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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 772 and 774

[Docket No. 051028279-5279-01]

RIN: 0694-AD57

Establishment of New License Exception for the Export or Reexport to U.S. Persons in Libya of Certain Items Controlled for Anti-Terrorism Reasons Only on the Commerce Control List

AGENCY: Bureau of Industry and Security, Commerce

ACTION: Interim rule with request for comments

SUMMARY: In this interim rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement changes to export and reexport controls with respect to Libya. Specifically, in this rule, BIS establishes a License Exception authorizing the export or reexport to U.S. persons in Libya of certain items listed on the Commerce Control List

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and controlled for anti-terrorism (AT) reasons only. This rule is consistent with the President's decision to modify United States' sanctions against Libya, in response to Libya's continuing efforts to dismantle its weapons of mass destruction (WMD) and missile programs and its renunciation of terrorism.

DATES: This rule is effective [INSERT DATE OF PUBLICATION]. Comments must be received on or before [INSERT 30 DAYS FROM DATE OF PUBLICATION]

ADDRESSES: Written comments on this rule may be sent to the Federal eRulemaking Portal: <http://www.regulations.gov>, or by e-mail to publiccomments@bis.doc.gov. Include RIN 0694-AD57 in the subject line of the message. Comments may be submitted by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th & Pennsylvania Avenue, N.W., Room 2705, Washington, D.C. 20230, ATTN: RIN 0694-AD57; or by fax: 202-482-3355.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to (202)395-7285.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone: (202) 482- 4252, or E-mail: jroberts@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by creating a new License Exception authorizing the export or reexport of certain items controlled for anti-terrorism (AT) reasons only on the Commerce Control List (CCL) to U.S. persons in Libya. In consultation with U.S. industry, BIS has identified certain items controlled for AT reasons only which are essential for undertaking business or professional activities, including humanitarian activities, in Libya. Excepting these items from license requirements, when consigned to and for use by U.S. persons or their employees only, would facilitate the ability of U.S. persons to do business in Libya without adversely jeopardizing U.S. national security or foreign policy interests with respect to Libya.

This rule is consistent with the President's April 23, 2004, decision to modify United States' sanctions against Libya, in response to Libya's continuing efforts to dismantle its weapons of mass destruction and missile programs and its renunciation of terrorism.

Establishment of New License Exception USPL

BIS has determined that a change in policy is warranted for certain AT-controlled items that are essential for U.S. persons conducting business or professional activities in Libya. In drafting this rule, BIS considered a range of items controlled for AT reasons only and identified those that

could be excepted from license requirements when exported or reexported for the exclusive use of U.S. persons in Libya or their employees (within the scope of their employment). These items are widely available outside the United States, and have a low likelihood to contribute significantly to terrorism or WMD - related activities in Libya. Items classified under Export Control Classification Numbers (ECCNs) 2A994 (portable generators), 5A992 (encryption hardware), 5D992 ("Information Security" "software" not controlled by 5D002) and 9A990 (diesel engines), and certain items classified under ECCNs 3A991 (electronic devices), 3A992 (electronic equipment), 3B992 (test and inspection equipment for electronic components), 4A994 (computers), 5A991 (telecommunications equipment) are eligible for new License Exception United States Persons In Libya (USPL), as set forth in new section 740.19 of the EAR, when those items are exported or reexported to Libya consigned to and for use by U.S. persons and their employees only. The definition of U.S. person set forth in part 772 of the EAR is applicable to this new provision.

Items exported or reexported to Libya pursuant to the new License Exception USPL may only be used by U.S. persons or by non-U.S. person employees within the scope of their employment and must remain under the control and supervision of the U.S. person employer. They may not be transferred to non-U.S. persons in Libya.

Additionally, items exported or reexported to Libya pursuant to License Exception USPL and not consumed or destroyed in the ordinary course of business may be returned to the United States without authorization from BIS, or such items may be reexported to a third country consistent

with the provisions of the EAR applicable to such reexports, which in some cases may require authorization from BIS.

Libya remains on the list of state sponsors of terrorism, and, therefore, it is appropriate for the United States to continue to require a license for the export or reexport to non-U.S. persons in Libya of AT-controlled items, as set forth in section 742.20. Further, AT-controlled items not specifically identified as eligible under License Exception USPL continue to require a license if exported or reexported to U.S. persons in Libya.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)) as extended by the Notice of August 2, 2005 (70 FR 45273, August 5, 2005), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for the 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. This rule is expected to result in a small decrease in license applications.

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

However, 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 (30 DAYS AFTER DATE OF PUBLICATION). 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 Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bos.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration at (202) 482-0637 for assistance.

List of Subjects

15 CFR ^{Part} 740

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

15 CFR parts 742 and 774

Exports, Foreign trade.

15 CFR part 772

Exports.

Accordingly, parts 740, 742, 772 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 740 - [AMENDED]

1. The authority citation for 15 CFR part 740 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 2, 2005, 70 FR 45273 (August 5, 2005).

2. Part 740 is amended by adding ^{g Add} new section [§] 740.19 to read as follows:

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§740.19 United States Persons in Libya (USPL)

(a) *Scope.* This License Exception authorizes exports and reexports to U.S. persons in Libya of items controlled for AT reasons only under the following ECCNs as described:

(1) All items controlled under the following ECCNs:

- (i) 2A994;
- (ii) 5A992;
- (iii) 5D992; and
- (iv) 9A990.

(2) Other items, as follows:

- (i) 3A991.a through 3A991.j, and 3A991.n;
- (ii) 3A992.b.1, 3A992.b.2 and 3A992.c;
- (iii) 3B992.b;
- (iv) 4A994, for items with CTP levels up to 12,000 MTOPS; and
- (v) 5A991.b.2, 5A991.b.3, 5A991.b.4, 5A991.b.7, 5A991.c.1 through c.9, 5A991.e, 5A991.g and 5A991.h.

(b) *Additional restrictions.* Items exported or reexported to Libya pursuant to this License Exception must be consigned to and for exclusive use in business or professional activities (including humanitarian activities) by U.S. persons or their employees only, and must remain under the control and supervision of the U.S. person employer.

(c) *Definition of U.S. person.* See part 772 of the EAR.

PART 742 -[AMENDED]

3. The authority citation for 15 CFR 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; Sec 1503, Pub.L. 108-11,117 Stat. 559; 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; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

4. Section 742.20 is amended by revising paragraphs (a)(1) to read as follows:

§742.20 Anti-terrorism: Libya

(a) *License requirements.* (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, or the License Requirements Section of an ECCN on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) indicates that such an ECCN is otherwise controlled to Libya for AT reasons without reference to a particular column on the Country Chart, BIS requires a license for export and reexport to Libya for antiterrorism purposes. Also see §740.19 of the EAR.

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PART 772 - [AMENDED]

5. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

introductory Text

6. Paragraph (a) of the definition for *U.S. Person* in section 772.1 is amended to read as follows:

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

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U.S. Person. (a) For purposes of §§740.19, 744.6, 744.10, 744.11, 744.12, 744.13 and 744.14 of the EAR, the term U.S. person includes:

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PART 774 - [AMENDED]

7. The authority citation for 15 CFR 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 2, 2005, 70 FR 45273 (August 5, 2005).

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2 - Materials Processing, Export Control Classification Number (ECCN) 2A994 is amended by revising the License Requirements section to read as follows:

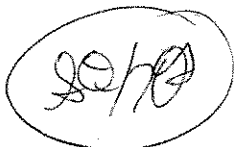
2A994 Portable electric generators and specially designed parts.

License Requirements

Reason for Control: AT

Control(s)

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See §§740.19 and 742.20 ^{of the EAR} for additional information on Libya. See §742.19 of the EAR for



additional information on North Korea.

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9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 - Electronics, Export Control Classification Number (ECCN) 3A991 is amended by revising the License Requirements section to read as follows:

3A991 Electronic devices and components not controlled by 3A001.

License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry

AT Column 1

See §§740.19 and 742.20 ^{of the EAR} for additional information on Libya.

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10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 - Electronics, Export Control Classification Number (ECCN) 3A992 is amended by



revising the License Requirements section to read as follows:

3A992 General purpose electronic equipment not controlled by 3A002.

License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry

AT Column 1

See §§740.19 and 742.20^{of the EAR} for additional information on Libya.

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11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3 - Electronics, Export Control Classification Number (ECCN) 3B992 is amended by revising the License Requirements section to read as follows:

3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic components and materials, and specially designed components and accessories therefor.



License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry

AT Column 1

See §§740.19 and 742.20 ^{of the EAR} for additional information on Libya.

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12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 - Computers, Export Control Classification Number (ECCN) 4A994 is amended by revising the License Requirements section to read as follows:

4A994 Computers, "electronic assemblies", and related equipment not controlled by 4A001 or 4A003, and specially designed components therefor.

License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry *of the EAR* AT Column 1

See §§740.19 and 742.20₁ for additional information on Libya.

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13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 - Telecommunications and "Information Security" - Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended by revising the License Requirements section to read as follows:

5A991 Telecommunication equipment, not controlled by 5A001.

License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry *of the EAR* AT Column 1

See §§740.19 and 742.20₁ for additional information on Libya.

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14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 - Telecommunications and "Information Security" - Information Security, Export Control Classification Number (ECCN) 5A992 is amended by revising the License Requirements section to read as follows:

5A992 Equipment not controlled by 5A002.

License Requirements

Reason for Control: AT

<i>Control(s)</i>	<i>Country Chart</i>
AT applies to 5A992.a	AT Column 1
AT applies to 5A992.b	AT Column 2

See §§740.19 and 742.20 ^{of the EAR} for additional information on Libya.

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15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5 - Telecommunications and "Information Security" - Information Security, Export Control Classification Number (ECCN) 5D992 is amended by revising the



License Requirements section to read as follows:

5D992 "Information Security" "software" not controlled by 5D002.

License Requirements

Reason for Control: AT

Control(s)

Country Chart

AT applies to 5D992.a.1
and .b.1

AT Column 1

AT applies to 5D992.a.2,
b.2 and c

AT Column 2

See §§740.19 and 742.20 ^{of the EAR} for additional information on Libya.

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16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9 - Propulsion Systems, Space Vehicles and Related Equipment, Export Control



Classification Number (ECCN) 9A990 is amended by revising the License Requirements section to read as follows:

9A990 Diesel engines, n.e.s., and tractors and specially designed parts therefor, n.e.s.

License Requirements

Reason for Control: AT

<i>Control(s)</i>	<i>Country Chart</i>
AT applies to entire entry except 9A990.a	AT Column 1
AT applies to 9A990.a only	AT Column 2

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of the EAR

See §§740.19 and 742.20 for additional information on Libya.

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DATED: November 9, 2005

Matthew S. Borman

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certified to be a true
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