

Collection number	Title	Reference in the EAR
0694-0129 .....	Export and Reexport Controls For Iraq .....	§ 732.3, 738, 744.18, 746.3(b)(1), 747, 750, 758, 762, 772, 774.
0607-0152 .....	Shipper's Export Declaration (SED)/Automated Export System (AES) Program FORMS: 7525-V AES.	§§ 740.1(d) 740.3(a)(3), 752.7(b), §§ 752.15(a), §§ 754.2(h) and 754.4(c), 758.1, §§ 758.2, and 758.3 of the EAR.

Dated: March 14, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 738, 740, 742, 764, and 774

[Docket No. 040422128-5024-02]

RIN 0694-AD14

#### Revision of Export and Reexport Restrictions on Libya

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

**ACTION:** Final rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement further changes to export and reexport controls with respect to Libya. The majority of changes are based on comments submitted to BIS as requested in an earlier interim rule. This rule also corrects an inadvertent error in that interim rule.

**DATES:** This rule is effective March 22, 2005.

**ADDRESSES:** Although comments are not formally requested, comments on this rule may be sent to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, fax: (202) 482-3355, or e-mail: [squarter@bis.doc.gov](mailto:squarter@bis.doc.gov).

**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](mailto:jroberts@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 29, 2004, the Bureau of Industry and Security (BIS) published

an interim rule with request for comments in the **Federal Register** (69 FR 23626). That rule amended the Export Administration Regulations (EAR) to implement the President's April 23, 2004 decision to modify the 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. On April 23, 2004, the President announced the termination of the application of the Iran and Libya Sanctions Act (ILSA) with respect to Libya. On April 29, 2004, the Department of the Treasury, Office of Foreign Assets Control (OFAC), modified its sanctions imposed on U.S. firms and individuals under the authority of the International Emergency Economic Powers Act (IEEPA) to allow the resumption of most commercial activities, financial transactions, and investments between the United States and Libya. Consequently, OFAC issued a General License (31 CFR 550.575) which transferred licensing jurisdiction for the export and reexport of items subject to the EAR back to the Department of Commerce.

The BIS April 29, 2004 interim rule set forth the new license requirements and licensing policy for exports and reexports to Libya under BIS's licensing responsibility. That rule also implemented the transfer to BIS from OFAC of the licensing jurisdiction for exports to Libya of most items subject to the EAR.

#### Changes From April 29 Interim Rule

Based on public comments received in response to the April 29, 2004 interim rule, BIS is establishing a review policy and licensing procedure for activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended ("installed base" items). BIS is also modifying the licensing policy for some commercial charges classified under Export Control Classification Number (ECCN) 1C992.

In addition to changes made in response to public comments, BIS is making a number of changes, including revision of License Exception Aircraft and Vessels (AVS) to permit vessels to make temporary sojourns to Libya

without a license. BIS is also modifying the language in License Exception Temporary Imports, Exports and Reexports (TMP) to ensure clarity regarding certain software. Additionally, BIS is modifying the licensing policy for the export or reexport of U.S.-origin civil aircraft and helicopters subject to the EAR to Libya to case-by-case review. In this rule, BIS also is clarifying that portable electric power generators, controlled under ECCN 2A994, and related software and technology, controlled under ECCNs 2D994 and 2E994, require a license for export or reexport to Libya for anti-terrorism reasons. Further, BIS is modifying ECCN 8A992 to clarify that it addresses vessels in addition to submersible items. Finally, BIS is correcting an inadvertent error in the April 29 interim rule, which omitted an "X" in the NP:2 column for Libya on the Commerce Country Chart, Supplement 1 to Part 738 of the EAR.

#### Comments

BIS received four comments on the April 29 interim rule, as summarized below.

1. *Anti-Terrorism Controls.* Two respondents requested that BIS remove unilateral anti-terrorism (AT) controls imposed on Libya. Respondents offered the following points in support of their request:

a. The United States has repeatedly stated that the Libyan Government has taken, and continues to take, extraordinary and concrete steps to renounce terrorism and all its means. The retention of AT controls is inconsistent with the United States' new Libya policy.

b. AT-controlled items do not contribute to the proliferation of weapons of mass destruction.

c. Unilateral controls are ineffective because similar items are commonly available from other countries which permit their export to Libya.

d. Delays caused by licensing requirements disadvantage U.S. industry.

2. *Installed base.* Two respondents also requested that BIS provide relief from General Prohibition Ten of Part 736 of the EAR enabling exporters to make use of, repair, maintain, service or upgrade U.S.-origin controlled items that may have been exported or

reexported to Libya in violation of the EAR during the comprehensive U.S. embargo ("installed base" items). In support of this request, they noted:

a. Many of the installed base items are either no longer controlled or of little strategic value.

b. Retaining a prohibition on U.S. based companies' interaction with low level installed base items is inconsistent with the United States' current Libya policy because the United States has repeatedly stated that the Libyan Government has taken, and continues to take, extraordinary and concrete steps to renounce terrorism and all its means.

c. The current prohibition, which restricts U.S. companies from working on the installed base items in Libya, puts U.S. companies at a competitive disadvantage in Libya because other countries do not place similar restrictions on their companies operating in Libya.

d. BIS issued a waiver for East Germany (55 FR 26652, June 29, 1990) under a similar set of circumstances.

3. *Encryption Software.* One respondent requested that the general policy of denial for software controlled under ECCN 5D002 for national security (NS), encryption (EI), and AT reasons be altered to one of case-by-case review, particularly for transactions in which the software is a small portion of a larger transaction.

4. *Commercial Charges.* Two respondents requested that BIS lift the general policy of denial for oil well perforators, a type of commercial charge controlled under ECCN 1C992.a. In support of this request, they noted:

a. A general policy of denial is too broad. The implementation of a policy of case-by-case review to ensure that the perforators are destined to legitimate oil operations, and a requirement for companies exporting U.S.-origin perforators to have a security plan in place, would maintain rigorous controls while allowing legitimate business to proceed.

b. Unilateral restrictions on oil well perforators are ineffective because similar items are widely available from a large number of countries that do not restrict their sale to Libya.

c. Foreign-made charges may perform the task of well perforation adequately but they are often not as safe as U.S. perforators. U.S.-based oil drillers prefer to use U.S.-made perforators because of this safety concern, but they may be forced to use less safe alternatives given the policy of denial delineated in the April 29th BIS Rule.

d. As a result of their design, oil well perforators are not useful as weapons or as a source of explosives for use in

weapons. In addition, the respondents note that less expensive sources for both weapons and explosive materials are plentiful outside the United States.

e. Retaining a general policy of denial on perforators is inconsistent with the United States' Libya policy. The United States has repeatedly stated that the Libyan Government has taken and continues to take extraordinary and concrete steps to renounce terrorism and all its means.

## **BIS Response to Public Comments**

### *AT Controls*

Although Libya has made progress in altering its behavior, BIS, in consultation with the Department of State, has determined that Libya has not yet met all the conditions for its removal from the State Department's List of State Sponsors of Terrorism. Many AT-controlled items could be used in the proliferation of weapons of mass destruction, or in terrorist acts.

Although there may be foreign sources for items similar to those subject to AT controls, the continued maintenance of U.S. sanctions limits their availability to Libya. In addition, the continuation of the controls serve foreign policy interests that override the impact of foreign availability and licensing delays. Consequently, the United States will continue to impose AT controls on Libya as deemed appropriate.

### *Installed Base*

Section 764.2(e) of the EAR prohibits ordering, buying, removing, concealing, storing, using, selling, loaning, disposing of, transferring, financing, forwarding, or otherwise servicing, in whole or in part, any items that may have been originally illegally exported or reexported to Libya by third parties ("installed base" items). This prohibition is restated in General Prohibition No. 10 in Section 736.2(b) of the EAR. Nonetheless, BIS recognizes the need to support U.S. companies' participation in Libya's newly opened markets while working to prevent the unlawful diversion of U.S.-origin commodities and facilitating the prosecution of persons involved in such diversion. BIS has determined that granting a general amnesty for activities involving installed base items would be detrimental to future BIS export control policies. BIS further notes that the precedent of 55 FR 26652 (*i.e.*, the East German amnesty) is not fully applicable because the U.S. Government continues to maintain greater restrictions on exports to Libya today than it did on East Germany in 1990.

To facilitate U.S. companies' participation in the Libyan markets while protecting U.S. national security interests, and consistent with the provisions set forth in section 764.5(f) of the EAR, and the precedent of 55 FR 26652 (*i.e.*, the East German amnesty), BIS has added Section 764.7 of the EAR. This new section addresses the application of section 764.2(e), as restated in General Prohibition Ten at section 736.2(b), to activities involving installed base items in Libya. These activities are divided into two categories: those that require a report to BIS, but not a license, in order to overcome the prohibition stated in section 764.2(e), and those that require a license in order to overcome the prohibition. Activities involving the following installed base items will generally only require a report to BIS: items that are subject to the EAR but are not on the Commerce Control List (CCL); items on the CCL that are now authorized for export and reexport to Libya under a License Exception; and items on the CCL that are controlled only for NS and AT or AT reasons only and are not on the Wassenaar Arrangement's Sensitive List or Very Sensitive List. Activities involving all other installed base items listed on the CCL will require a BIS license to overcome the prohibition.

### **Software Controlled Under ECCN 5D002**

BIS has determined that a general policy of denial best represents the concerns of the United States regarding Libyan access to 5D002 software. This policy allows the U.S. Government the flexibility to approve those transactions that it believes will further U.S. foreign policy goals in Libya, while denying those that do not.

### **Explosive Charges Controlled Under 1C992 (Perforators)**

BIS has determined that controls on commercial charges classified under ECCN 1C992 are an important tool in limiting Libya's ability to obtain items that could be used to support terrorist activities or contribute significantly to Libya's military potential. However, BIS also recognizes that similar items may be available from other countries and that these items are important to ensure that oil development and production occurs in a safe manner. Rather than maintaining a general policy of denial, BIS has concluded that it is appropriate to take into account not only the end-use and end-user, but also the ability of the exporter and consignee to ensure the safety of the charges during transport to and within Libya, and while in storage

in Libya. Therefore, BIS has amended section 742.20(b) to permit a case-by-case review of exports of perforators.

### Other Changes

This rule revises the EAR to permit the temporary export of vessels departing U.S. waters and the reexport of vessels subject to the EAR on temporary sojourn to Libya, as set forth in section 740.15(d) of the EAR (License Exception AVS). Most vessels are classified on the Commerce Control List under ECCN 8A992. Prior to the publication of this rule, all vessels subject to the EAR bound for Libya required a license from BIS.

In addition, this rule amends License Exception TMP in section 740.9, paragraph (a)(2)(i), to clarify that software controlled under ECCN 5D992 may be exported to any destination that permits use of License Exception TMP. The language in License Exception TMP did not specifically address 5D992, but it did reference other types of software, making the availability of the License Exception TMP for 5D992 software unclear. This revision removes this ambiguity.

This rule revises the licensing policy for applications to export or reexport aircraft and helicopters to Libya, as set forth in section 742.20(b). The U.S. Government will now review applications for export or reexport of civil aircraft or helicopters on a case-by-case basis rather than under a general policy of denial.

In section 742.20 and Supplement No. 2 to part 742 of the EAR, this rule clarifies that portable electric power generators, controlled under ECCN 2A994, and related software and technology, controlled under ECCNs 2D994 and 2E994, require a license for export or reexport to Libya for anti-terrorism reasons. Applications to export or reexport these items to non-military end-users or for non-military end-uses in Libya will be reviewed on a case-by-case basis. This rule also amends ECCNs 2A994, 2D994 and 2E994 to refer exporters to section 742.20 of the EAR for additional information on anti-terrorism controls on Libya.

This rule amends part 774 of the EAR by adding the word "Vessels" to the heading of ECCN 8A992 and to ECCN 8A992.f. The previous language in the heading of 8A992.f was imprecise and could lead applicants to misunderstand what items were controlled by ECCN 8A992.

Finally, this rule corrects an inadvertent error in the April 29 rule, which omitted the placement of an "X" in the NP:2 column for Libya on the

Commerce Country Chart, Supplement 1 to part 738 of the EAR. Placing an "X" in the NP:2 column for Libya on the Commerce Country Chart is appropriate because Libya remains in Country Group D:2 in Supplement 1 to part 740 (License Exceptions) of the EAR.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 6, 2004 (69 FR 48763, August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act. BIS amends the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.

### Rulemaking Requirements

1. This rule has been determined to be 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, and 0694-0058, "Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations," which carries a burden hour estimate of 10 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the 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, as that term is defined 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.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments on this rule may be sent to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, fax: (202) 482-3355, or e-mail: [squarter@bis.doc.gov](mailto:squarter@bis.doc.gov).

### List of Subjects

#### 15 CFR Part 738

Exports.

#### 15 CFR Parts 740, 742 and 774

Exports, Foreign trade.

#### 15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

■ Accordingly, parts 738, 740, 742, 764, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

### PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 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 6, 2004, 69 FR 48763 (August 10, 2004).

### Supplement 1 to Part 738—[Amended]

■ 2. Supplement 1 to part 738 entry for Libya is amended by adding an "X" under the NP:2 column.

### PART 740—[AMENDED]

■ 3. 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 6, 2004, 69 FR 48763 (August 10, 2004).

#### § 740.9 [Amended]

■ 4. Section 740.9 is amended by removing the last sentence of paragraph (a)(2)(i) introductory text and adding in its place the following two sentences: “Exports of items controlled under ECCN 5D992 are permitted pursuant to this section. For other exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, including items controlled for NS and EI reasons, refer to note 2 to Category 5, Part 2 of Supplement No. 1 to Part 774.”

#### § 740.10 [Amended]

■ 5. Section 740.10 is amended

■ (a) By adding the parenthetical sentence “(For exports or reexports to the installed base in Libya see § 764.7 of the EAR).” after the phrase “or made in a foreign country incorporating authorized U.S.-origin parts.” in paragraph (a)(2)(ii); and

■ (b) By adding the sentence “See § 764.7 of the EAR for exports or reexports to the installed base in Libya.” to the end of paragraph (b)(3)(ii)(D).

■ 6. Section 740.15 is amended by adding new paragraph (d) to read as follows:

#### § 740.15 Aircraft and vessels (AVS).

\* \* \* \* \*

(d) *Vessels on temporary sojourn.* (1) *Foreign flagged vessels.* A foreign flagged vessel in the United States may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the vessel to nationals of a destination in Country Group E:1 (see Supplement No.1 to this part) has occurred while in the United States;

(ii) The vessel is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (see Supplement No. 1 to this part); and

(iii) The vessel does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(2) *U.S. flagged vessels.* A U.S. flagged vessel may depart from the United States under its own power for any destination, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel’s U.S. flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry from the United States any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (see Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).

(3) *Criteria for temporary sojourn of vessels.* The following criteria must be met if a voyage is to be considered a temporary sojourn under this paragraph (d). To be considered a temporary sojourn, the voyage must not be for the purpose of sale or transfer of operational control. A transfer of operational control occurs unless the exporter or reexporter retains each of the following indicia of control:

(i) *Hiring of crew.* Right to hire and fire the crew.

(ii) *Dispatch of vessel.* Right to dispatch the vessel.

(iii) *Selection of routes.* Right to determine the vessel’s routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the vessel, which principal maintenance is conducted outside a destination in Country Group E:1 (see Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(4) *Reexports.* Vessels subject to the EAR may be reexported under this section on temporary sojourn, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel’s flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (see Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (see Supplement No. 1 to this part).

(5) No vessels may be exported or reexported under this License Exception to a country in Country Group E:1, except Libya.

#### PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised 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 August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

■ 8. Section 742.20 is amended:

■ (a) By revising paragraphs (a)(1) and (a)(3)(ii);

■ (b) By removing paragraph (b)(1)(iv) and (b)(1)(ix) and redesignating paragraphs (b)(1)(v) through (b)(1)(xi) as paragraphs (b)(1)(iv) through (b)(1)(ix);

■ (c) By redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5) and adding a new paragraph (b)(2); and

■ (d) By revising newly designated paragraph (b)(4) 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. Portable electric power generators and related software and technology (ECCNs 2A994, 2D994 and 2E994) are controlled for export to Libya for anti-terrorism reasons.

(2) \* \* \*

(3) \* \* \*

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Libya, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of Supplement No. 2 to part 742, are controlled to Libya under section 6(a) of the EAA.

(b) \* \* \*

(1) \* \* \*

(2)(i) Applications to export or reexport aircraft, helicopters, engines, or related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-use or end-users in Libya will generally be denied. Notwithstanding the general policy of denial for MT controlled items to Libya, those MT items used for safety of flight in civil aircraft or helicopters will be reviewed on a case-by-case basis.

(ii) Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

(3) \* \* \*

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section, applications for Libya will be considered on a case-by-case basis if:

(i) The U.S. content of foreign-produced commodities is 20% or less by value; or

(ii) The commodities are medical items.

**Note to paragraph (b) of this section:** Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content or the specifications and medical use of the equipment.

\* \* \* \* \*

■ 9. Supplement No. 2 to Part 742 is amended by revising paragraphs (b)(3)(ii), (c)(6)(v) and (c)(43)(v), and by adding paragraph (c)(15)(iii) to read as follows:

**Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, Libya, 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 Libya, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of this Supplement; and 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) \* \* \*

(6) \* \* \*

(v) Aircraft, helicopters, engines, and related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-uses or end-users in Libya will generally be denied.

\* \* \* \* \*

(15) \* \* \*

(iii) *Libya.* Applications for all military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya of such equipment will be considered on a case-by-case basis.

\* \* \* \* \*

(43) \* \* \*

(v) *Libya.* Applications for all military end-uses or military end-users in Libya of such equipment will generally be denied. Applications for non-military end-users and non-military end-uses in Libya will be considered on a case-by-case basis. Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

\* \* \* \* \*

**PART 764—[AMENDED]**

■ 10. The authority citation for 15 CFR part 764 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 6, 2004, 69 FR 48763 (August 10, 2004).

■ 11. Section 764.4 is amended by adding new paragraph (d) to read as follows:

**§ 764.4 Reporting of violations.**

\* \* \* \* \*

(d) *Formerly embargoed destinations.* Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or reexported to Libya prior to the lifting of the comprehensive embargo on Libya are found in § 764.7 of the EAR.

■ 12. Part 764 is amended by adding new § 764.7 to read as follows:

**§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.**

(a) *Introduction.* As set forth in § 764.2(e) of this part, and restated in

General Prohibition Ten at § 736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection with the item. This section addresses the application of § 764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (“installed base” items).

(b) *Libya.* (1) *Activities involving installed base items in Libya for which no license is required.* Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of § 764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.

(i) *Scope.* An installed base item is within the scope of paragraph (b)(1) of this section if:

(A) It is not on the Commerce Control List in Supplement No.1 to Part 774 of the EAR;

(B) It is on the Commerce Control List, but is authorized for export or reexport pursuant to a License Exception to Libya; or

(C) It is on the Commerce Control List and controlled only for AT reasons or for NS and AT reasons only, and is not listed on the Wassenaar Arrangement’s Sensitive List (Annex 1) or Very Sensitive List (Annex 2) posted on the Wassenaar Arrangement’s Web site ([www.wassenaar.org](http://www.wassenaar.org)) at the Control Lists web page.

**Note 1 to paragraph (b)(1)(i):** An item being exported or reexported to Libya may require a license based on the classification of the item to be exported or reexported regardless of whether the item will be used in connection with an installed base item. See paragraph (b)(4) of this section.

**Note 2 to paragraph (b)(1)(i):** Not all items listed on the Wassenaar Arrangement’s Annex 1, Sensitive List, and Annex 2, Very Sensitive List, fall under the export licensing jurisdiction of the Department of Commerce. Please refer to the Commerce Control List for additional jurisdictional information related to those items. Also, if you do not have access to the internet to review the Wassenaar Arrangement’s Sensitive List and Very Sensitive List, please contact the Office of Exporter Services, Division of Exporter Counseling for assistance at telephone number (202) 482-4811.

(ii) *Reporting requirement.* Any person engaging in activity described in paragraph (b)(1) of this section must submit to BIS's Office of Export Enforcement (OEE) a report including all known material facts with respect to how the installed base item arrived in Libya. The report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.

(2) *Licensing procedure for activities involving installed base items in Libya.*

(i) *License requirement.* Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted on standard form BIS 748-P or the electronic equivalent, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.

(ii) *Licensing policy.* BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.

(3) *Exclusion.* The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reexported items to be undertaken based on permission from BIS.

(4) *Relationship to other Libya license requirements.* Notwithstanding this section, a license may be required pursuant to another provision of the EAR (e.g., § 742.20 of the EAR) to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be specified on the license application. Such applications must also include all known information as to how the installed base item originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of § 764.2(e) of this part.

#### **PART 774—[AMENDED]**

■ 13. 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 6, 2004, 69 FR 48763 (August 10, 2004).

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2A994 is amended by revising the License Requirements Section and the Related Controls Paragraph in the List of Items Controlled section to read as follows:

#### **Supplement No. 1 to Part 774—The Commerce Control List**

#### **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 for anti-terrorism reasons. 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 § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

\* \* \* \* \*

#### **List of Items Controlled**

*Unit:* \* \* \*

*Related Controls:* See also 2D994 and 2E994

*Related Definitions:* \* \* \*

*Items:* \* \* \*

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2D994 is amended by revising the License Requirements section to read as follows:

#### **2D994 “Software” Specially Designed for the “Development” or “Production” of Portable Electric Generators Controlled by 2A994**

##### **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 for anti-terrorism reasons. 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 § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

\* \* \* \* \*

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2E994 is amended by revising the License Requirements section to read as follows:

#### **2E994 “Technology” for the “Use” of Portable Electric Generators Controlled by 2A994**

##### **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 for anti-terrorism reasons. 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 § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

\* \* \* \* \*

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A992 is amended by revising the heading, and the Paragraph (f) of the Items section in the List of Items Controlled section to read as follows:

**8A992 Vessels, Marine Systems or Equipment, Not Controlled by 8A001, 8A002 or 8A018, and Specially Designed Parts Therefor**

\* \* \* \* \*

**List of Items Controlled**

Unit: \* \* \*  
 Related Controls: \* \* \*  
 Related Definitions: \* \* \*  
 Items: \* \* \*

\* \* \* \* \*

(f) Vessels, n.e.s., including inflatable boats, and specially designed components therefor, n.e.s.

\* \* \* \* \*

Dated: March 16, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 05-5537 Filed 3-21-05; 8:45 am]

BILLING CODE 3510-33-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 381**

[Docket No. RM05-8-000]

**Annual Update of Filing Fees**

March 16, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; annual update of Commission filing fees.

**SUMMARY:** In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2004.

**DATES:** *Effective Date:* April 21, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth Misiewicz, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 4R-04, Washington, DC 20426, 202-502-6240.

**SUPPLEMENTARY INFORMATION:**

*Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this

document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

*Overview:* The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2004 costs. The adjusted fees announced in this notice are effective April 21, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

**Fees Applicable to the Natural Gas Policy Act**

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403) .....	\$9,660
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**Fees Applicable to General Activities**

1. Petition for issuance of a declaratory order (except under part I of the Federal Power Act). (18 CFR 381.302(a)) .....	19,410
2. Review of a Department of Energy remedial order:	
Amount in Controversy	
\$0-9,999. (18 CFR 381.303(b)) .....	100
\$10,000-29,999. (18 CFR 381.303(b)) .....	600
\$30,000 or more. (18 CFR 381.303(a)) .....	28,330
3. Review of a Department of Energy denial of adjustment:	
Amount in Controversy	
\$0-9,999. (18 CFR 381.304(b)) .....	100
\$10,000-29,999. (18 CFR 381.304(b)) .....	600
\$30,000 or more. (18 CFR 381.304(a)) .....	14,850
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)) .....	5,560

**Fees Applicable to Natural Gas Pipelines**

1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b)) .....	*1,000
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**Fees Applicable to Cogenerators and Small Power Producers**

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)) .....	16,690
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)) .....	18,890
3. Applications for exempt wholesale generator status. (18 CFR 381.801) .....	890

\* This fee has not been changed.