

**RECORD OF COMMENTS: EXPORTS AND REEXPORTS OF EXPLOSIVES
DETECTION EQUIPMENT AND RELATED SOFTWARE AND TECHNOLOGY;
IMPOSITION AND EXPANSION OF FOREIGN POLICY CONTROLS**

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COMMENT	SOURCE	SIGNER(S) OF LETTER	DATE	NUMBER OF PAGES
1	<u>U.S. Department of State</u>	Lisa Sampson Wenger	May 19, 2003	1
2	<u>Poliner & Luks LLP on behalf of GE Ion Track Instruments, Inc</u>	Michael C. Poliner	May 19, 2003	11

submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2003-14657/Airspace Docket No. 03-ACE-26." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 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. The 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.

571.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 St. Louis, MO

Lambert-St. Louis International Airport, MO

(Lat. 38°44'52" N., long. 90°21'36" W.)

Spirit of St. Louis Airport, MO

(Lat. 38°39'44" N., long. 90°39'07" W.)

St. Louis Regional Airport, Alton, IL

(Lat. 38°53'25" N., long. 90°02'46" W.)

St. Charles County Smartt Airport, St. Charles, MO

(Lat. 38°55'47" N., long. 90°25'48" W.)

St. Louis VORTAC

(Lat. 38°51'39" N., long. 90°28'57" W.)

Foristell VORTAC

(Lat. 38°41'40" N., long. 90°58'17" W.)

ZUMAY LOM

(Lat. 38°47'17" N., long. 90°16'44" W.)

OBLIO LOM

(Lat. 38°48'01" N., long. 90°28'29" W.)

Civic Memorial NDB

(Lat. 38°53'32" N., long. 90°03'23" W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis International Airport Runway 30L ILS localizer course extending from the airport to 8.7 miles southeast of the airport and within a 6.8 mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius of Spirit of St. Louis Airport to 8.3 miles west of the airport and within a 6.4-mile radius of St. Charles County Smartt Airport and within a 6.9-mile radius of St. Louis Regional Airport and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9 mile radius of the St. Louis Regional Airport to 7 miles north of the airport and

within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on March 21, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03-8126 Filed 4-2-03; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 762 and 774

[Docket No. 030213032-3032-01]

RIN 0694-AB87

Exports and Reexports of Explosives Detection Equipment and Related Software and Technology; Imposition and Expansion of Foreign Policy Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations to expand the scope of explosives detection equipment controlled under Export Classification Control Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. BIS is also expanding controls on the export and reexport of such explosives detection equipment by imposing regional stability (RS) controls and clarifying the previously-existing anti-terrorism (AT) controls on this equipment. BIS is also imposing RS and AT controls on related software and technology, previously EAR99, but now classified under newly created ECCNs 2D983 and 2E983. This rule makes available for most destinations the use of License Exception Servicing and Replacement of Parts and Equipment (RPL) for one-for-one replacement of parts, and servicing and replacement of explosives detection equipment controlled under ECCN 2A983 that was legally exported or reexported and related software controlled under ECCN 2D983. License Exception Technology and Software-Unrestricted (TSU) may also be used to export or reexport certain operation technology and software controlled under ECCNs 2D983 and 2E983. Special records must be maintained when utilizing such License

Exceptions. License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) also is available to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983 for official use by personnel and agencies of the U.S. Government.

DATES: Effective Date: This rule is effective April 3, 2003.

Comment Dates: Comments on this rule must be received on or before May 19, 2003.

ADDRESSES: Written comments on this rule should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to E-mail address squarterm@bis.doc.gov.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Controls Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone: (202) 482-0171, E-mail: jroberts@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Imposition and Expansion of Foreign Policy Controls

The Bureau of Industry and Security (BIS), in this rule, amends the Export Administration Regulations (EAR) by expanding the scope of explosives detection equipment controlled under Export Control Classification Number (ECCN) 2A983, previously 2A993, to include equipment that detects the presence of explosives, explosive residue, or detonators. This rule also creates new ECCNs 2D983 and 2E983 for software and technology designed or modified for the "development", "production" or "use" of explosives detection equipment controlled under 2A983. This software and technology was previously classified as EAR99. The change in the second digit of the ECCN for explosives detection equipment, from 2A993 to 2A983, more accurately indicates the expanded number of countries to which BIS will control the equipment and related software and technology.

Regional Stability Controls

This rule imposes regional stability (RS) controls on exports and reexports of explosives detection equipment controlled under ECCN 2A983, as well as software and technology controlled under ECCNs 2D983 and 2E983, to all destinations except countries in Country Group A:1, The Czech Republic,

Hungary, Iceland, New Zealand and Poland. This is noted in the Country Chart, Supplement 1 to Part 738, by an X in RS column 2. Applications will be reviewed on a case-by-case basis, consistent with the licensing policy set forth for these items in section 742.6 of the EAR.

Anti-Terrorism Controls

Anti-terrorism controls for explosives detection equipment classified under ECCN 2A983, previously 2A993, remain in effect for Iran, North Korea, Sudan, Syria, Cuba and Libya. With the creation of new ECCNs 2D983 and 2E983, BIS is imposing new license requirements for exports or reexports of such related software and technology to Iran, North Korea, Sudan and Syria for anti-terrorism reasons. Controls are maintained on this software and technology with respect to Cuba and Libya, since these items, previously classified as EAR99, were controlled to these countries under part 746 of the EAR. Applications to export or reexport such items to Cuba, Libya, Iran, North Korea, Sudan, and Syria are subject to a general policy of denial. Applications to export items controlled for more than one reason are reviewed under all applicable licensing policies, as provided in §742.1(f).

Respective Licensing Responsibilities of BIS and the Department of the Treasury

With regard to licensing jurisdiction and licensing responsibilities of BIS and the Department of the Treasury's Office of Foreign Assets Control (OFAC) for exports to embargoed countries, this rule does not affect exports to destinations subject to comprehensive export restrictions-Cuba, Libya, Iran, Iraq and Sudan-since a general policy of denial already applies to such exports. For most of these destinations, BIS and OFAC have allocated licensing responsibility so that exporters need to obtain a license from only one agency. Exporters need a license only from OFAC for exports and reexports to Iraq and Iran, and for exports to Libya. A license is required from both OFAC and BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Sudan and reexports involving U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to Cuba and for reexports of such items by non-U.S. persons to Libya. Exporters need a license only from BIS for exports and reexports of items controlled under 2A983, 2D983 and 2E983 to North Korea and Syria, non-embargoed countries.

BIS will consider transactions involving contracts predating March 21, 2003 for exports or reexports of 2A983, 2D983 and 2E983 items to countries other than those in Country Group E (Supplement 1 to part 740) as set forth in section 742.6(c), as revised herein. For exports of such items to Iran, North Korea, Syria and Sudan, contract sanctity will apply as set forth in Supplement 2 of part 742.

Available License Exceptions-RPL, TSU and GOV

License Exception Servicing and Replacement of Parts and Equipment (RPL) may be used to export and reexport one-for-one replacement parts, and servicing and replacement of equipment to most destinations. The use of RPL, as provided in section 740.10, is restricted to the repair or servicing of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 that were previously legally exported or reexported. As set forth in new section 740.10(a)(3)(v), the one-for-one replacement of parts provision set forth in section 740.10(a) may not be used for exports of explosives detection equipment controlled under ECCN 2A983 and related software controlled under ECCN 2D983 to countries in Country Group E:1. Also, as currently set forth in paragraph 740.10(b)(2)(iv), repaired equipment or software may not be exported or reexported to countries in Country Group E:1. Also note that as provided in paragraph 740.10(b)(3)(i)(D), shipments may not be made to Country Group E:1 or to any other destinations to replace defective or otherwise unusable equipment owned or controlled by, or leased or chartered to, a national of any E:1 country.

In addition, License Exception Technology and Software-Unrestricted (TSU), as provided in section 740.13(a), may be used to export and reexport operation technology and software controlled under ECCNs 2D983 and 2E983. This operation technology is the minimum technology necessary for the installation, operation, maintenance (checking), and repair of those products legally exported or reexported that are controlled under 2A983. TSU section 740.13(c) may be used to export and reexport software updates only to correct errors ["fixes" to "bugs"] in software controlled under 2D983 legally exported or reexported (original software). The software updates may be exported or reexported only to the same consignee to whom the software was originally exported or reexported and the software updates may not enhance

the functional capabilities of the original software.

License Exception Governments, International Organizations, and International Inspections Under the Chemical Weapons Convention (GOV) may be used to export and reexport items controlled under ECCNs 2A983, 2D983 and 2E983. This exception is restricted to export and reexport of items for official use by U. S. Government personnel and agencies, as set forth in §740.11(b)(2)(ii).

To ensure accountability while allowing practical maintenance, special records must be maintained when utilizing License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The same requirement applies when utilizing License Exception TSU to export or reexport operation technology and software controlled under ECCNs 2D983 and 2E983. The special recordkeeping requirements are described in sections 740.10(c) and 740.13(f), respectively.

BIS is taking this action after consultation with, and upon the recommendation of, the Secretary of State. Consistent with the provisions of the Export Administration Act (EAA), as amended, BIS submitted a foreign policy report to Congress indicating the imposition of new foreign policy controls for regional stability reasons on March 21, 2003.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), as extended by Notice of August 14, 2000~ (67 FR 53721, August 16, 2002), continues the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from License Exception eligibility or No License Required (NLR) status 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 3, 2003, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous License Exception eligibility or NLR status provisions so long as they have been exported from the United States before May 5, 2003. Any such items not actually exported before midnight on May 5, 2003 require a license in accordance with this regulation.

Rulemaking Requirements

1. This interim rule has been determined not to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes per electronic submission and 45 minutes for a manual submission. This burden hour estimate takes into consideration the reporting time for new license requirements for explosives detection equipment and related software and technology imposed through this final rule, and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Public comment is sought regarding whether the proposed collection of information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of technology. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; 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 sufficient to warrant preparation of a Federalism assessment under 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 (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 interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under Title 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, the Department of Commerce (the Department) 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 May 19, 2003. The Department 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. The Department 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. The Department 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, the Department 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 this regulation will be maintained in the Bureau of Industry and Security Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the

Code of Federal Regulations. Information about the inspection and copying of records at the facility obtained from the Bureau of Industry and Security Freedom of Information Officer, at the above address or by calling (202) 482-0500.

List of Subjects

5 CFR Part 740

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

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 742, 764 and 774 of the Export Administration Regulations (15 CFR parts 739-799) are amended as follows:

■ 1. The authority citation for part 740 continues 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 14, 2002, 67 FR 53721, August 16, 2002.

PART 740—[AMENDED]

■ 2. Section 740.2 is amended by adding paragraph (a)(8) to read as follows:

§ 740.2 Restrictions on all License Exceptions.

(a) * * *

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740);

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii); or

(iii) TSU, under the provisions of § 740.13(a) and (c).

■ 3. Section 740.10 is amended:

■ a. By redesignating paragraph (a)(3)(v) as (a)(3)(vi) and by adding new paragraph (a)(3)(v) and

■ b. By adding new paragraph (c) to read as follows:

§ 740.10 Servicing and Replacement of Parts and Equipment (RPL).

be * * * * *

(a) * * *

(3) * * *

(v) No replacement parts may be exported to countries in Country Group E:1 if the commodity to be repaired is explosives detection equipment controlled under ECCN 2A983 or related software controlled under ECCN 2D983.

(c) Special recordkeeping requirements: ECCNs 2A983 and 20983.

(1) In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this section, for any items exported or reexported pursuant to License Exception RPL to repair or service previously legally exported or reexported items controlled under ECCNs 2A983 and 2D983. The following information must be specially maintained for each such export or reexport transaction:

(i) A description of the equipment replaced, repaired or serviced;

(ii) The type of repair or service;

(iii) Certification of the destruction or return of equipment replaced;

(iv) Location of the equipment replaced, repaired or serviced;

(v) The name and address of who received the items for replacement, repair or service;

(vi) Quantity of items shipped; and

(vii) Country of ultimate destination.

(2) Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR.

■ 4. Section 740.13 is amended by adding paragraph (f) to read as follows:

§ 740.13 Technology and Software—Unrestricted (TSU).

* * * * *

(f) Special recordkeeping requirements: ECCNs 20983 and 2E983.

In addition to any other recordkeeping requirements set forth elsewhere in the EAR, exporters are required to maintain records, as specified in this paragraph, when exporting operation software or technology controlled under ECCNs 2D983 and 2E983, respectively, under License Exception TSU. Records maintained pursuant to this section may be requested at any time by an appropriate BIS official as set forth in § 762.7 of the EAR. The following information must be specially maintained for each export or reexport transaction, under License Exception TSU, of operation software and technology controlled by ECCNs 2D983 and 2E983:

(1) A description of the software or technology exported or reexported,

including the ECCN, as identified on the CCL;

(2) A description of the equipment for which the software or technology is intended to be used, including the ECCN, as identified on the CCL;

(3) The intended end-use of the software or technology;

(4) The name and address of the end-user;

(5) The quantity of software shipped; and

(6) The location of the equipment for which the software or technology is intended to be used, including the country of destination.

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

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 18 U.S.C. 2510 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 742—[AMENDED]

■ 6. Section 742.6 is amended:

■ a. By revising paragraph (a)(2);

■ b. By adding paragraph (b)(3); and

■ c. By revising paragraph (c) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), The Czech Republic, Hungary, Iceland, New Zealand and Poland for items described on the CCL under ECCNs 2A983, 2D983 and 2E983, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

(b) * * *

(3) For terrorist-designated countries, the applicable licensing policies are found in parts 742 and 746 of the EAR.

(c) **Contract sanctity date:** March 21, 2003. This contract sanctity date applies only to items controlled under ECCNs 2A983, 2D983 and 2E983 destined for

countries not listed in Country Group E (Supplement 1 to part 740). See parts 742 and 746 for the contract sanctity requirements applicable to exports and reexports to countries listed in Country Group E.

■ 7. Section 742.8 is amended by revising the phrase “through (c)(43)” in paragraph (a)(4)(ii) to read “through (c)(44)”.

■ 8. Section 742.9 is amended:

- a. By revising the phrase “through (c)(43)” in paragraph (a)(3)(ii) to read “through (c)(44)”;
- b. By revising paragraph (b)(1)(vi);
- c. By redesignating paragraph (b)(1)(vii) as (b)(1)(ix) and (b)(1)(viii) as (b)(1)(x); and
- d. By adding new paragraphs (b)(1)(vii), (b)(1)(viii) and (b)(1)(xi) to read as follows:

§ 742.9 Anti-terrorism: Syria.

- (b) * * *
- (1) * * *
- (vi) Explosives detection equipment controlled under ECCN 2A983.
- (vii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.
- (viii) “Technology” (ECCN 2E983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.

(xi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

■ 9. Section 742.10 is amended:

- a. By revising the phrase “through (c)(43)” in paragraph (a)(4)(ii) to read “through (c)(44)”;
- b. By revising paragraph (b)(1)(vi);
- c. By redesignating (b)(1)(vii) as (b)(1)(ix), (b)(1)(viii) as (b)(1)(x) and (b)(1)(ix) as (b)(1)(xi); and
- d. By adding new paragraphs (b)(1)(vii) and (b)(1)(viii) to read as follows:

§ 742.10 Anti-terrorism: Sudan.

- (b) * * *
- (1) * * *
- (vi) Explosives detection equipment controlled under ECCN 2A983.
- (vii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.
- (viii) “Technology” (ECCN 2E983) specially designed or modified for the

“development”, “production” or “use” of explosives detection equipment controlled by 2A983.

■ 10. Section 742.19 is amended:

- a. By revising the phrase “(c)(6) through (c)(44)” in paragraph (a)(3)(ii) to read “(c)(6) through (c)(45)”;
- b. By revising paragraph (b)(1)(xi);
- c. By redesignating paragraphs (b)(1)(xii) through (b)(1)(xviii) as (b)(1)(xiv) through (b)(1)(xx);
- d. By adding new paragraphs (b)(1)(xii), (b)(1)(xiii) and (b)(1)(xxi); and
- e. By revising the phrase “and (c)(44)” in paragraph (b)(3) to read “and (c)(45)” to read as follows:

§ 742.19 Anti-terrorism: North Korea.

- (b)
- (1) * * *
- (xi) Explosives detection equipment controlled under ECCN 2A983.
- (xii) “Software” (ECCN 2D983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.
- (xiii) “Technology” (ECCN 2E983) specially designed or modified for the “development”, “production” or “use” of explosives detection equipment controlled by 2A983.
- (xxi) Technology for the production of Chemical Weapons Convention (CWC) Schedule 2 and 3 Chemicals controlled under ECCN 1E355.

■ 11. Supplement No. 2 to part 742 is amended:

- a. By revising paragraph (b)(3)(ii);
- b. By revising paragraph (c)(39);
- c. By adding a new paragraph (c)(40);
- d. By redesignating paragraphs (c)(41) through (c)(44) as (c)(42) through (c)(45); and
- e. By adding a new paragraph (c)(41) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

- (b)
- (3) * * *
- (ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through

(c)(19), and (c)(22) through (c)(44) of this Supplement.

(c) * * *

(39) Explosives detection equipment described in ECCN 2A983.

(i) Explosives detection equipment described in ECCN 2A983, controlled prior to April 3, 2003 under ECCN 2A993.

(A) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(B) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(C) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

(D) *North Korea*. Applications for all end-users in North Korea of these items will generally be denied.

(ii) Explosives detection equipment described in ECCN 2A983, not controlled prior to date April 3, 2003 under ECCN 2A993.

(A) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(B) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(C) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(D) *North Korea*. Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

(40) “Software” described in ECCN 2D983 specially designed or modified for the “development”, “production” or “use” of explosives detection equipment.

(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea*. Applications for all end-users in North Korea of these items

will generally be denied. Contract sanctity date: March 21, 2003.

(41) "Technology" described in ECCN 2E983 specially designed or modified for the "development", "production" or "use" of explosives detection equipment.

(i) *Iran*. Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(ii) *Syria*. Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: March 21, 2003.

(iii) *Sudan*. Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date for reexports by non-U.S. persons: March 21, 2003.

(iv) *North Korea*. Applications for all end-users in North Korea of these items will generally be denied. Contract sanctity date: March 21, 2003.

* * * * *

■ 12. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 762-[AMENDED]

■ 13. Section 762.2 is amended:
By redesignating paragraphs (b)(4) through (41) as (b)(6) through (43) and by adding new paragraphs (b)(4) and (5) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(4) § 740.10(c), Servicing and replacement of parts and equipment (RPL);

(5) § 740.13(f), Technology and software-unrestricted (TSU);

* * * * *

■ 14. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c, 22 U.S.C. 3201 et seq., 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Pub. L. 106-387; Sec. 221, Pub. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

PART 774-[AMENDED]

■ 15. In Supplement No. 1 to part 774, the Commerce Control List, Category 2

(Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by removing Export Control Classification Number (ECCN) 2A993 and adding a new ECCN 2A983 reading as follows:

2A983 Explosives or detonator detection equipment, both bulk and trace based, consisting of an automated device, or combination of devices for automated decision making to detect the presence of different types of explosives, explosive residue, or detonators; and parts and components, n.e.s.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number

Related Controls: N/A

Related Definitions: (1) For the purpose of this entry, automated decision making is the ability of the equipment to detect explosives or detonators at the design or operator-selected level of sensitivity and provide an automated alarm when explosives or detonators at or above the sensitivity level are detected. This entry does not control equipment that depends on operator interpretation of indicators such as inorganic/organic color mapping of the items(s) being scanned. (2) Explosives and detonators include commercial charges and devices controlled by 1C018 and 1C992 and energetic materials controlled by ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1 Category V.

Items:

Note: Explosives or detonation detection equipment in 2A983 includes equipment for screening people, documents, baggage, other personal effects, cargo and/or mail.

a. Explosives detection equipment for automated decision making to detect and identify bulk explosives utilizing, but not limited to, x-ray (e.g., computed tomography, dual energy, or coherent scattering), nuclear (e.g., thermal neutron analysis, pulse fast neutron analysis, pulse fast neutron transmission spectroscopy, and gamma resonance absorption), or electromagnetic techniques (e.g., quadropole resonance and dielectrometry).

b. Explosives detection equipment for automated decision making to detect and identify the presence of explosive residues utilizing, but not limited to, explosives trace detection techniques (e.g., chemiluminescence, ion mobility spectroscopy and mass spectroscopy).

c. Detonator detection equipment for automated decision making to detect and identify initiation devices (e.g. detonators, blasting caps) utilizing, but not limited to, x-ray (e.g. dual energy or computed tomography) or electromagnetic techniques.

■ 16. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2D983 reading as follows:

2D983 "Software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry	RS Column 2
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: \$ value

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 17. In Supplement No. 1 part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by revising the heading of Export Control Classification Number (ECCN) 2E001 reading as follows:

2E001 "Technology" ACCORDING TO THE GENERAL TECHNOLOGY NOTE FOR THE "DEVELOPMENT" OF EQUIPMENT OR "SOFTWARE" CONTROLLED BY 2A (EXCEPT 2A983, 2A991, OR 2A994), 2B (EXCEPT 2B991, 2B993, 2B996, 2B997, OR 2B998), OR 2D (EXCEPT 2D983, 2D991, 2D992, OR 2D994).

* * * * *

■ 18. In Supplement No. 1 part 774, the Commerce Control List, Category 2 [Materials Processing, Chemicals, Microorganisms, and Toxins], is amended by revising the heading of Export Control Classification Number (ECCN) 2E002 reading as follows:

2E002 "Technology" according to the General Technology Note for the "production" of equipment controlled by 2A (except 2A983, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

* * * * *

■ 19. In Supplement No. 1 to part 774, the Commerce Control List, Category 2 (Materials Processing, Chemicals, Microorganisms, and Toxins), is amended by adding new Export Control Classification Number (ECCN) 2E983 reading as follows:

2E983 "Technology" specially designed or modified for the "development", "production" or "use" of equipment controlled by 2A983, or the "development" of software controlled by 2D983.

License Requirements

Reason for Control: RS, AT

Control(s)	Country chart
RS applies to entire entry AT applies to entire entry	RS Column 2 AT Column 1

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: N/A

Related Controls: N/A

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

Dated: March 24, 2003.

James J. Jochum,
Assistant Secretary for Export
Administration.

[FR Doc. 03-7696 Filed 4-2-03; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

RIN 1006-AA46

Public Conduct on Bureau of Reclamation Lands and Projects; Extension of Expiration Date

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule extends the expiration date for the rule governing public conduct on Reclamation lands and projects to April 17, 2005. The rule is currently set to expire on April 17,

2003. The additional time will allow the Bureau of Reclamation to prepare and publish a more comprehensive rule. **EFFECTIVE DATE:** Effective April 3, 2003, the expiration date of 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, is extended from April 17, 2003, to April 17, 2005.

ADDRESSES: Address any questions concerning this rule to Larry Todd, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: Gary Anderson, Safety, and Law Enforcement, Bureau of Reclamation, 6th and Kipling, Building 67, Denver, CO 80225. Telephone (303) 445-2891
SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 2001, terrorists launched attacks on targets within the United States. Following the terrorist attacks, on November 12, 2001, Congress enacted Public Law 107-69 (now codified at 43 U.S.C. 373b and 373c), for the purpose of providing law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of Public Law 107-69 law requires Reclamation to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." Pursuant to that statutory requirement, Reclamation issued a final rule, 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, on April 17, 2002 (now codified at 43 CFR 423.1-423.10). That rule's preamble set the rule to expire on April 17, 2003, based on Reclamation's intent to develop a more comprehensive public conduct rule by that date.

A more comprehensive rule is currently under development, but additional time is needed to complete that rulemaking. In order to avoid a period during which no rule is in place addressing public conduct on our lands and facilities, Reclamation has decided to extend the expiration date of the existing rule from April 17, 2003, to April 17, 2005.

II. Procedural Requirements

A. Determination To Issue Final Rule Without Notice and Comment, and Effective in Less Than 30 Days

The Administrative Procedure Act (APA) generally requires agencies to provide advance notice and an opportunity to comment on agency

rulemakings. However, the APA allows an agency to promulgate rules without notice and comment when an agency, for good cause, finds that notice and public comment are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(3)(B)). To the extent that 5 U.S.C. section 553 applies to the rule, good cause exists to exempt this rulemaking from advance notice and comment.

Allowing a period for advance notice could result in the expiration of the existing rule before this rule, which extends the expiration date, goes into effect. A period without a rule in place addressing public conduct on Reclamation lands and projects would result in a serious disruption in the protection of Reclamation facilities and property, with accompanying confusion to employees and the public. Such disruption and confusion would be contrary to public and national security interests.

We expect to issue a comprehensive rule that would supersede the existing rule in the near future. Establishing a public comment period for the extension of the existing rule's expiration date is likely to create significant public confusion in that such a comment period might closely coincide with the comment period on the proposed comprehensive rule.

Finally, the existing rule which was issued on April 17, 2002, generated virtually no public reaction. Despite our request for comments on the rule, we received only one nonsubstantive comment. Therefore, it is not reasonable to expect that mere extension of the rule's expiration date would result in substantive comments from the public.

For the foregoing reasons, we conclude it is impracticable, unnecessary, and contrary to the public interest to request public comment on this rule.

We have also determined that good cause exists to waive the requirement of publication 30 days in advance of the rule's effective date under 5 U.S.C. 553(d)(3). As discussed above, it is essential that the existing rule's expiration date be extended before the rule expires. If the rule expired without any additional action, Reclamation would face a situation in which no rule exists governing public conduct on Reclamation facilities and property. Such a situation would be harmful to the security of Reclamation facilities and property and therefore not in the public interest, as well as national security interests. Also, a period during which no rule was in effect would create both legal and public confusion. Finally, even if the 30-day period were

From: "Wenger, Lisa Sampson" <WengerLS@T.state.gov>
To: "squarter@bis.doc.gov" <squarter@bis.doc.gov>
Date: 5/19/03 2:05PM
Subject: Comment on interim rule RIN 0694-AB87

Hello, Sheila. Please accept this as a comment from the Department of State pursuant to Federal Register Notice in Vol. 68, No. 64 of April 3, 2003.

Please revise the heading for ECCN **2A983** as follows:

2A983 Equipment and its parts and components for use in commercial establishments (e.g., airports, public buildings) when the equipment is for automated decision making to detect the presence of different types of explosives, explosive residue, both bulk and trace based, or detonators for explosives. The explosives detected by such equipment are both those covered by this subchapter or those controlled by the Department of State, 22 CFR 121 .1, Category V.

Thank you.

CC: "Tomchik, Stephen J" <TomchikSJ@state.gov>

POLINER & LUKS LLP

Michael C. Poliner, Attorney at Law
Harold Paul Luks, Export Control & Int'l Trade Advisor

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May 19, 2003

Ms. Sheila Quarterman
Regulatory Policy Division
Bureau of Industry and Security
U.S. Department of Commerce
P.O. Box 273
Washington, DC 20044

Re: Comments on the Interim Rule (68 Fed. Reg. 16208 (April 3, 2003))
on Exports and Reexports of Explosives Detection Equipment

Dear Ms. Quarterman:

On behalf of GE Ion Track Instruments, Inc. ("GE Ion Track"), herewith are comments related to certain aspects of the Interim Rule on "Exports and Reexports of Explosives Detection Equipment and Related Software and Technology; Imposition and Expansion of Foreign Policy Controls" published by the Bureau of Industry and Security ("**BIS**") in the Federal Register on April 3, 2003. This Interim Rule was published with a request for comments, and GE Ion Track understands that its submission will be made available to the public. This submission does not contain proprietary or confidential information.

Background

Within days of publication, it became apparent that the Interim Rule did not effect a transfer of export licensing jurisdiction **from** the State Department's Directorate of Defense Trade Controls ("**DTC**") to **BIS**. In sum, notwithstanding the creation of new Export Classification Control Numbers ("**ECCNs**") for explosive trace detection hardware, software and technology (*i.e.*, **2A983**, **2D983** and **2E983**, respectively), these items were still classified within the United States Munitions List ("**USML**"), Part 121 of the International **Traffic** in Arms Regulations ("**ITAR**"). Moreover, in certain respects described more particularly below, the Interim Rule actually imposed more restrictive export licensing rules than exist currently under the **ITAR**. Based on nearly two years of discussions with the Departments of Commerce, State, Defense and other U.S. government agencies, such additional restrictions appear to be inconsistent with the interagency agreement to shift jurisdiction **from** **DTC** to **BIS**. GE Ion Track strongly recommends that these additional export-licensing restrictions be removed, as **BIS** considers revisions to the Interim Rule. In addition, GE Ion Track has proposed certain additional modifications to the Interim Rule that are in accord with the established Commerce

Department policy to eliminate or reduce the requirement to obtain export licenses for items subject to the Export Administration Regulations (“EAR”) when traded among countries that participate in the multilateral enforcement of export controls.

GE Ion Track has previously **identified** a number of reasons why the continued export of its equipment under the **ITAR** was detrimental to U.S. national **security** and foreign policy objectives related to the war against terrorism, Operation Enduring Freedom and the protection of Americans abroad. In addition, the inability of GE Ion Track to export its equipment under the Export Administration Regulations (“EAR”) continues to impose a severe disability on the company, particularly with respect to potential sales in China. There appears to be little doubt that other Western companies are making sales of similar equipment to China.

GE Ion Track believes it would be useful to review further the assumptions regarding foreign availability noted in the Commerce Department’s Foreign Policy Reports to Congress for 2002 and 2003. Both Reports include the statement that BIS “is not aware of foreign competitors that, at this time, produce the highest level of Federal Aviation **Administration**-certified explosive detection equipment.” It would appear that this claim provides a justification for U.S. unilateral, **RS2-based**, export licensing controls. However, GE Ion Track understands that the Transportation Security Administration (which has assumed the **functions** of the FM) purchases explosive trace detection equipment that is *not* manufactured in the United States. Foreign-made explosive trace detection equipment seeks to compete with the U.S. industry for both commercial sales and procurements by federal government agencies, including the TSA.

Furthermore, GE Ion Track knows that non-U.S. origin explosive trace detection equipment is currently procured by private entities and government agencies in Europe, Latin America and Asia. Whether the TSA certifies such equipment is not the determining factor governing the purchase of devices to detect Improvised Explosive Devices (“**IEDs**”) of the type used by terrorists. The Reports to Congress for 2002 and 2003 also note that BIS “will work with industry to minimize any adverse economic effect that may result” from the expanded controls on explosive detection equipment. In light of foreign availability issues, there is a heightened need for BIS, and the other Departments involved in developing the Interim Rule, to consider the impact on U.S. industry.

Thus, in spite of the difficulties related to the Interim Rule, the ongoing discussions between the Departments of Commerce and State to resolve the jurisdictional issues now afford an opportunity to improve the Interim Rule *and* provide an opportunity to effect a transition from the **ITAR** to the EAR that will not further disrupt U.S. exports. These points are discussed in more detail below.

¹ The 2002 Report, but not the Report for 2003, notes: “there also are foreign manufacturers of explosive detection equipment – although none produce items with the same technical capabilities as the U.S. products.” 2002 Report on Foreign Policy Export Controls at 24-25.

A. The Interim Rule Should Authorize Exports under License Exception TMP

The Interim Rule authorizes, subject to specific limitations, the partial use of only three License Exceptions from the requirement to obtain licenses for exports and reexports.² For the reasons reviewed below, the applicable License Exceptions should be expanded to include, among others, the License Exception for Temporary Imports, Exports, and Reexports (“TMP”). EAR § 740.9.

As a general principle, jurisdiction over explosive detection equipment under the EAR should not be more restrictive than under the ITAR. Under the ITAR, following the initial licensing of hardware for one trade show or public exhibition, the same hardware may be exported to other similar events without the requirement to obtain additional export licenses. For explosive detection equipment, the ITAR permits the use of this “exemption” except for exports to proscribed countries, *i.e.*, those countries in ITAR § 126.1 to which the U.S. maintains a policy of denying export license applications. The text of the ITAR exemption follows:

District Directors of Customs shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the District Director of Customs that these conditions are met. [ITAR 123.16(b)(5).]

The inability of GE Ion Track to export equipment under a similar exception in the EAR, License Exception TMP, would impose a major impediment on the company’s ability to participate in a timely manner in public exhibitions, trade shows, air shows or related events.

GE Ion Track has obtained DTC approval to demonstrate its equipment to foreign government agencies, quasi-governmental entities, and private sector companies that provide security services for governmental entities (e.g., airport authorities) and other private sector entities. Such licenses have also been used to authorize short-term trials of GE Ion Track

² The three exceptions are:

- Servicing and Replacement of Parts and Equipment (“RPL”),
- Government, International Organizations, and Inspections under the Chemical Weapons Convention (“GOV”), an exception that also includes shipment to U.S. government agencies and agencies of certain other specified governments, and
- Technology and Software Unrestricted (“TSU”).

equipment to demonstrate its effectiveness, ease of use and reliability. *The State Department did not deny any of these export license applications.*

License Exception TMP would authorize the temporary export of GE Ion Track's equipment for "exhibition and demonstration" purposes to Country Group B countries. EAR Supplement No. 1 to Part 740. The regulations regarding the TMP **exception** impose a series of obligations and pre-conditions that would forestall the potential diversion of equipment to unauthorized end-users or end-uses. These are as follows. EAR § 740.9(2)(iii).

- The exporter must maintain ownership of the equipment.
- The exporter, an employee of the exporter, or the exporters "designated sales representative" must retain effective control over the equipment while it is abroad.
- The hardware "may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration."
- Unless authorized by BIS, exhibition at any one site is limited to not more than 120 days **after** installation.
- Commodities must be returned to the United States within one year from the date of exportation.
- Use of the exemption is conditioned upon the exporter retaining "effective control" over the disposition of the hardware, such as storage in a bonded warehouse or being locked in a guarded facility. **See** also "Effective Control" in EAR Part 772 ("Definitions).
- At the time of shipment, the export documentation must "show the U.S. exporter as the ultimate consignee, in care of the person who will have control over the commodities. . . abroad."

In addition to these specific limitations, the EAR imposes additional general restrictions on the use of all License Exceptions. EAR § 740.2. As a precondition for relying on TMP, an exporter must review the proposed export against the Ten General Prohibitions, including embargoed destination and parties. Therefore, given the scope of restrictions that must be reviewed prior to reliance on TMP, the inclusion of TMP within the revised regulation for ECCNs 2A983, 2D983 and 2E983 should authorize the temporary export of explosive detection equipment for exhibitions *and* demonstrations.

B. The Interim Rule Should Expand the Scope of License Exception TSU to Include “Sales Technology”

The Interim Rule restricts the use of TSU to “operational technology and software” (*i.e.*, EAR § 740.13(a)) and “software updates (*i.e.*, EAR § 740.13(c)). The Interim Rule does *not* state clearly that exporters may rely on TSU for the export of “sales technology.” This is another instance where the Interim Rule is stricter than the ITAR and appears to impose an unintended restriction on marketing activities.

Sales technology, as defined in the EAR, is “data supporting a prospective or actual quotation, bid, or offer to sell, lease, or otherwise supply any item [subject to the EAR].” EAR § 740.13(b). Under the EAR, sales technology is considered to include data “customarily transmitted with a prospective or actual quotation, bid, or offer in accordance with established business practice” and does not “disclose the detailed design, production, or manufacture technology, or the means of reconstruction, of either the quoted item or its product.” This same provision notes: “The purpose of this limitation is to prevent disclosure of technology so detailed that the consignee could reduce the technology to production.” EAR § 740.13(b)(2)(i)(A)-(B). Under the Interim Rule, this type of marketing information (*i.e.*, sales technology) appears to be excluded from the scope of TSU. The ability to use the TSU exemption for sales technology is fundamental to marketing products abroad. Otherwise, the ability to respond to marketing opportunities would be contingent upon securing BIS approval for marketing licenses. In addition, the EAR notes that the use of TSU for marketing purposes does not obligate BIS to approve an export license.

Under the ITAR there is a general requirement to obtain licenses for the export of ITAR-controlled “technical data,” as that term is defined by ITAR § 120.10. The ITAR definition of technical data, however, *excludes* “basic marketing information on function or purpose or general system description of defense articles.” Thus, the ITAR imposes no restriction on GE Ion Track’s ability to export basic marketing information. Even though sales technology under the EAR may include slightly more information than basic marketing information under the ITAR, the difference is not significant enough to preclude the use of TSU.

As established by the Interim Rule, ECCN 2E983 applies RS2 licensing controls to technology “specially designed or modified” for the “development”, “production” or “use” of explosive detection equipment controlled by ECCN 2A983. The Interim Rule authorizes the use of TSU for operational technology (*i.e.*, use technology) for legally exported goods. However, because sales technology could include limited aspects of “development” or “production” technology in ECCN 2E983, particularly given the expansive definitions of these terms in the EAR, the revised Interim Rule should make clear that TSU authorizes the release of sales technology to foreign persons.

The Interim Rule imposes comprehensive record keeping requirements to document the export of software or technology. These requirements, among other things, include a description of the information or software, the specific goods to which they relate, the intended end-user, the name and address of the end-user, and the location of the equipment for which the information or software will be used. Given these special controls, which do not apply to other TSU-eligible technology or software, there should be no restriction on U.S. exporters from having the ability to fully utilize TSU for the export of sales technology.

C. The Interim Rule Should Modify the Interim Rule to Confirm the Transfer of Jurisdiction from the ITAR to the EAR

The Interim Rule does not explicitly confirm the transfer of jurisdiction of explosive detection equipment from the **ITAR** to the EAR. Prior transfers of jurisdiction from the **ITAR** to the EAR have been accomplished by an explicit acceptance in the Federal Register notice issued by the Bureau of Export Administration and an explicit release in the Federal Register notice issued by DTC. This process should be replicated regarding the shift in jurisdiction for explosive detection equipment.

For example, when BXA accepted jurisdiction over commercial communications satellites and hot section technology for aircraft engines, the new regulation as published in the Federal Register contained a detailed explanation of the items that were being made subject to the EAR. This review included several references to **ITAR** provisions and terminology, thus leaving no doubt as to what was being made subject to the EAR. 61 Fed. Reg. 54540 (October 21, 1996). Shortly thereafter, DTC published an amendment to the **ITAR** stating explicitly that aircraft engine hot section technology “will be controlled on the Commerce Control List (CCL) of dual-use items that are licensed by Commerce. Commercial communications satellites will be controlled on the dual-use list, as well.” 61 Fed. Reg. 56894 (November 5, 1996).³ Thus, the transfer of jurisdiction was effective because the Department of Commerce asserted jurisdiction over these products and the Department of State affirmatively released the products from the United States Munitions List to the Commerce Control List. This pattern needs to be replicated with respect to jurisdiction over explosive detection equipment and related software and technology.

Moreover, for transfer of jurisdiction to occur, which presumably will be based upon an existing interagency agreement, the Department of State must issue a response to GE Ion Track’s appeal of the Commodity Jurisdiction (“**CJ**”) determination of June 6, 2001, that asserted jurisdiction over certain explosive detection equipment. Subsequent correspondence from the Department of State to GE Ion Track and to another manufacturer underscored the application of

³ There have been other instances when DTC release and Commerce accepted jurisdiction over items previously classified in the United States Munitions List and thus subject to **ITAR** licensing controls.

ITAR-based export licensing controls. To date, ODTC has not issued a response to GE Ion Track's appeal of this CJ. The forthcoming interagency discussions regarding revisions to the Interim Rule should, in addition, focus on the status of the pending CJ since resolution of this matter is related directly to the applicability of the new Export Classification Control Numbers ("ECCNs") established by the Interim Rule for explosive detection equipment, software and technology.

With respect to the overall issue of jurisdiction, we understand that the Department of State has reviewed and approved the transfer of jurisdiction to Commerce. It has cleared a formal notification to Congress. Therefore, **there** should be no impediment to the issuance of an affirmative response to GE Ion Track's appeal of the CJ determination. This would have the immediate effect of permitting the export of GE Ion Track equipment to Country Group A:1 countries in Supplement No. 1 to Part 740 of the EAR, the Czech Republic, Hungary, Iceland, New Zealand and Poland *and* would then provide the opportunity for the interagency review to expand the number of countries exempt from licensing requirements and to expand the applicability of certain License Exceptions.

D. The Interim Rule Should be Modified to Include a Transition Period to Permit Exporters to Use both the ITAR and BIS Export Regulations

The Interim Rule did not address the status of export licenses issued under the **ITAR** for (1) the permanent export of hardware, (2) the temporary export of hardware for trade shows, demonstrations and trials and (3) the status of pending export license applications submitted to DTC. GE Ion Track requests a transition period of not less than six months.

An interim period would permit the Department of Commerce and other agencies involved in the export license review process to consider and approve a relatively significant number of new license applications. This would permit GE Ion Track, and other companies affected by the revised Interim Rule, to prepare the necessary license applications. Because of the substantial number of export licenses issued by DTC, it would be preferable for these **ITAR** licenses to remain in effect for a **sufficient** period of time to permit the issuance of replacement/substituted licenses. Alternatively, a companion rule issued by DTC could make clear that **ITAR** licenses issued before a certain date remain valid for their four year validity period or until returned to DTC by the applicant.

During this interim period, every effort should be made by DTC to issue pending export license applications. Moreover, special attention should be given to those applications where there is a presumption of denial under the **ITAR**, but where there is no such presumption under the EAR. We urge that **BIS** raise this issue in its deliberations with DTC over the Interim Rule. It should be possible either to approve such license applications under the **ITAR** or to develop a mechanism for their transfer to **BIS**.

Finally, during **this** transition period, it would be helpful if a directive were provided to the U.S. Customs Services advising them of the status of the jurisdictional transfer from the **ITAR** to the EAR *and* that export licenses issued under authority of the **ITAR** remain valid. Thus, in effect, for some period of time exporters would have the ability to rely on export licenses issued under authority of the EAR and the **ITAR**. Exporters could attach a copy of this notice to their shipping documents to avoid confusion at the time of **export**, thereby avoiding possible detentions and seizures of legitimate exports. This would permit exporters to **identify** either an **ITAR**- or BIS-approved export license number, BIS License Exception or **ITAR** exemption on Shipper's Export Declaration ("SED") that is collected by U.S. Customs.

E. The Interim Rule Should Expand the Scope of Countries Exempt from RS2 License Requirements and Interagency Staffing and Review

Under Regional Stability Column 2 Controls ("**RS2**") (EAR § 742.6(a)(2)), the list of countries exempted from export licensing requirements should be expanded to include the following "Cooperating Countries" identified in EAR Supplement No. 1 to Part 740.

Austria	Sweden
Finland	Switzerland
South Korea	

Alternatively, if it is not possible within the next 60 days to expand the number of countries exempt **from** licensing requirements under RS2 controls, we urge BIS to negotiate a broad interagency delegation of authority that would permit BIS to unilaterally review and approve export license applications to the five cooperating countries identified immediately above *and* to additional countries identified in Country Group B (EAR Supplement No. 1 to Part 740.) With respect to Country Group B, we recommend that full interagency review be waived, and that BIS have the unilateral authority to issue export licenses for those countries that are members of the Organization of American States *and* for which there is no requirement to obtain Import Certificates and/or a Statement of Ultimate Consignee and Purchaser (BIS Form 711) in support license applications. EAR §§ 748.9(a)(1)⁴ and 748.11(a)(4), respectively.

As stated in the EAR, export license applications for commodities subject to RS Column 2 controls will "generally be considered favorably on a case-by-case basis unless there is evidence that the export or reexport would contribute significantly to the destabilization of the region to which the equipment is destined." EAR § 742.6(b)(1). With respect to various classes

4 This list of 33 countries includes Canada that is exempt from all licensing requirements under the proposed Interim Rule.

of end-users established by approved export license applications under the ITAR⁵, the presumption of favorable approval under the EAR for items subject to RS2 controls, and the favored position of most Latin American countries in the EAR, it should not be necessary to require interagency staffing for exports to these countries. A similar logic should be applied to identify other countries in Country Group B and exempting export license applications for end-users in these countries from interagency staffing.

F. The Interim Rule Should Expand the Scope of License Exception GOV to Include Certain Cooperating Countries

The Interim Rule restricts License Exception GOV to “items consigned to and for the official use of any agency of the U.S. Government.” EAR § 740.1 1(b)(2)(ii). This provision is similar to an ITAR licensing exemption for expedited exports to U.S. government agencies. ITAR § 126.4(c). Under the Interim Rule, however, explosive detection equipment, software and technology are already exempt from licensing controls when exported to twenty-one countries (i.e., sixteen Country Group A: 1 and five Country Group B countries). Accordingly, there is no need to rely on GOV to export to qualifying government agencies of these countries.

However, as noted above in Section E of this letter, GE Ion Track believes exports to cooperating countries should *not* be subject to export licensing controls. At a minimum, the scope of License Exception GOV should be expanded to include exports in 2A983 and 2D983 to agencies of ten additional cooperating governments. These countries are identified in EAR § 740.1 1(b)(2)(ii) and are as follows.⁶

⁵ End-users include: national and local government agencies, quasi-governmental entities, private sector companies that provide security services for airport authorities, governmental buildings, entities that are open to the general public, such as museums and auditoriums, and private entities such as shipping companies, banks, and other private sector facilities that could be terrorist targets.

⁶ New Zealand, which is included in the EAR provision above, is already exempted from license requirements by the Interim Rule.

Argentina	Republic of Korea
Austria	Singapore
Finland	Sweden
Hong Kong ⁷	Switzerland
Ireland	Taiwan

Given that each of these ten governments has entered into an agreement with the United States to cooperate on export control matters, it seems reasonable they should be included within the scope of **GOV**.

The structure of the EAR permits flexibility in focusing specific controls on specific countries. For example, Supplement No. 1 to Section 740.11 (Additional Restrictions on Use of License Exception **GOV**) is designed to exclude items from the scope of **GOV**, *except* to certain countries; This flexibility should be applied not only with respect to the proposed expansion of **GOV**, but also to other license exceptions. This would enhance the competitiveness of the U.S. industry and would be consistent with general objective of facilitating the deployment of explosive detection equipments, a goal clearly in the national interest of the United States.

GE Ion Track is suggesting a series of modest steps to expand the scope of the Interim Rule to include certain government agencies and countries that already benefit from a broad range of License Exceptions for items controlled for reasons of national security. A relatively small set of commodities, software and technology are “controlled” under RS2 U. S.-based unilateral controls, *i.e.*, items on the International Munitions List in six ECCNs OA018, IBO18, 2B018, 9A018, 9D018 and 9E018. Therefore, BIS has the discretion, and the EAR provides the flexibility, to impose one set of RS2 controls on products in the ECCNs identified above and another set of **RS2-based** controls for explosive detection equipment. Since RS controls do not have a multilateral basis, if at some future date another product, or group of products, were to be made subject to RS2 controls, there is nothing to prevent BIS from applying a product-specific set of controls to such items.

**G. The Interim Rule Should Permit Exports & Reexports among Countries
Exempt from RS2 License Requirements and Certain Cooperating Countries**

The Interim Rule does not authorize the use of the License Exception for Additional Permissive Reexports (“**APR**”). EAR § 740.16. Under **APR**, subject to certain conditions, reexports are authorized to and among Country Group A:1 and cooperating countries. EAR § 740.16(b). Authorizing use of this provision within APR would be in accord with the existing

⁷ Hong Kong is identified as a cooperating country in EAR Supplement No. 1 Part 740. As a cooperating country, and given the many other national security and multilaterally controlled products that are exportable to Hong Kong under License Exception **GOV**, there does not appear to be a compelling reason why Hong Kong and each of the other cooperating countries should be excluded from **GOV**.

Ms. Sheila Quarterman
Bureau of Industry and Security
May 19, 2003
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exclusion in the Interim Rule of Country Group A:1 from licensing requirements and the proposed expansion to include cooperating countries.

Considering that the United States is controlling explosive detection equipment as a unilateral measure, authorizing such reexports would also -take into account the need for cooperating with those countries that control exports on a **multilateral** basis and avoids an unnecessary extension of U. S extraterritorial controls.

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GE Ion Track appreciates the efforts of the Bureau of Industry and Security to bring to closure the jurisdictional issues regarding explosive detection equipment. Furthermore, GE Ion Track hopes that its comments on the Interim Rule will contribute to this effort. Adoption of GE Ion Track's recommendations in revising the Interim Rule would eliminate a substantial competitive disadvantage to the U.S. industry, while enhancing the ability of governmental and private sector end-users abroad to detect and interdict those persons who seek to disrupt the international order through acts of terror.

If you have questions regarding this submission, please contact Walter Kopek (Vice President, Operations, GE Ion Track) at (978) 658-3767, ext. 1269 or Harold Paul Luks at Poliner & Luks LLP.

Sincerely,


Poliner & Luks LLP