

following officials of the Cuban Government and Cuban Communist Party:

(i) *Ineligible Cuban Government Officials.* Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(ii) *Ineligible Cuban Communist Party Officials.* Members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

PART 746—[AMENDED]

■ 6. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 7. Section 746.2, is amended by adding a paragraph (a)(1)(xiii) and by revising paragraph (b)(2) to read as follows:

§ 746.2 Cuba.

(a) * * *

(1) * * *

(xiii) Commodities and software authorized under License Exception Consumer Communications Devices (CCD) (*see* § 740.19 of the EAR).

* * * *

(b) * * *

(2) Items may be authorized for export or reexport to Cuba on a case-by-case basis, provided the items are necessary to provide efficient and adequate telecommunications links between the

United States and Cuba, including links established through third countries, and including the provision of satellite radio or satellite television services to Cuba.

* * * * *

Dated: September 1, 2009.
Matthew S. Borman,
Acting Assistant Secretary for Export Administration.
[FR Doc. E9–21402 Filed 9–3–09; 4:15 pm]
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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 090126062–91139–01]

RIN 0694–AE54

Revisions to Certain End-User Controls Under the Export Administration Regulations; Clarification Regarding License Requirements for Transfers (in-country) to Persons Listed on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to make revisions to three sections that are used by the United States Government as the basis for placing persons onto the Entity List. These three sections specified license requirements for exports and reexports to persons listed on the Entity List, however; the sections were silent regarding whether or not the scope of the licensing requirements included transfers (in-country). This rule adds transfers (in-country) to the scope of the license requirements under each of the three sections. As a result of adding transfers (in-country) to these three end-user controls, all of the end-use and end-user controls that are used as a regulatory basis for placing persons on the Entity List now specify that the scope of the license requirements includes exports, reexports, and transfers (in-country).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective September 8, 2009. Although there is no formal comment period,

public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE54, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include “RIN 0694–AE54” in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE54.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet.K.Seehra@omb.eop.gov or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694–AE54)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–3343, *Fax:* (202) 482–3911, *E-mail:* bscott@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited. Persons are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from or changes to the Entity

List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

There are six sections in part 744 of the EAR that provide the regulatory basis for putting persons on the Entity List: §§ 744.2, 744.3, 744.4, 744.10, 744.11, and 744.20. Sections 744.2, 744.3, and 744.4 are foreign policy end-user controls under the EAR that prohibit transactions destined for certain nuclear, missile or chemical and biological end-uses. Sections 744.10, 744.11, and 744.20 are foreign policy end-user controls that prohibit transactions destined for certain individuals. Prior to the publication of this rule, the three end-user controls each specified that they applied to exports and reexports, but were silent on whether these end-user controls also applied to transfers (in-country). The United States Government intends the license requirements for §§ 744.10, 744.11, and 744.20 to apply to transfers (in-country) as well as to exports and reexports. Therefore, this rule extends the scope of these three sections to include transfers (in-country).

The rationale for the extension of this license requirement to include transfers (in-country) is that the United States Government's objective in placing a person on the Entity List on the basis of one of the end-user controls in part 744 of the EAR is to have an opportunity to review any transaction involving items subject to the EAR prior to shipment or transfer (in-country) to a listed person. Regardless of the form of the transaction (export, reexport, or transfer (in-country)), the United States Government believes it is important to review all transactions involving persons listed on the Entity List prior to the initiation of a transaction with a listed person and/or receipt by the listed person of an item in a transaction.

In publishing this rule, the United States Government is achieving the export control objective of allowing the United States Government to have prior review of any transaction involving items subject to the EAR and persons included on the Entity List. This prior review is important because the United States Government does not want these end-users of concern (*i.e.*, persons listed on the Entity List) to receive items subject to the EAR that might allow them to continue their activities of concern without specific United States Government authorization.

This rule also clarifies that prior to the publication of this rule, persons added to the Entity List on the basis of their involvement in the activities described in sections 744.2, 744.3 and

744.4, as described above, were subject to licensing requirements applicable to exports, reexports, and transfers (in-country).

This rule makes the following revisions to the Export Administration Regulations:

In Section 744.10 (Restrictions on Certain Entities in Russia), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports, and transfers (in-country). Specifically, this rule revises the second sentence of paragraph (a) to specify that a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to such entities (*i.e.*, persons added to the Entity List on the basis of § 744.10). This rule also revises paragraph (c) to specify that license applications to transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

In Section 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports, and transfers (in-country). To broaden the scope of this end-user control, this rule makes three changes to this section. First, this rule revises the first sentence of the introductory text of this section to specify that transfers (in-country) are within the scope of the foreign policy controls that BIS may impose under this section. Second, this rule revises the first sentence of paragraph (a) to specify that for the license requirements of this section, a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section (*i.e.*, persons added to the Entity List on the basis of § 744.11). Third, under paragraph (b)(5), this rule adds transfer (in-country) to the scope of this illustrative example provided for the criteria used for revising the Entity List in paragraph (b) of this section.

In Section 744.20 (License Requirements that Apply to Certain Sanctioned Entities), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user

control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports and transfers (in-country). Specifically, this rule revises the introductory text of paragraph (a) to specify that a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to such entities (*i.e.*, persons added to the Entity List on the basis of § 744.20). This rule also revises paragraph (b) to add transfer (in-country) to the general restriction on using license exceptions in paragraph (b) of this section. Lastly, this rule revises paragraph (c) to specify that license applications to transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

In Supplement No. 4 to part 744 (The Entity List) of the EAR, this rule revises the introductory text of the Entity List to specify that the license requirements for these entities includes exports, reexports and transfers (in-country), unless otherwise stated. This clarification is needed because now all of the sections of part 744 that provide the regulatory basis for adding a person to the Entity List include license requirements for exports, reexports and transfers (in-country), unless otherwise specifically stated in an entry on the Entity List for a listed person.

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a foreign policy report was submitted to Congress on August 11, 2009, notifying Congress of the imposition of foreign policy-based licensing requirements reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

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 be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget

(OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule.

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 or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised 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; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Section 744.10 is amended:

- a. By revising the second sentence of paragraph (a); and
- b. By revising paragraph (c), to read as follows:

§ 744.10 Restrictions on certain entities in Russia.

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR to such entities.

* * * * *

(c) *License review standard.*

Applications to export, reexport, or transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

■ 3. Section 744.11 is amended:

- a. By revising the first sentence of the introductory text of the section;
- b. By revising the first sentence of paragraph (a); and
- c. By revising paragraph (b)(5), to read as follows:

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

BIS may impose foreign policy export, reexport, and transfer (in-country) license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section.

* * *

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country)

any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section. * * *

(b) * * *

(5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review committee believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS’s ability to prevent violations of the EAR.

■ 4. Section 744.20 is amended:

- a. By revising the first sentence of the introductory text of the section;
- b. By revising the second sentence of paragraph (a); and
- c. By revising paragraphs (b) and (c), to read as follows:

§ 744.20 License requirements that apply to certain sanctioned entities.

BIS may impose, as foreign policy controls, export, reexport, and transfer (in-country) license requirements and set licensing policy with respect to certain entities that have been sanctioned by the State Department.

* * *

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item to such entities.

(b) License Exceptions. No license exception may be used to export, reexport, or transfer (in-country) to such entities unless specifically authorized on the Entity List.

(c) Licensing policy. Applications to export, reexport, or transfer (in-country) to such entities will be reviewed according to the licensing policy set forth on the Entity List.

■ 5. Supplement No. 4 to part 744 is amended by revising the introductory text, to read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.				

* * * * *

Dated: August 31, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9-21367 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9459]

RIN 1545-BH53

Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of governmental plans.

DATES: *Effective Date:* These regulations are effective on September 8, 2009.

Applicability Date: These regulations apply to all plan years to which section 401(a)(9) applies to the plan.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy V. Pastor or Michael P. Brewer at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(9) provides required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires ("the required beginning date"). If the entire interest of the participant is not distributed by the required beginning date, then section 401(a)(9)(A) provides that the entire interest of the participant must be distributed beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a

period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) provides the required minimum distribution rules after the death of the participant.

IRAs described in section 408, section 403(b) plans, and eligible deferred compensation plans under section 457(b), also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections. In 2002, the IRS and the Treasury Department published final regulations under sections 401(a)(9), 403(b), and 408 in the **Federal Register** (67 FR 18987). Section 1.401(a)(9)-1, A-2(a), provides that the final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. The rules for defined benefit plans and annuities were included in a temporary regulation, § 1.401(a)(9)-6T, as well as in a proposed regulation (67 FR 18834) in order to allow taxpayers to comment on the rules.

In 2004, the IRS and the Treasury Department replaced the temporary regulations with final regulations under § 1.401(a)(9)-6 (69 FR 33288). The final regulations contain a "grandfather rule" in Q&A-16, which provides that annuity distribution options provided under the terms of a governmental plan (within the meaning section 414(d)) as in effect on April 17, 2002, are treated as satisfying the requirements of section 401(a)(9) if they satisfy a reasonable and good faith interpretation of the provisions of section 401(a)(9). In addition, Q&A-17 provides that, for distributions from any defined benefit plan or annuity contract during 2003, 2004, and 2005, the payments could satisfy a reasonable and good faith interpretation of section 401(a)(9) in lieu of § 1.401(a)(9)-6. For governmental plans, § 1.401(a)(9)-6, Q&A-17, extended this reasonable good faith standard to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

In 2003, the IRS and the Treasury Department published final regulations under section 457(b) in the **Federal Register** (68 FR 41230). These regulations included § 1.457-6(d), which provides that a section 457(b) eligible plan must meet the

requirements of section 401(a)(9) and the regulations under that section.

In 2007, the IRS and the Treasury Department published final regulations under section 403(b) in the **Federal Register** (72 FR 41128). These regulations, which become effective for tax years beginning after December 31, 2008, included § 1.403(b)-6(e)(1), which provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)-6(e)(2) provides, with certain exceptions, that section 403(b) contracts apply the section 401(a)(9) required minimum distribution rules in accordance with § 1.408-8.

Section 1.408-8, Q&A-1, provides, with certain exceptions, that in order to satisfy section 401(a)(9) for purposes of determining required minimum distributions, the rules of § 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied.

Section 823 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA 06), instructs the Secretary of the Treasury to issue regulations under which, for all years to which section 401(a)(9) applies, a governmental plan, within the meaning of section 414(d), shall be treated as having complied with section 401(a)(9) if such plan complies with a reasonable good faith interpretation of section 401(a)(9).

On July 10, 2008, the IRS and Treasury Department published a notice of proposed rulemaking (REG-142040-07) in the **Federal Register** (73 FR 39630-01) proposing regulations that would implement section 823 of PPA 06 by amending the regulations under sections 401(a)(9) and 403(b) of the Code. The IRS and Treasury Department received no comments on the proposed regulations and no public hearing was requested or held. Accordingly, the provisions of these final regulations are identical to the proposed regulations.

Explanation of Provisions

The final regulations amend the regulations under section 401(a)(9) to treat a governmental plan, within the meaning of section 414(d), as having complied with the rules of section 401(a)(9) if the governmental plan applies a reasonable and good faith interpretation of section 401(a)(9). The same rule applies to an eligible 457(b) plan maintained by a government. In addition, this rule applies to a section 403(b) contract that is part of a governmental plan, and the regulations under section 403(b) are amended accordingly. The final regulations also make conforming amendments to the regulations under section 401(a)(9) that eliminate other special rules for