

The scope of Section 744.11(b)(3) as currently written is breathtaking in its reach from what was initially proposed in the China Rule. The only provision in Part 744 of the EAR that restricts transactions that enhance the military capability of a foreign country is focused on China. No other country is designated for similar treatment under Part 744.

This item should be eliminated for several reasons.

First, since there is no other country identified in the EAR where a licensing requirement is required if the proposed transaction could make either a direct and significant contribution or material contribution to enhanced capability of the People's Republic of China. This should not be the

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back-door maneuver BIS is seeking to use to penalize activities or conduct comparable to those wisely removed from the final China Rule. When first proposed in 2006, the "China conventional military catch-all" rule (Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User [71 FR 38313 of July 6, 2006] as it was then known) contained a new Section 744.6 entitled "Restrictions on Certain Activities of U.S. Persons". That provision sought to extend the coverage of the EAR to those entities which "support" an export, re-export, or transfer of an item requiring a license if for a Chinese military end-use. "Support" meant "any action, including financing, transportation and freight forwarding by which a person facilitates an export, re-export, or transfer without being the actual exporter or re-exporter." During the lengthy comment period on the China rule, industry and the exporting community seriously criticized this provision. The proposed Section 744.6 received particularly strong criticism from various quarters including banks, the legal community and financial institutions, especially on account of its overly broad scope and lack of any provision for contract sanctity.

When the final China Rule was published in June 2007, BIS excised that nettlesome section without comment. One wonders why this proposed Entity List expansion seeks to resurrect this wide range of activities related to aspects of any given export or re-export transaction, including financing and "enabling" (not defined), when the final China rule eliminated an identical provision?

Second, we believe that this item fails to take into consideration the reality that foreign governments have existing bilateral arrangements and defense cooperation agreements with other countries concerning conventional transfers and related activities such as service, repair, development or production. Except for those destinations subject to full or partial arms embargoes by actions taken by the U.S. Security Council, there is no international restriction on conventional arms transfers at this time. For example, the U.S. Government has imposed a unilateral embargo and trade sanctions on the Government of Iran. But there is yet no international conventional weapons embargo or sanction against Iran and therefore it is not illegal under international law to engage in the trade of conventional weapons with Iran. Although the U.S. Government is strongly opposed to trade with Iran and has sanctioned foreign

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companies under the Iran Nonproliferation Act of 2000, those companies are unable to learn specifically what activities have caused them to be sanctioned under that statute. We believe it important for the Department of State to engage with those foreign governments which are behind the trade in conventional weapons with governments of concern, and not have BIS drive foreign policy concerning certain destinations through promulgation of export control regulations and penalize those entities involved in the trade that are engaged in legitimate programs in full compliance with their domestic laws and regulations, particularly those of our allies.

Currently, the U.S. Government has no overarching China trade policy, yet seeks to cobble a trade policy directed to China through bits and pieces of export control and trade-related regulations not cut from full cloth. This approach creates unpredictability for U.S. exporters in terms of compliance and in their ability to remain globally competitive, especially in the highly-charred US-Sino market.

We also believe it important for the U.S. Government to change its position on the development of an International Arms Trade Treaty. It is a sad fact that the U.S. Government was the only U.N. member state that voted against the draft International Arms Trade Treaty when the issue was voted on in the U.N. General Assembly last December (The final vote was 153 countries voting in favor, the U.S. voting against, and 23 member states abstaining.) It is both hypocritical and dysfunctional that the U.S. Government seeks to penalize those involved in legitimate conventional weapons activities while choosing not to use its influence to work within the U.N. framework in drafting a meaningful arms trade treaty that recognizes internationally recognized human rights and the obligation to restrict the arms trade to avoid the black trade and illicit trafficking to include non-state actors.

Section 744.11(b)(4) Conflict with the Unverified List

Section 744.11(b)(4) appears to conflict with the publication of the Unverified List, which identifies those companies and countries in which BIS could not conduct a pre-license check (PLC), or post-shipment verification (PSV). BIS published a notice on June 14, 2002, advising U.S. exporters of the identities of eleven foreign companies for which no PLC or PSV could be undertaken. In that notice, U.S. exporters were informed that identification on the Unverified List did not

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trigger a license requirement, but in accordance with long-standing "red flag" guidance, advised U.S. exporters to perform *enhanced due diligence* before exporting any items to such identified entities.

The newly proposed section (b)(4) triggers not only listing *but also* a license requirement to export or re-export to such entities for "deliberately failing or refusing to comply with an end-use check conducted by or on behalf of BIS or the Directorate of Defense Trade Controls of the Department of State, by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that...cannot be verified or authenticated." There have been increasing numbers of license conditions requiring a PLC and/or PSV, including those routinely imposed on sequential licenses to well-know ultimate consignees with no record of non-compliance that result in the backup of shipments of items because pending license applications are not processed until and unless a prior visitation requirement is completed. These on-site visitations are done pursuant to specific agreements with the foreign governments where the ultimate consignee is located and require representatives of both the U.S. government and the foreign government to do the on-site together.

These on-site visits are generally not done in a timely manner, because there is insufficient, and, in some cases, inappropriately trained staff in U.S. embassies abroad. Moreover, there is no rationalization for when and with what frequency the interagency licensing reviewers, along with the Office of Export Enforcement, will impose such on-site visitation requirements on a licensee.

Although the U.S. Congress appears to be pushing BIS for on-site inspections for many if not all licensed transactions, it is illogical to impose these on-site visitation requirements all licensed transactions. A better approach would be for BIS to work with the technical advisory committees to develop a risk transaction matrix that would identify specific criteria which calls for the imposition of such on-site visitation requirements as opposed to routine reporting requirements or other measures to assure compliance with license terms.

Another reason for this item to be reconsidered is that there are limited resources in the U.S. government. In the critical China market, there is only one OEE representative In the U.S. Embassy in Beijing charged in part with doing on-site

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visitations for all of China. When this individual is not available, no on-site visitations are completed, the backlog grows, with the cooperating and willing-to-comply Chinese ultimate consignee eagerly awaiting receipt of the item to continue its production requirements.

We recommend that certain elements of this proposed rule be withdrawn and reconsidered before imposing additional burdens on U.S. exporters, their ultimate consignees, and other entities, foreign and domestic, involved in such transactions.

As we have noted, there is need for clarify and preciseness in key terms used in descriptions of the types of conduct which can trigger listing and a license requirement.

Broader initiatives, such as a conventional weapons policy, need to be coordinated and formulated internationally, and a strategically coordinated China policy needs to have input from government, academia, and industry, instead of a rushed, scatter-shot approach through regulatory tweaks here and there that give the appearance of "taking action" but in reality only render the U.S. control system and U.S. exporters vulnerable to commercial mischief by competitors and represent yet another step away from multilateralism at WA.

To fail to address these fatal deficiencies of the proposed rule threatens the competitiveness of U.S. industry, disruptions to existing contractual relationships, commercial mischief, and will trigger a further "designing out" initiative in the global market of items subject to unpredictable and fickle U.S. export controls.

We look forward to assisting you and the Under Secretary's Technical Advisory Committees in these efforts, and thank you for the opportunity to comment on this proposed regulation.

Very truly yours,


Donald Alford Weadon, Jr.


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August 17, 2007



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Attention: Mr. Mike Rithmire

Re: Proposed Rule: Authorization to Impose License
Requirements for Exports or Reexports to Entities
Acting Contrary to the National Security or Foreign
Policy Interests of the United States -
Published in the Federal Register on June 5, 2007
Regulatory Identification Number (RIN): 0694-AD82

Dear Mr. Rithmire:

Thank you for the opportunity to comment on the above-referenced Proposed Rule, which would establish new licensing requirement for foreign entities that the Bureau of Industry and Security (BIS) has reason to believe pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States.

The Boeing Company (Boeing) supports the national security and foreign policy goals of the U.S. Government and, in principle, Boeing supports the emerging trend in the U.S. export control system to focus on individual end users for additional requirements--or benefits, such as the Validated End User (VEU) concept in the dual-use exports area.

However, Boeing is concerned that the unprecedented scope of this Proposed Rule could have unintended consequences that could present a problem for exporters, not only in terms of compliance but also with respect to their ability to remain competitive in the international business arena. Specifically, we have the following concerns:

The Rule states that a decision to place a party on the List would be made on the basis of "specific and articulable facts". However, it would be important

for industry to know what standard those specific and articulable facts would have to meet, i.e., what universe of conduct would lead to the imposition of a licensing requirement. While we understand the dynamic nature of foreign policy, U.S. industry must also have articulable facts in hand in order to make long range business planning decisions.

Of particular concern are the types of conducts that could trigger placement on the List. Specifically, conducts (iii), (iv) and (v), as follows:



- Conduct (iii), "Transferring, developing, servicing, repairing, or producing conventional weapons in a manner that is contrary to United States national security or enabling such transfer, development, service, repair or production by supplying parts, components, technology, or financing for such activity."

In our view, such broad language has the potential to capture entities that are involved in legitimate conventional weapons programs in countries which may be major trading partners and/or major allies who are responsible members of the international community. The Proposed Rule has the potential of suddenly subjecting them to export and re-export licensing requirements. The question is, then, in what "manner" would the target entity have to be involved in such activity to warrant placement on the List.

- Conduct (iv), deliberately failing or refusing to comply with an end use check conducted by or on behalf of BIS or the Department of State by denying access, by refusing to provide information about parties to a transaction, or by providing information about such parties that is false or that cannot be verified or authenticated. The language appears too broad, since inability to verify would be in the same category as providing false information.

There is already a mechanism under the Export Administration Regulations for addressing entities in countries in which BIS has been or is unable to conduct pre-license checks or post shipment verifications, which in our opinion is more adequate because it requires enhanced due diligence on the part of the U.S. company, rather than an automatic licensing requirement. Establishing new licensing requirements on U.S. companies for actions that could be seen by other countries as their sovereign right could have consequences for U.S. manufacturers in that those companies could decide to "design-out" their products.

- Finally, with respect to conduct (v), acting in a manner that poses a risk of violating the EAR, we believe it would be better for BIS to engage in a partnership with U.S. industry in order to find ways to prevent

potential violations, rather than impose additional licensing requirements on the U.S. company.

Our conclusion in this regard is that this regulation lacks clarity with respect to what types of entities could be subject to this Proposed Rule. More importantly, it would appear that the types of conduct that could lead to placement on the Entities List are too disparate to warrant placement on one single list.

Another issue of concern is whether parents and subsidiaries of the listed companies would also be subject to the same licensing requirements.



Given these concerns, we have the following recommendations:

- Ensure that the criteria for making a decision to list an entity is well defined and clear, to avoid capturing entities that are engaged in legitimate programs in full compliance with their countries' laws and regulations, particularly if those companies are located in countries that are allies or major trading partners of the U.S.
- Ensure that the behaviors that can lead to placement on the List are at a comparable level in terms of failure to comply with U.S. Government requirements.
- Conduct (iii) in particular, and comparable behaviors that may be considered for placement on the List, should be the subject of government to government diplomatic exchanges rather than result in a licensing requirement.
- Foreign availability should be a key factor in all decisions, particularly with respect to items that may pose little or no national security or foreign policy concerns. If a foreign company presents such significant foreign policy or national security concerns that it must be listed, controls should be applied only to items which themselves present a national security or foreign policy concern and which are not readily available in the international marketplace, rather than across the board.
- Avoid capturing parent companies and subsidiaries, and ensure that a decision to do so takes into consideration all potential consequences for legitimate business of the parent or subsidiary, particularly if they could negatively impact additional companies far removed from the behavior that may cause the listing, a scenario that our own experience has shown is quite possible.
- Consider the potential effect of listing decisions on imports from listed companies and resulting consequences for U.S. companies.



- Consult with U.S. companies that might be particularly affected by a listing as much as possible before making a final decision.
- Provide a mechanism to allow a company that may be considered for placement on the List to present arguments against such action.
- Consider including a contract sanctity provision in the new regulations to avoid unnecessary disruptions to collaborative efforts that may have been in place for a long time.
- Conduct more training overseas on U.S. export control requirements to ensure that foreign companies and governments fully understand the extra-territorial nature of U.S. export controls.
- Designate this Proposed Rule as a major rule because of its broad implications and the economic consequences that could arise for U.S. exporters if the Rule results in a larger effort by foreign companies to design-out U.S. products.

In closing, we reiterate our support for an end user approach to export controls, but want to caution against using this approach so broadly that it could result in compliance or competitive issues for U.S. exporters in the future, as well as in an undue burden on the already limited resources of the export control agencies. Placing entities on a watch list can have important consequences not only for a particular entity but also for the country in which that company is located. Actions that would warrant placement on a List should be examined principally against international standards of business conduct and internationally agreed upon principles for addressing common threats to the world community, rather than on purely unilateral considerations.

Additionally, we hope that in parallel with expanding end user controls BIS will proactively engage in an effort to extend a well implemented Validated End User (VEU) program to all its trading partners.

Again, we thank you for the opportunity to provide comments.

Sincerely,

A handwritten signature in cursive script that reads "Norma Rein".

Norma Rein
Senior Manager
Global Trade Controls Policy