

Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

■ 1. Authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

*Paragraph 500 Class D Airspace Areas Extending Upward From the Surface of the Earth.*

\* \* \* \* \*

**ASW NM D Alamogordo, TX [Revised]**

Alamogordo, Holloman AFB, NM

Lat. 32°51'09" N, long. 106°06'23" W

Alamogordo-White Sands Regional Airport, NM

Lat. 32°50'24" N, long. 105°59'26" W

Holloman ILS Localizer

Lat. 32°49'48" N, long. 106°06'31" W

That airspace extending upward from the surface up to and including 6,600 feet MSL within a 4.8-mile radius of Holloman AFB, NM and within 1 mile each side of the Holloman ILS Localizer northwest course extending from the 4.8-mile radius to 5.4 miles northwest of the airport excluding that airspace within 2-mile radius of the Alamogordo-White Sands Regional Airport, NM.

\* \* \* \* \*

Issued in Fort Worth, TX, on October 25, 2004.

**Herman J. Lyons, Jr.,**

*Area Director, Central En Route and Oceanic Operations.*

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**BILLING CODE 4910–13–M**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740 and 744**

[Docket No. 040818241–4241–01]

RIN 0694–AC46

**Revisions to the Export Administration Regulations: Removal of the List of Missile Projects and Expansion of Missile-Related End-Use and End-User Controls**

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the Export Administration Regulations (EAR) by removing the list of missile projects of concern and expanding license requirements for missile-related end-users and end-uses. This rule expands the scope of end-uses to which a license requirement applies to include certain rocket and unmanned air vehicle activities in certain countries of concern for missile proliferation reasons. In addition, this rule implements a new license requirement for exports, reexports and transfers anywhere in the world that applies when you know or are informed that an item subject to the EAR will be used in rocket systems or unmanned air vehicles of any range for the delivery of chemical, biological or nuclear weapons. These changes to the end-use and end-user controls are necessary to meet U.S. nonproliferation objectives and are consistent with the Missile Technology Control Regime (MTCR) Guidelines.

**DATES:** This rule is effective November 8, 2004.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AC46, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [mblaskov@bis.doc.gov](mailto:mblaskov@bis.doc.gov). Include "RIN 0694–AC46" in the subject line of the message.
- *Fax:* (202) 482–3355.
- *Mail or Hand Delivery/Courier:* Matthew Blaskovich, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AC46.

**FOR FURTHER INFORMATION CONTACT:** Steven B. Clagett, Director, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1641.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Current License Requirements for Missile-Related End-Uses/End-Users.* Section 742.5 of the Export Administration Regulations (EAR) requires a license for the export or reexport to all destinations (except Canada) of those dual-use items specifically identified on the Commerce Control List (CCL) as controlled for missile technology (MT) reasons. Section 744.3 of the EAR also requires a license for the export or reexport of any item subject to the EAR, when the exporter knows or has reason to know that the item (1) is destined for a missile project listed in the footnote to Country Group D:4 in Supplement 1 to part 740 of the EAR, or (2) will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4, whether or not the use involves a project listed in the footnote. "Missile" is defined in the EAR as a rocket system or unmanned air vehicle system capable of delivering at least 500 kilograms payload to a range of at least 300 kilometers. The list of missile projects set forth in the footnote to Supplement No. 1 to part 740 includes only those projects meeting the "missile" payload and range criteria.

*Removal of List of Missile Projects in D:4 Countries.* This rule removes the list of missile projects in D:4 countries set forth in the footnote in Supplement No. 1 to Part 740 of the EAR because the activities subject to the license requirement set forth in 744.3 are no longer limited to "missile" projects with a certain payload and range capability. The referenced activities are expanded, by this rule, to include any rocket system or unmanned air vehicle with a range of 300 kilometers to be used in D:4 countries.

*Worldwide License Requirement for Delivery Systems for Chemical, Biological or Nuclear Weapons.* This rule implements a new license requirement in section 744.3 for exports, reexports and transfers to anywhere in the world that applies when you know, or are informed, that an item subject to the EAR will be used in rocket systems or unmanned air vehicles of any range for the delivery of chemical, biological or nuclear weapons.

*Expansion of End-Use License Requirement for Country Group D:4 Countries.* This rule revises the license requirements under section 744.3 of the EAR to provide that a license is required for the export, reexport or transfer of any item subject to the EAR if you know, or are informed, that the item will be used in the design, development, production or use of rocket systems or

unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4. This rule also provides that a license is required if you know that the item will be used in the design, development, production or use of rocket systems or unmanned air vehicles in or by a country listed in Country Group D:4, but are unable to determine the characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned air vehicles, or whether the rocket systems or unmanned air vehicles, regardless of range capabilities, are used for the delivery of chemical, biological, or nuclear weapons.

For purposes of this rule, "rocket systems" include, but are not limited to, ballistic missile systems, space launch vehicles, and sounding rockets.

"Unmanned air vehicles" include, but are not limited to, cruise missile systems, target drones and reconnaissance drones. This rule adds these definitions in a note to section 744.3 of the EAR.

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 Congress on September 20, 2004.

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), continues the EAR in effect under the International Emergency Economic Powers Act.

#### Savings Clause

Shipments of items that are subject to a license requirement 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 November 8, 2004, pursuant to actual orders for export to a foreign destination, may proceed to that destination without a license so long as they have been exported from the United States before December 8, 2004. Any such items not actually exported before midnight, on December 8, 2004, 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, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections 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 Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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 interim 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.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations.

Accordingly, BIS encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 23, 2004. BIS will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments

accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482-2165. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA Web site (which can be reached through <http://www.bis.doc.gov/foia>). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Please refer to the **ADDRESSES** section cited above for comment submission.

#### List of Subjects

##### 15 CFR Part 740

Exports, Foreign trade, Reporting and Recordkeeping requirements.

##### 15 CFR Part 744

Exports, Foreign trade, Reporting and Recordkeeping requirements.

■ Accordingly, parts 740 and 744 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

#### PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901-911, Pub. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Supplement No. 1 to part 740 is amended by removing the footnote to Country Group D:4, and all footnote references in the table.

**PART 744—[AMENDED]**

■ 3. 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).

■ 4. Section 744.3 is amended by revising the section heading and paragraphs (a), (b) and (d) to read as follows:

**§ 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses.**

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR, without a license if at the time of the export, reexport or transfer you know the item:

(1) Will be used in the design, development, production or use of rocket systems or unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of Supplement No. 1 to part 740 of the EAR.

(2) Will be used, anywhere in the world, in rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, development, production or use of any rocket systems or unmanned air vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

(i) The characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned air vehicles, or

(ii) Whether the rocket systems or unmanned air vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.

**Note to paragraph (a) of this section:** For the purposes of this section, “Rocket Systems” include, but are not limited to,

ballistic missile systems, space launch vehicles, and sounding rockets. Also, for the purposes of this section, “unmanned air vehicles” include, but are not limited to, cruise missile systems, target drones and reconnaissance drones.

(b) *Additional prohibition.* BIS may inform, either individually, by specific notice, or generally through amendment to the EAR, that a license is required for a specific export, reexport or transfer of specified items to a certain end-user, anywhere in the world, because there is an unacceptable risk of use in or diversion to activities described in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse non-compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

\* \* \* \* \*

(d) *License Review Standards.* (1) Applications to export, reexport or transfer the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer would make a material contribution to the proliferation of certain rocket systems, or unmanned air vehicles. When an export, reexport or transfer is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

(i) The specific nature of the end use;

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, development, production or use of certain rocket systems or unmanned air vehicles;

(iii) The capabilities and objectives of the rocket systems or unmanned air vehicles of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use for certain rocket system or unmanned air vehicle delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

Dated: October 27, 2004.

**Peter Lichtenbaum,**

*Assistant Secretary for Export Administration.*

[FR Doc. 04–24857 Filed 11–5–04; 8:45 am]

**BILLING CODE 3510–33–P**

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**DEPARTMENT OF ENERGY**
**Federal Energy Regulatory Commission**
**18 CFR Part 375**

[Docket No. RM04–13–000]

**Delegations of Authority**

Issued November 1, 2004.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission is amending its regulations governing delegations of authority to reflect a recent internal reorganization. The change is necessary to transfer certain authority to the official now responsible for the affected functions.

**EFFECTIVE DATE:** The rule will become effective November 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8953.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

**Delegations of Authority; Docket No. RM04–13–000; Order No. 650; Final Rule**

1. This final rule revises the Federal Energy Regulatory Commission’s (Commission) regulations governing delegations of authority to reflect a recent internal reorganization. The changes will become effective immediately.

2. The Commission’s Division of Regulatory Audits has been moved from the Office of the Executive Director (OED) to the Office of Market Oversight and Investigations (OMOI). It has been renamed the Division of Financial Audits (DFA). Among DFA’s duties are financial audits, in which it reviews the accounting records and financial statements of jurisdictional companies to determine if they are complying with requirements of the Uniform Systems of Accounts and related Regulations of the Commission. DFA also performs other types of audits, in which it reviews the