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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 080717847–81643–01]

RIN 0694–AE35

Burma: Revision of Restrictions on Exports, Reexports and Transfers to Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Orders

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In response to the Government of Burma's continued repression of the democratic opposition in Burma, and consistent with Executive Order 13047 of May 20, 1997, Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007, and the Trade Sanctions Reform and Export Enhancement Act (Title IX of Pub. L. 106–387), the Bureau of Industry and Security (BIS) previously amended the Export Administration Regulations (EAR) on October 24, 2007 to impose a license requirement for most exports, reexports, or transfers of items subject to the EAR to persons whose property and interests in property are blocked pursuant to those Executive Orders. In light of the Government of Burma's continued repression of the democratic opposition in Burma and unwillingness to respond to the calls of the Burmese people for genuine dialogue that will lead to a democratic transition in Burma, this final rule amends the EAR to extend these existing licensing requirements to persons whose property and interests in property are blocked pursuant to Executive Order 13464 of April 30, 2008.

DATES: *Effective Date:* This rule is effective January 8, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE35 (Burma II), by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE 35 (Burma II)'' in the subject line of the message.

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

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE35 (Burma II).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov*, or by fax to (202) 395–7285; and to the U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.* RIN 0694–AE35 (Burma II))—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705,Washington, DC 20230; Telephone: (202) 482–4252, or E-mail: *skramer@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In response to the Government of Burma's repression of the democratic opposition in Burma, the President has issued a series of Executive Orders imposing economic sanctions on the Burmese regime. In 1997, pursuant to Executive Order 13047 (May 20, 1997) and other relevant authorities, the U.S. imposed a ban on new investments in Burma by U.S. persons. In 2003, pursuant to Executive Order 13310 (July 28, 2003) and other relevant authorities, the U.S. imposed additional economic sanctions, including a ban on all imports from Burma, a ban on the export of financial services by U.S. persons to Burma, and the freezing of assets of designated Burmese persons listed in the Annex or subsequently designated according to the criteria of the Executive Order. The sanctions are primarily administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

In 2007, the President further expanded the sanctions by issuing Executive Order 13448 (October 18, 2007), which listed certain additional persons in its Annex and set forth additional criteria for blocking the property and interests in property of additional persons. Consistent with Executive Orders 13310 and 13448, and the Trade Sanctions Reform and Export Enhancement Act (Title IX of Pub. L. 106–387), BIS issued a final rule, published in the **Federal Register** on October 24, 2007 (72 FR 60248, October 24, 2007), amending the EAR to impose a license requirement for exports, reexports or transfers of items subject to the EAR, except agricultural commodities, medicine, or medical devices classified as EAR99, to persons listed in or designated pursuant to Executive Orders 13310 or 13448. The 2007 BIS rule created section 744.22 of the EAR to set forth this licensing requirement.

Further, in part 740 of the EAR (License Exceptions), that rule moved Burma from Computer Tier 1 to Computer Tier 3, restricting access to high-performance computers and certain related technology and software under License Exception APP (Section 740.7). In Supplement No. 1 to part 740 (Country Groups), that rule moved Burma from Country Group B (countries raising few national security concerns) to Country Group D:1 (countries raising national security concerns), which further limits the number of license exceptions available for exports to Burma. Burma remained in Country Group D:3 (countries raising proliferation concerns related to chemical and biological weapons).

In this final rule, BIS further amends the EAR to expand the existing licensing requirements in section 744.22 of the EAR to include persons whose property and interests in property are blocked pursuant to Executive Order 13464 of April 30, 2008 (73 FR 24489, May 2, 2008). The Annex to Executive Order 13464 designates certain persons subject to this prohibition, and provides criteria for additional designations. Additional designations were announced by the Department of the Treasury on July 29, 2008 (73 FR 45270 and 73 FR 45271, both of August 4, 2008). As set forth in section 744.22 of the EAR, exports, reexports or transfers of items subject to the EAR, except agricultural commodities, medicine, or medical devices classified as EAR99, to any person whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464, require a license under the EAR.

The licensing requirements set forth in section 744.22 of the EAR are applicable to all persons whose property

and interests in property are blocked pursuant to Executive Orders 13310, 13448, or 13464. This includes persons listed in or designated pursuant to Executive Orders 13310, 13448, or 13464. Such persons are identified with the reference [BURMA] on OFAC's list of Specially Designated Nationals and Blocked Persons set forth in Appendix A to 31 CFR Chapter V and on OFAC's Web site at *http://www.treas.gov/OFAC*. Consistent with guidance issued by OFAC on February 14, 2008, a person whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC is considered to have an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50% or greater interest. The property and interests in property of such an entity are blocked, and licensing requirements in section 744.22 of the EAR apply to the entity, regardless of whether the entity itself is listed in the annex to an Executive order or otherwise designated pursuant to such order. The OFAC guidance on this topic is available at *http://www.treas.gov/offices/enforcement/ofac/programs/common/licensing_guidance.pdf*. Exporters should contact OFAC directly if you have questions about how to determine interest in property for purposes of complying with this final rule.

As was previously the case, in order to avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in section 744.22 of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in section 744.22, no separate authorization from BIS is necessary.

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a foreign policy report was submitted to Congress on January 2, 2009, notifying Congress of the imposition of foreign policy-based licensing requirements reflected in this rule.

Although the EAA expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603 (July 23, 2008)), has continued the EAR in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.*, under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on February 9, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before February 23, 2009. Any such items not actually exported or reexported before midnight, on February 23, 2009, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person 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 rule involves a collection of information subject to the PRA. The collection has been approved by OMB under control number 0694–0088, ''Multi-Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act 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 should be submitted to Sheila Quarterman, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

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

PART 744—[AMENDED]

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

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Section 744.22 is revised to read as follows:

§ 744.22 Restrictions on Exports, Reexports and Transfers to Persons Whose Property and Interests In Property Are Blocked Pursuant to Executive Orders 13310, 13448 or 13464.

Consistent with Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007 and Executive Order 13464 of April 30, 2008, BIS maintains restrictions on exports, reexports, and transfers to persons whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464. These persons include individuals and entities listed in the Annexes to Executive Orders 13310, 13448 and 13464, as well as other persons whose property and interests in property are blocked pursuant to those orders.

(a) *License Requirements.* (1) A license requirement applies to the export, reexport, or transfer of any item

subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) to—

(i) Persons listed in the Annexes to Executive Order 13310 of July 28, 2003, Executive Order 13448 of October 18, 2007 or Executive Order 13464 of April 30, 2008; or

(ii) Persons designated pursuant to Executive Order 13310, Executive Order 13448 or Executive Order 13464.

Note to paragraph (a)(1): All persons listed in or designated pursuant to Executive Orders 13310, 13448, or 13464 are identified with the reference [BURMA] on OFAC's list of Specially Designated Nationals and Blocked Persons set forth in Appendix A to 31 CFR Chapter V and on OFAC's Web site at *http://www.treas.gov/OFAC.* Consistent with guidance issued by OFAC on February 14, 2008, a person whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by OFAC is considered to have an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50% or greater interest. The property and interests in property of such an entity are blocked, regardless of whether the entity itself is listed in the annex to an Executive order or otherwise designated pursuant to such order. The OFAC guidance on this topic is available at *http://www.treas.gov/offices/enforcement/ofac/programs/common/licensing_guidance.pdf.*

(2) To avoid duplication, U.S. persons are not required to seek separate BIS authorization for an export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to both the EAR and regulations maintained by OFAC. Therefore, if OFAC authorizes an export from the United States or an export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section, no separate authorization from BIS is necessary.

(3) U.S. persons must seek authorization from BIS for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) but not subject to regulations maintained by OFAC.

(4) Non-U.S. persons must seek authorization from BIS for the export from abroad, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464).

(5) Any export, reexport, or transfer to a person identified in paragraph (a) of this section by a U.S. person of any item subject both to the EAR and regulations maintained by OFAC and not authorized by OFAC is a violation of the EAR.

(6) Any export, reexport, or transfer by a U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) that is not subject to regulations maintained by OFAC and not authorized by BIS is a violation of the EAR. Any export from abroad, reexport, or transfer by a non-U.S. person to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) and not authorized by BIS is a violation of the EAR.

(7) These licensing requirements supplement any other requirements set forth elsewhere in the EAR.

(b) *Exceptions.* No License Exceptions or other BIS authorizations are available for export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464).

(c) *Licensing policy.* Applications for licenses for the export, reexport, or transfer to a person identified in paragraph (a) of this section of any item subject to the EAR (except for agricultural commodities, medicine, or medical devices, classified as EAR99 and destined for entities whose property and interests in property are blocked pursuant to Executive Orders 13310, 13448 or 13464) will generally be denied. You should consult with OFAC concerning transactions subject to OFAC licensing requirements.

(d) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section, except as available under 31 CFR 537.210(c).

Dated: January 2, 2009.

Christopher R. Wall,

Assistant Secretary for Export Administration.

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BILLING CODE 3510–33–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Correcting amendment.

SUMMARY: The Pension Benefit Guaranty Corporation published in the **Federal Register** of December 29, 2008, a final rule amending its regulation on Allocation of Assets in Single-Employer Plans to adopt interest assumptions for plans with valuation dates in the first quarter of 2009. This document corrects inadvertent errors in that final rule.

DATES: Effective January 8, 2009.

Applicability date: January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation published a document in the December 29, 2008, **Federal Register** (73 FR 79362), amending its regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) to adopt interest assumptions for plans with valuation dates in the first quarter of 2009. This document corrects inadvertent errors in the January, February, and March 2009 entries to Appendix B to part 4044. (There were no corresponding errors in the preamble to the document.)

List of Subjects in 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ Accordingly 29 CFR part 4044 is corrected by making the following correcting amendments: