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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740 and 748

[Docket No. 110818514-1531-01]

RIN 0694-AF33

Exports and Reexports to the Principality of Liechtenstein

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend certain requirements in the Export Administration Regulations (EAR) that apply to the Principality of Liechtenstein (Liechtenstein). In this final rule, BIS aligns license requirements and licensing policy under the EAR for Liechtenstein with those for Switzerland. As a result, for purposes of the EAR, Liechtenstein will be treated the same as Switzerland.

By virtue of a Customs Union Treaty with Switzerland, Liechtenstein has adopted the export controls implemented under Swiss law, including controls equivalent to those prescribed under multilateral regimes, and has authorized Switzerland to administer and enforce export controls within Liechtenstein's territory. As a result of this arrangement, Liechtenstein and Switzerland serve as one territory for customs and export purposes. Having recently been made aware of the full scope of this arrangement and its consequences on export controls, BIS has determined that

it is appropriate to codify the treatment of Liechtenstein and Switzerland as one territory for purposes of the EAR. This treatment of Liechtenstein is consistent with the effort of the United States to streamline licensing requirements where export controls prescribed by the multilateral regimes are implemented.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Sheila Quarterman, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202-482-2440 or by email Sheila.Quarterman@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

By virtue of a Customs Union Treaty with Switzerland, Liechtenstein has adopted the export controls implemented under Swiss law, and has authorized Switzerland to administer and enforce export controls within Liechtenstein's territory. The Bureau of Industry and Security (BIS) recognizes that this arrangement results in the implementation of export controls in Liechtenstein that are equivalent to those in Switzerland, and in accordance with the multilateral export control regimes. By virtue of the Customs Union Treaty of 1923 between Switzerland and Liechtenstein (Customs Union Treaty),¹ Liechtenstein is a part of the "Swiss customs territory" and

¹ Customs Union Treaty of 29 March 1923 between the Principality of Liechtenstein and Switzerland, 21 League of Nations Treaty Series 233 (1924).

Switzerland acts on behalf of Liechtenstein regarding issues of trade in goods. The Customs Union Treaty empowers Switzerland to conclude and incur undertakings that apply automatically and directly to Liechtenstein. As a result of this arrangement, Swiss export control law applies equally to exporters from Switzerland and Liechtenstein. Further, Switzerland is responsible for administering export controls and enforcing export controls in Liechtenstein. Consequently, in this final rule, BIS aligns its treatment of Liechtenstein with that of Switzerland, resulting in the treatment of Liechtenstein and Switzerland as one territory for purposes of the Export Administration Regulations (EAR). Therefore, license requirements and licensing policy under the EAR for Liechtenstein are effectively the same as those for Switzerland. This treatment of Liechtenstein is consistent with the effort of the United States to streamline licensing requirements where export controls prescribed by the multilateral regimes are implemented.

Specific Amendments to the EAR that align Liechtenstein with Switzerland for Purposes of Licensing Requirements

In this rule, BIS amends the EAR by adding a sentence to paragraph (b) (Countries) of Section 738.3 (Commerce Country Chart Structure) that states that Liechtenstein, which serves as one territory with Switzerland for customs and export purposes, will be accorded the same licensing treatment as Switzerland under the EAR.

In addition and consistent with the purpose of this rule, BIS amends the EAR by adding a footnote for “Liechtenstein” on the Commerce Country Chart in Supplement No. 1 to Part 738 that states, “Refer to Switzerland for licensing requirements for Liechtenstein under the EAR.”; and by removing the “X” in chemical and biological weapons column 2, nuclear nonproliferation

column 1, national security column 2, and regional stability column 2. BIS also amends the EAR by removing Liechtenstein from the group of Computer Tier 1 Destinations in paragraph (c)(1) of Section 740.7 (License Exception Computers (APP)); Country Group B in Supplement No. 1 to Part 740; the group of countries for which an Import Certificate or End-User Statement may be required in paragraph (b)(2) of Section 748.9 (Support Documents for License Applications); and the Authorities Administering Import Certificate/Delivery Verification and End-User Statement Systems in Foreign Countries in Supplement No. 4 to Part 748. Finally, in this rule, BIS removes and reserves paragraph (g), which expressly permitted reexports between Liechtenstein and Switzerland, in License Exception Additional Permissive Reexports (APR).

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

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, distributive 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 rule has been designated a “significant regulatory action” although

not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provisions 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 OMB Control Number. This rule involves two collections of information subject to the PRA. This collection has been approved by OMB under control number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748. The other collection has been approved by OMB under control number 0694-0106, “Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,” and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control numbers 0694-0088 and 0694-0106 are not expected to increase as a result of this rule.

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

4. Pursuant to 5 U.S.C. 553(a)(1), the provisions of the Administrative Procedure Act 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)). Immediate implementation of these

amendments furthers United States policies and goals toward allies and cooperating and like-minded countries with regard to export controls and reduces the burden on exporters in relation to licensing obligations. This rule will positively impact regional stability by promoting greater responsibility in the transfer of dual-use goods, technologies, thus preventing destabilizing effects. This action also reconciles any inconsistencies in the treatment of Liechtenstein in light of its Treaty and export control arrangement with Switzerland and therefore is consistent with the effort of the United States to streamline licensing requirements where export controls prescribed by the multilateral regimes are implemented. Failure to immediately implement this rule would result in an unnecessary licensing burden on businesses, especially small businesses. Thus, in light of the United States' understanding of how export controls are administered in Liechtenstein, the United States seeks to assist businesses and prevent confusion by immediately removing licensing requirements that are unnecessary in light of the fact the international regime requirements are otherwise being met. 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. In addition, the Department finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the reasons provided above. Accordingly, this regulation is made effective immediately upon publication.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Part 740

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

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

Accordingly, Parts 738, 740 and 748 of the Export Administration Regulations (15 CFR Parts 730 through 774) are amended as follows:

PART 738 – [AMENDED]

1. The authority citation for 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); 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; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; 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 12, 2011, 76 FR 50661 (August 16, 2011).

2. Amend §738.3 by revising paragraph (b) to read as follows:

§738.3 Commerce Country Chart structure.

* * * * *

- (b) *Countries*. The first column of the Country Chart lists countries in alphabetical order.

There are a number of destinations that are not listed in the Country Chart contained in Supplement No. 1 to part 738. If your destination is not listed on the Country Chart and such destination is a territory, possession, dependency or department of a country included on the Country Chart, the EAR accords your destination the same licensing treatment as the country of which it is a territory, possession, dependency or department. For example, if your destination is the Cayman Islands, a dependent territory of the United Kingdom, refer to the United Kingdom on the Country Chart for licensing requirements. In addition, if your destination is Liechtenstein, which serves as one territory with Switzerland for purposes of the EAR, refer to Switzerland on the Country Chart for licensing requirements.

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- 3. Amend Supplement No. 1 to Part 738 by
 - a. Revising the entry for “Liechtenstein” to read as set forth below; and
 - c. Adding footnote 5 to read as set forth below.

SUPPLEMENT NO. 1 TO PART 738 –COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & Biological			Nuclear		National		Missile	Regional		Firearms	Crime			Anti-	
	Weapons			Nonproliferation		Security		Tech	Stability		Convention	Control			Terrorism	
	CB	CB	CB	NP	NP	NS	NS	MT	RS	RS	FC	CC	CC	CC	AT	AT
	1	2	3	1	2	1	2	1	1	2	1	1	2	3	1	2
								*	*	*	*	*				

Liechtenstein⁵

x						x		x	x				x		x		
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⁵ Refer to Switzerland for licensing requirements for Liechtenstein under the EAR.

PART 740 - [AMENDED]

4. The authority citation for Part 740 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. 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; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 740.7 [Amended]

5. Amend §740.7 by removing “Liechtenstein,” from the group of countries in paragraph (c)(1).

§ 740.16 [Amended]

6. Amend §740.16 by removing and reserving paragraph (g).

Supplement No. 1 to Part 740 [Amended]

7. Amend Country Group B of Supplement No. 1 to Part 740 by removing “Liechtenstein”.

PART 748 – [AMENDED]

8. The authority citation for Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *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; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

§ 748.9 [Amended]

9. Amend §748.9 by removing “Liechtenstein” from the group of countries listed in alphabetical order in paragraph (b)(2).

Supplement No. 4 to Part 748 [Amended]

10. Amend Supplement No. 4 to Part 748 by removing the entire entry for “Liechtenstein”.

DATED: November 7, 2011

Kevin J. Wolf
Assistant Secretary
for Export Administration

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