

**DEPARTMENT OF COMMERCE****Bureau of Industry and Security****15 CFR Part 744**

[Docket No. 040615184-4184-01]

RIN 0694-AD15

**Amendments Affecting the Country Scope of the Chemical/Biological End-User/End-Use Controls****AGENCY:** Bureau of Industry and Security, Commerce.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final rule to amend the chemical and biological weapons end-user/end-use controls in the Export Administration Regulations (EAR). Specifically, this final rule expands the country scope of the EAR restrictions on certain chemical and biological weapons end-uses to apply to exports and reexports of items subject to the EAR to any destination, worldwide. Prior to the publication of this rule, such restrictions applied only to exports and reexports of items subject to the EAR to certain countries of concern for chemical and/or biological reasons. The amendments are consistent with the “catch-all” provisions in the Australia Group’s (AG) “Guidelines for Transfers of Sensitive Chemical or Biological Items.”

**DATES:** This rule is effective March 30, 2005.**ADDRESSES:** You may submit comments, identified by RIN 0694-AD15, by any of the following methods:

- E-mail: [wfisher@bis.doc.gov](mailto:wfisher@bis.doc.gov). Include “RIN 0694-AD15” in the subject line of the message.
- Fax: (202) 482-3355. Please alert the Regulatory Policy Division, by calling (202) 482-2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694-AD15.

**FOR FURTHER INFORMATION CONTACT:**

Mark Sagrans, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-7900.

**SUPPLEMENTARY INFORMATION:****Background**

This rule expands the country scope of the “end-user/end-use” controls in Section 744.4(a) of the EAR. Section 744.4 sets forth the EAR “end-user/end-

use” provisions that apply to chemical and biological weapons end-uses. Section 744.4(a) of the EAR requires a license to export or reexport items subject to the EAR if, at the time of the export or reexport, the exporter or reexporter knows that the items are intended for chemical or biological weapons activities. Prior to the publication of this rule, the country scope of this “end-user/end-use” license requirement applied only to countries of concern for chemical and biological weapons reasons (*i.e.*, Country Group D:3 in Supplement 1 to part 740 of the EAR). This final rule amends Section 744.4(a) of the EAR to expand the number of countries subject to this EAR “end-user/end-use” license requirement to include all destinations, worldwide, including the countries identified in Country Group A:3 (*i.e.*, the AG-participating countries). The amendments are consistent with the “catch-all” provisions in the Australia Group’s (AG) “Guidelines for Transfers of Sensitive Chemical or Biological Items” (Guidelines).

The AG-related changes described above do not affect Section 744.4(b) of the EAR, which describes certain “end-user/end-use” license requirements that apply to any exporter or reexporter who has been “informed” by BIS that a license is required by a certain end-user due to an unacceptable risk of use in or diversion to chemical or biological weapons activities, because this EAR provision currently has a worldwide country scope that is consistent with the equivalent “catch-all” provision in the AG Guidelines.

This rule imposes new export controls for foreign policy reasons. As required by section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to the Congress on March 21, 2005. Although the Act 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 6, 2004, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Savings Clause**

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 14, 2005, pursuant to actual orders for export to a foreign destination, may

proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before April 29, 2005. Any such items not actually exported before midnight, on April 29, 2005, require a license in accordance with this regulation.

**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 shall any person 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 contains a collection of information subject to the requirements of the PRA. This collection has been approved by 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David.Rostker@omb.eop.gov](mailto: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 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 and foreign affairs function of the United States (Sec. 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 final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 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.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on

this regulation are welcome on a continuing basis.

#### List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

#### PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR 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 October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Section 744.4 is amended by revising paragraph (a) to read as follows:

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

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export or reexport an item subject to the EAR without a license if, at the time of export or reexport you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

\* \* \* \* \*

Dated: March 23, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 05–6271 Filed 3–29–05; 8:45 am]

BILLING CODE 3510–33–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408 and 416

[Regulations No. 4, 8 and 16]

RIN 0960–AG06

#### Expanded Authority for Cross-Program Recovery of Benefit Overpayments

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are adopting without change the final rules that were

published in the **Federal Register** on January 3, 2005, at 70 FR 11, revising our rules on the recovery of overpayments incurred under one of our programs from benefits payable to the overpaid individual under other programs we administer. The revised rules expand the authority for cross-program recovery of overpayments made in our various programs. We are implementing a portion of those rules that we did not implement on January 3, 2005, pending consideration of public comments that we requested at that time.

**DATES:** Most of these rules were effective January 3, 2005. Some provisions were changed from the version published earlier with a notice of proposed rulemaking (NPRM) and were not implemented on January 3. We are implementing those changes effective March 30, 2005.

#### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://gpoaccess.gov/fr/index.html>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:** Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY 1–800–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

#### Background

On August 24, 2004, at 69 FR 51962, we published an NPRM in which we proposed to expand our ability to recover overpayments made in one of our programs from benefits payable to the overpaid individual under other programs we administer. These programs are Social Security benefits under title II of the Social Security Act (the Act), Special Veterans Benefits (SVB) under title VIII of the Act and Supplemental Security Income (SSI) benefits under title XVI of the Act. After considering the public comments we received on the NPRM, we published the final rules with request for comment on January 3, 2005, at 70 FR 11, expanding our cross-program recovery authority effective January 3, 2005. As

stated in those final rules with request for comment, although most of the amendments to the regulations were effective upon publication, we solicited additional public comments on material changes from the NPRM version in some provisions (*i.e.*, the removal of provisions excluding certain types of cases from cross-program recovery). We stated that we would not implement these changes until after we considered any comments we received during the 30-day public comment period.

#### Final Rules With Request for Comment

In the final rules with request for comment published January 3, 2005, we changed the regulations in 20 CFR parts 404, 408 and 416 to reflect the expanded cross-program recovery authority granted by section 1147 of the Act (42 U.S.C. 1320b–17), as amended by section 210 of the Social Security Protection Act of 2004 (SSPA), Public Law 108–203.

Previously, part 404 had no provisions permitting cross-program recovery, since that option had not been applied to collect title II benefit overpayments. In part 404, we added new §§ 404.530, .535, .540 and .545, which parallel existing regulations at §§ 408.930 through 408.933, to include the expanded authority to recover title II overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income (as defined in the regulation) to recover a title II overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover a title II overpayment;
- We may withhold up to 100 percent of SSI and SVB past-due payments to recover a title II overpayment.

We changed §§ 408.930 through 408.933 to reflect the expanded authority to recover title VIII overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover an SVB overpayment;
- We may withhold no more than 10 percent of current monthly title II benefits to recover an SVB overpayment;
- We may withhold up to 100 percent of title II and SSI past-due payments to recover an SVB overpayment.

We changed the regulations at § 416.570 to delete obsolete information. We changed the regulations at § 416.572 and added §§ 416.573, .574 and .575 to reflect the expanded authority to