

Points, and subsequent amendments can be viewed online at [https://www.faa.gov/air\\_traffic/publications/](https://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email [fedreg.legal@nara.gov](mailto:fedreg.legal@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**FOR FURTHER INFORMATION CONTACT:** Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-3695.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Mark Hoard Memorial Airport, Leoti, KS, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

**History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 81167, December 15, 2020) for Docket No. FAA-2020-1072 to establish Class E airspace for Mark Hoard Memorial Airport, Leoti, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E5 airspace designations are published in paragraph 6005 of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**Availability and Summary of Documents for Incorporation by Reference**

This document amends FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Rule**

This amendment to 14 CFR part 71 establishes Class E airspace extending upward from 700 feet above the surface at the Mark Hoard Memorial Airport, Leoti, KS. The airspace is designed to contain IFR arrivals descending below 1,500 feet above the surface, and IFR departures to 1,200 feet above the surface. The airspace contains the new instrument approach and departure procedures that were developed for the airport.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist

that warrant the preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

**ACE KS E5 Leoti, KS [New]**

Mark Hoard Memorial Airport, KS  
(Lat. 38°27'27" N, long. 101°21'03" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Mark Hoard Memorial Airport.

Issued in Seattle, Washington, on February 24, 2021.

**B.G. Chew,**

*Acting Group Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2021-04211 Filed 3-5-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 740, 742 and 744**

[Docket No. 210302-0033]

**RIN 0694-A143**

**Burma: Implementation of Sanctions**

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

**ACTION:** Final rule.

**SUMMARY:** In response to the Burmese military coup that overthrew the democratically-elected government of Myanmar (Burma), in this final rule, the

Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to apply more restrictive treatment to exports and reexports to, and transfers within, Burma of items subject to the EAR. This action advances the U.S. Government's efforts to reduce the availability of items to Burma's military and security services.

**DATES:** This rule is effective March 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Tracy Patts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, by email at [Foreign.Policy@bis.doc.gov](mailto:Foreign.Policy@bis.doc.gov), or by phone at 202-482-4252.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Burma Under the Export Administration Regulations*

On February 10, 2021, President Biden signed Executive Order (E.O.) 14014, "Blocking Property With Respect to the Situation in Burma." See 86 FR 9429 (Feb. 12, 2021). In E.O. 14104, the President declared a national emergency to address the threat posed to the United States by the situation in, and in relation to, Burma following a February 1, 2021 military coup, citing the military's overthrow of the country's democratically-elected government and arrest and detention of government leaders, human rights defenders, and journalists. See *id.* The United States had removed sanctions on Burma over the past decade based on progress toward democracy, and the reversal of that progress necessitated an immediate review of our sanction laws and authorities, followed by appropriate action. See *President Biden's February 1, 2021 statement, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/01/statement-by-president-joseph-r-biden-jr-on-the-situation-in-burma/>*.

In response to the February 1, 2021 Burmese military coup, on February 18, 2021, BIS took action under the Export Administration Regulations, 15 CFR parts 730-774 (EAR), and published a **Federal Register** notice announcing a more restrictive review policy for applications involving exports and reexports of items requiring a license under the EAR that are destined for Burma's military and security services and suspended the availability of certain license exceptions for items destined for Burma. See 86 FR 10011 (Feb. 18, 2021). Taken together, the measures set forth in the February 18,

2021 **Federal Register** notice and this final rule are consistent with recent actions taken by the Department of the Treasury's Office of Foreign Assets Control under E.O. 14104. Specifically, this rule: 1) moves Burma from Country Group B to the more restrictive Country Group D:1; 2) adds Burma to the countries subject to the national security licensing policy for certain military end uses and end users, and to the 'military end use' and 'military end user' restrictions; and 3) moves Burma from Computer Tier 1 to the more restrictive Computer Tier 3 in the (Computers) (APP) license exception.

*Burma Under the EAR Prior to the February 18, 2021 Notice*

As a general matter, during a four-year period following BIS's placement of Burma in Country Group B in December 2016, BIS did not maintain special controls on Burma. See 81 FR 94962 (Dec. 27, 2016). Applications for items requiring a license for export or reexport to Burma were generally subject to case-by-case review consistent with the licensing policies set forth in Part 742 and other applicable parts of the EAR. For purposes of License Exception Computers (APP) (Section 740.7 of the EAR) in August 2017, Burma was placed in Computer Tier 1, a relatively less-restrictive placement. See 82 FR 38764, 8/15/17.

Prior to December 2016, BIS had imposed more significant restrictions on exports and reexports to Burma as part of a broad U.S. Government-wide embargo in effect for nearly two decades that had restricted trade with or involving Burma under a national emergency declared by President Bill Clinton pursuant to Executive Order 13047 of May 20, 1997, in response to repression by the then-governing regime in Burma. This emergency was extended and expanded by Presidents George W. Bush and Barack Obama, who together issued five additional Burma-related Executive Orders. Between October 2007 and December 2016, Burma was located in Country Group D:1, Supp. No. 1 to Part 740 of the EAR. It was located in Computer Tier 3, a relatively restrictive placement, for purposes of License Exception Computers (APP) until August 2017. See 82 FR 38764, 8/15/17. BIS also maintained license requirements in part 744 (then § 744.22) (see 72 FR 60248, October 24, 2007, as modified by 74 FR 770, January 8, 2009), for the export, reexport, or transfer (in country) of most items subject to the EAR, to persons listed in or designated pursuant to three of the Burma-related Executive Orders. Executive Order 13742 of October 7,

2016, terminated the national emergency declared in Executive Order 13047 and revoked that Executive Order and the other Burma-related Executive Orders.

Notwithstanding the EAR changes made following the October 2016 termination of the embargo, Burma continued to be located in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons) and Country Group D:5 (U.S. arms-embargoed countries), consistent with § 126.1 of the International Traffic in Arms Regulations, 22 CFR parts 120-130.

*Burma Under the EAR: February 18, 2021 Notice*

On February 1, 2021, the Burmese military overthrew the democratically-elected government of Burma and detained President Win Myint and State Counsellor Aung San Suu Kyi and other parliamentarians affiliated with the National League for Democracy.

In response to this coup, as noted above, BIS issued a **Federal Register** notice effective February 18, 2021, adopting a more restrictive license application review policy of a presumption of denial for items subject to the EAR that require a license for export and reexport and that are destined for Burma's Ministry of Defense, Ministry of Home Affairs, armed forces, or security services. BIS also suspended the use of four license exceptions set forth in part 740 of the EAR that would otherwise have generally been available to Burma as a result of its Country Group B placement: Shipments of Limited Value (LVS) (§ 740.3); Shipments to Group B Countries (GBS) (§ 740.4); Technology and Software under Restriction (TSR) (§ 740.6); and Computers (APP) (§ 740.7).

**Changes Made by This Rule**

This rule strengthens export controls on Burma consistent with the policy concerns described in BIS's February 18, 2021 notice. The actions in this rule support the United States Government's efforts to promote an immediate return to democracy in Burma, to underscore to Burma's security forces there must not be violence against civilians, and to stand in solidarity with the people of Burma, who continue to voice their desire for democracy, peace, and rule of law. In particular, this rule enhances the U.S. Government's efforts to ensure that items subject to the EAR are not available to Burma's military and security services. These measures also address the foreign policy and national

security concerns that formed the basis for the issuance of E.O. 14104 of February 10, 2021.

#### Country Group D:1

The rule removes Burma from EAR Country Group B in supplement no. 1 to part 740 (Country Groups) and moves it into the more restrictive Country Group D:1. This action makes certain license exceptions or portions of license exceptions unavailable for Burma, or imposes conditions on the use of such license exceptions, including as follows:

- Shipments of Limited Value (LVS) (§ 740.3). This license exception is no longer available for Burma due to Burma's removal from Country Group B.
- Shipments to Group B Countries (GBS) (§ 740.4). This license exception is no longer available for Burma due to Burma's removal from Country Group B.
- Technology and Software under Restriction (TSR) (§ 740.6). This license exception is no longer available for Burma due to Burma's removal from Country Group B.
- Temporary Imports, Exports, Reexports, and Transfers (in-country) (TMP) (§ 740.9). Paragraph (b) (Exports of items temporarily in the United States) of this license exception places restrictions on shipments of national security (NS) controlled items to D:1 countries, and thus the provisions in paragraph (b) that would authorize exports of NS-controlled items to Country Group B (but not Country Group D:1) are no longer available for shipments destined to Burma.
- Servicing and Replacement Parts and Equipment (RPL) (§ 740.10). This license exception authorizes certain items to be returned to Country Group B (see (a)(4) (Reexports), and (b)(3)(ii)(C) (return of defective or unacceptable equipment)). These two paragraphs are no longer available for the return of such items to Burma due to Burma's removal from Country Group B.
- Aircraft, Vessels, and Spacecraft (AVS) (§ 740.15). Paragraph (b) of this license exception authorizes exports and reexports of certain equipment and spare parts for permanent use upon a vessel or aircraft, except for vessels registered in a D:1 country or aircraft registered in, owned or controlled by, or under charter or lease to a country included in Country Group D:1, or a national of any of these countries. With the publication of this rule, Burma is a D:1 country, and restrictions in this paragraph are applied to exports for vessels registered in Burma, or aircraft registered in, owned or controlled by, or under charter or lease to Burma or a Burmese national. Paragraph (c) of this license exception authorizes certain

exports to U.S. or Canadian vessels, planes and airline installations or agents except for exports to D:1 countries and for aircraft located in, or owned, operated or controlled by, or leased or chartered to a D:1 country. Burma is now subject to all D:1-related specified restrictions set forth in paragraph (c) of § 740.15.

- Additional Permissive Reexports (APR) (§ 740.16(j)). Paragraph (j) of this license exception authorizes certain reexports of nuclear non-proliferation controlled items except when also controlled for NS reasons when destined to a D:1 country. Burma is now a D:1 country and will thus no longer be eligible for reexports of NS-controlled items under this provision.
- Encryption commodities, technology, and software (ENC) (§ 740.17). Paragraph (b)(2)(iv)(B) of this license exception places restrictions on certain encryption technology exports to users in D:1 countries. These restrictions shall apply to users in Burma now, due to Burma's placement in Country Group D:1.

The restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Country Group D:1, pursuant to § 744.17 (Restrictions on certain exports, reexports, and transfers (in-country) of microprocessors and associated "software" and "technology" for "military end uses" and to "military end users"), apply to transactions to Burma now that it is in Country Group D:1 as a result of this rule. Furthermore, the restrictions in § 744.7 (Restrictions on certain exports to and for the use of certain foreign vessels or aircraft) on certain exports and reexports to vessels and aircraft located in ports in a D:1 country now apply to exports and reexports to Burma, and restrictions in that section that apply to aircraft located in, or owned, operated or controlled by, or leased or chartered to, Country Group D:1 or a national of such country, now apply to aircraft located in, or owned, operated or controlled by, or leased or chartered to Burma or a Burmese national. Finally, the addition of Burma to Country Group D:1 expands the applicability of § 736.2(b)(3), General Prohibition Three, by imposing licensing requirements for reexports of foreign-produced direct products of certain U.S.-origin technology and software to Burma.

Burma remains in Country Groups D:3 (countries raising proliferation concerns related to chemical and biological weapons) and D:5 (U.S. arms-embargoed countries). See supplement no. 1 to part 740 of the EAR.

#### Licensing Policy

As noted below, this rule adds Burma to the countries subject to the military end use and end user controls, and associated licensing policies, in § 744.21. This rule also adds Burma to the list of countries subject to the licensing policy in § 742.4(b)(7) (NS-controlled items) of the EAR. The license review policy for NS-controlled items in § 742.4(b)(7) applies to transactions with the other countries included in § 744.21, and now applies to Burma as well.

#### Section 744.21

This rule adds Burma to the countries subject to the 'military end use' and 'military end user' (MEU) restrictions in § 744.21 of the EAR. In addition to the license requirements for items specified on the Commerce Control List (CCL), § 744.21 prohibits the export, reexport, or transfer (in-country) without a license of items subject to the EAR that are listed in supplement no. 2 to part 744—List of Items Subject to the Military End Use or End User License Requirement of § 744.21—to the People's Republic of China (China), the Russian Federation, or Venezuela, and with the publication of this rule, Burma, in certain circumstances. Such exports, reexports, or transfers (in-country) require a license if, at the time of the export, reexport, or transfer (in-country), the exporter, reexporter, or transferor (in-country) has "knowledge," as defined in § 772.1 of the EAR that the item is intended, entirely or in part, for a 'military end use,' or 'military end user,' in Burma, China, the Russian Federation, or Venezuela. Applications submitted for the export or reexport to Burma, or transfer within Burma, of an item in supplement no. 2 to part 744 under this section will be reviewed with a presumption of denial.

This rule also adds a reference to Burma in supplement no. 7 to part 744—'Military End User' List but does not add any entities located in Burma to the list of Military End Users (MEU List) at this time. The MEU List notifies the public that certain entities are subject to the military end-user prohibitions in § 744.21 of the EAR. BIS may add entities located in Burma to the MEU List in the future.

This rule also corrects a typo in the last sentence of the introductory text to supplement no. 7 to part 744. The correction removes the phrase 'supplement no. 2 to part 744' from the last sentence of the introductory text and adds in its place the phrase 'supplement no. 7 to part 744'. Supplement no. 7 to part 744 is the

correct supplement reference in the context of this sentence. With this correction, the last sentence correctly states that “. . . license application procedure and license review policy for entities specified in supplement no. 7 to part 744 is specified in § 744.21(d) and (e).”

**Computer Tier 3**

This rule moves Burma from Computer Tier 1 to Computer Tier 3 under License Exception Computers (APP), § 740.7. This change limits the use of that license exception for exports and reexports to, or transfers (in-country) within, Burma. The placement of Burma in Country Group D:1 by this rule and movement of Burma into Computer Tier 3 supersedes the suspension of four License Exceptions announced as part of the February 18, 2021 notice, as the prior suspension was linked to Burma’s placement at the time in Country Group B and in Computer Tier 1.

**Export Control Reform Act of 2018**

On August 13, 2018, President Donald J. Trump signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated to be a “significant regulatory action,” although not

economically significant, under section 3(f) of Executive Order 12866.

2. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

3. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

4. 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. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. Notwithstanding any other provision of law, no person may be required to respond to or 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 a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. The collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to not significantly increase with the publication of this rule.

**Savings Clause**

Shipments of items that may no longer be made under No License Required (NLR) or license exception as a result of this action and were on dock for loading, on lighter, laden aboard an exporting or transferring carrier, or en route aboard a carrier to a port of export

or reexport on April 7, 2021, pursuant to actual orders for export to Burma, reexport to Burma, or transfer (in country) within Burma may proceed to their destination under the prior authorization.

**List of Subjects**

15 CFR Part 740

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

15 CFR Part 742

Exports, Terrorism

15 CFR 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 740, 742, and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

**PART 740—LICENSE EXCEPTIONS**

■ 1. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

**§ 740.7 [Amended]**

- 2. Amend § 740.7 by
- a. Removing “Burma,” from paragraph (c)(1); and
- b. Adding “Burma” alphabetically in paragraph (d)(1).

**Supplement No. 1 to Part 740—Country Groups**

- 3. Supplement no. 1 to part 740 is amended by
- a. In the Country Group B table, removing “Burma”; and
- b. In the Country Group D table revising the entry for “Burma” to read as follows:

**Supplement No. 1 to Part 740—Country Groups**

\* \* \* \* \*

**Country Group D**

| Country     | [D:1]<br>National security | [D:2]<br>Nuclear | [D:3]<br>Chemical & biological | [D:4]<br>Missile technology | [D:5]<br>U.S. Arms embargoed countries <sup>1</sup> |
|-------------|----------------------------|------------------|--------------------------------|-----------------------------|---|
| Burma ..... | X                          | *                | x                              | *                           | x   |

| Country | [D:1]<br>National<br>security | [D:2]<br>Nuclear | [D:3]<br>Chemical &<br>biological | [D:4]<br>Missile<br>technology | [D:5]<br>U.S. Arms<br>embargoed<br>countries <sup>1</sup> |
|---------|-------------------------------|------------------|-----------------------------------|--------------------------------|---|
| * * *   | *                             | *                |                                   | *                              | *   |

<sup>1</sup> Note to Country Group D:5: Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the FEDERAL REGISTER. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department FEDERAL REGISTER notices related to arms embargoes (compiled at [http://www.pmdtc.state.gov/embargoed\\_countries/index.html](http://www.pmdtc.state.gov/embargoed_countries/index.html)) and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the FEDERAL REGISTER), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

\* \* \* \* \*

**PART 742—CONTROL POLICY—CCL BASED CONTROLS**

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

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *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; 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, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 5. Section 742.4 is amended by revising paragraph (b) (7) to read as follows:

**§ 742.4 National security.**

\* \* \* \* \*

(b) \* \* \*

(7)(i) For Burma, the People's Republic of China (China), the Russian Federation, and Venezuela, all applications will be reviewed to determine the risk of diversion to a military end user or military end use. There is a general policy of approval for license applications to export, reexport, or transfer items determined to be for civil end users for civil end uses. There is a presumption of denial for license applications to export, reexport, or transfer items that would make a material contribution to the "development," "production," maintenance, repair, or operation of weapons systems, subsystems, and assemblies, such as, but not limited to, those described in supplement no. 7 to part 742 of the EAR, of Burma, China, the Russian Federation, or Venezuela.

(ii) The following factors are among those that will be considered in reviewing license applications described in paragraph (b)(7)(i) of this section:

(A) The appropriateness of the export, reexport, or transfer for the stated end use;

(B) The significance of the item for the weapon systems capabilities of the importing country;

(C) Whether any party is a 'military end user' as defined in § 744.21(g) of the EAR;

(D) The reliability of the parties to the transaction, including whether:

(1) An export or reexport license application has previously been denied;

(2) Any parties are or have been engaged in unlawful procurement or diversion activities;

(3) The parties are capable of securely handling and storing the items; and

(4) End-use checks have been and may be conducted by BIS or another U.S. government agency on parties to the transaction;

(E) The involvement of any party to the transaction in military activities, including activities involving the "development," "production," maintenance, repair, or operation of weapons systems, subsystems, and assemblies;

(F) Government strategies and policies that support the diversion of exports from their stated civil end use and redirection towards military end use.

(G) The scope and effectiveness of the export control system in the importing country; and

(iii) The review will also include an assessment of the impact of a proposed export of an item on the United States defense industrial base and the denial of an application for a license that would have a significant negative impact, as defined in § 1756(d)(3) of the Export Control Reform Act of 2018 (50 U.S.C. 4815(d)(3)), on such defense industrial base.

\* \* \* \* \*

**PART 744—CONTROL POLICY: END-USER AND END-USE BASED**

■ 6. The authority citation for part 744 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *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. 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 September 18, 2020, 85 FR 59641 (September 22, 2020); Notice of November 12, 2020, 85 FR 72897 (November 13, 2020).

■ 7. Section 744.21 is revised to read as follows:

**§ 744.21 Restrictions on certain 'military end use' or 'military end user' in Burma, The People's Republic of China, The Russian Federation, or Venezuela.**

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to part 744 to Burma, the People's Republic of China (China), the Russian Federation, or Venezuela without a license if, at the time of the export, reexport, or transfer (in-country), you have "knowledge," as defined in § 772.1 of the EAR, that the item is intended, entirely or in part, for a 'military end use,' as defined in paragraph (f) of this section, or 'military end user,' as defined in paragraph (g) of this section, in Burma, China, the Russian Federation, or Venezuela.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, China, the Russian Federation, or Venezuela. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's

designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(1) *‘Military End-User’ (MEU) List.* BIS may inform and provide notice to the public that certain entities are subject to the additional prohibition described under this paragraph (b) following a determination by the End-User Review Committee (ERC) that a specific entity is a ‘military end user’ pursuant to this section and therefore any exports, reexports, or transfers (in-country) to that entity represent an unacceptable risk of use in or diversion to a ‘military end use’ or ‘military end user’ in Burma, China, the Russian Federation, or Venezuela. Such entities may be added to supplement No. 7 to part 744—‘Military End-User’ (MEU) List through **Federal Register** notices published by BIS, and will thus be subject to a license requirement for exports, reexports, or transfers (in-country) of items specified in supplement No. 2 to part 744. The listing of entities under supplement No. 7 to part 744 is not an exhaustive listing of ‘military end users’ for purposes of this section. Exporters, reexporters, and transferors are responsible for determining whether transactions with entities not listed on supplement No. 7 to part 744 are subject to a license requirement under paragraph (a) of this section. The process in paragraph this (b)(1) for placing entities on the MEU List is only one method BIS may use to inform exporters, reexporters, and transferors of license requirements under this section.

(i) *End-User Review Committee (ERC).* 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 other modifications to the MEU List. Decisions by the ERC for purposes of the MEU List will be made following the procedures identified in this section and in supplement no. 5 to part 744—Procedures for End-User Review Committee Entity List and ‘Military End User’ (MEU) List Decisions.

(ii) *License requirement for parties to the transaction.* The license requirement for entities listed in supplement no. 7 to part 744 applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement No. 2 to part 744 when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f).

(2) *Requests for removal from or modification of ‘Military End User’ (MEU) List.* Any entity listed on the MEU List may request that its listing be removed or modified. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230. In order for an entity listed on the MEU List to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a ‘military end user’ for purposes of this section.

(i) *Review.* The ERC will review such requests for removal or modification in accordance with the procedures set forth in supplement No. 5 to part 744.

(ii) *BIS action.* The Deputy Assistant Secretary for Export Administration will convey the decision on the request to the requester in writing. That decision will be the final agency action on the request.

(c) *License exception.* Despite the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the “additional information” block of the application that “this application is submitted because of the license requirement in this section. In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the ‘military end use’ and ‘military end user(s)’ of the item(s). If you submit an attachment with your license application, you must reference the attachment in the “additional information” block of the application.

(e) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items described in paragraph (a) of this section will be reviewed with a presumption of denial.

(2) Applications may be reviewed under chemical and biological weapons, nuclear nonproliferation, or missile technology review policies, as set forth in §§ 742.2(b)(4), 742.3(b)(4), and 742.5(b)(4) of the EAR, if the end use may involve certain proliferation activities.

(3) Applications for items requiring a license for any reason that are destined to Burma, China, the Russian Federation, or Venezuela for a ‘military end use’ or ‘military end user’ also will

be subject to the review policy stated in paragraph (e)(1) of this section.

(f) *Military end use.* In this section, ‘military end use’ means: Incorporation into a military item described on the U.S. Munitions List (USML) (22 CFR part 121, International Traffic in Arms Regulations); incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or any item that supports or contributes to the operation, installation, maintenance, repair, overhaul, refurbishing, “development,” or “production,” of military items described on the USML, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs.

(g) *Military end user.* In this section, the term ‘military end user’ means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support ‘military end uses’ as defined in paragraph (f) of this section.

(h) *Effects on contracts.* Venezuela: Transactions involving the export, reexport, or transfer (in country) of items to or within Venezuela are not subject to the provisions of § 744.21 if the contracts for such transactions were signed prior to November 7, 2014.

**Supplement No. 7 to Part 744 [Amended]**

■ 8. The Supplement No.7 to Part 744 table is amended by:

■ a. Removing from the last sentence of the introductory text the phrase ‘supplement no. 2 to part 744’ and adding in its place the phrase “this supplement 7 to part 744”; and

■ b. In the table adding in alphabetical order an entry for “BURMA”.

The addition reads as follows:

| Country     | Entity     | Federal Register citation |
|-------------|------------|---------------------------|
| Burma ..... | [Reserved] | [Reserved]                |
| *           | *          | *                         |

**Matthew S. Borman,**

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