



Billing Code: 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Revisions to Sudan Licensing Policy

15 CFR Part 742

[Docket No. 160901810-6810-01]

RIN 0694-AH10

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the policy of review for applications for licenses to export or reexport to Sudan certain items that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing, commercial passenger aircraft. Such applications will now be reviewed under a general policy of approval rather than a general policy of denial.

This rule also revises the review policy from a general policy of denial to a general policy of approval for applications for licenses to export or reexport to Sudan certain items for use to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan. This rule does not create any new license requirements or remove any existing license requirements for exports or reexports to Sudan. BIS is making these licensing policy changes in connection with ongoing U.S.-Sudan bilateral engagement, and with the aim of enhancing the

safety of Sudan's civil aviation and improving the country's railroads. This action takes into account the United States' goals to improve regional peace and security.

This rule also removes two instances of "contract sanctity dates" pertaining to the export and reexport of certain items to Sudan from the EAR that currently serve no practical purpose.

BIS is taking these actions in coordination with the Department of the Treasury's Office of Foreign Assets Control (OFAC), which is amending the Sudanese Sanctions Regulations.

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482-4252.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to § 742.10 of the Export Administration Regulations (EAR), in keeping with Sudan's designation as a state sponsor of terrorism, persons must obtain a license to export or reexport to Sudan all aircraft controlled on the Commerce Control List (Supp. No. 1 to part 774 of the EAR) (CCL) and to export related parts and components that are controlled on the CCL. Prior to the publication of this rule, the EAR imposed a general policy of denial on license applications for such exports or reexports to all end-users and for all end uses in Sudan. This rule revises the licensing policy to a general policy of approval for parts, components, materials, equipment, and technology that are controlled on the CCL only for anti-terrorism reasons and that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing, commercial passenger aircraft.

Applications to export or reexport to Sudan complete aircraft and applications to export or reexport to Sudan aircraft-related items that are controlled for anti-terrorism reasons and one or more additional reasons (for example, missile technology reasons) will continue to be reviewed under a general policy of denial to all end users.

This rule also revises the general policy of denial to a general policy of approval for license applications to export or reexport to Sudan items controlled on the CCL only for anti-terrorism reasons that will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan.

With respect to both aircraft related-items and railroad-related items, the general policies of approval set forth in this rule apply only to exports and reexports to Sudan for civil uses by non-sensitive end-users within Sudan. Sensitive end users, who are not eligible for these policies, include Sudan's military, police, and/or intelligence services and persons that are owned by or are part of or are operated or controlled by those services. Additionally, license applications for the export or reexport of items that would substantially benefit such sensitive end users will generally be denied. To implement these policies, this rule revises § 742.10(b)(3) of the EAR, which sets forth exceptions to the general policies of denial that apply to most license applications to export or reexport to Sudan.

In conjunction with this rule, the Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Sudanese Sanctions Regulations, 31 CFR part 538, to add a new general license that authorizes all transactions prohibited by those regulations and by Executive Orders 13067 and 13412. Under OFAC's new general license, newly-authorized transactions include the processing of transactions involving persons in Sudan; the importation of

goods and services from Sudan; the exportation of goods, technology, and services to Sudan; and transactions involving property in which the Government of Sudan has an interest. Persons interested in exporting or reexporting to Sudan goods and technology that are subject to the EAR, including items related to railroads or the safety of civil aviation or safe operation of fixed-wing commercial passenger aircraft, pursuant to OFAC's new general license should consult BIS regarding any licensing obligations they may have under the EAR.

BIS will continue to evaluate license applications in light of section 6(j) of the Export Administration Act of 1979 (EAA), as continued in effect under the International Emergency Economic Powers Act, and any other relevant legal requirements.

This rule also removes and reserves paragraphs (c)(6)(iii) and (c)(10)(iii) of Supplement No. 2 to part 742, which state licensing policy and contract sanctity dates for aircraft, and cryptographic and cryptologic equipment, respectively. The licensing policies for these commodities are stated in paragraphs (b)(1)(iv) and (b)(1)(v) of § 742.10 and need not be repeated in Supplement No. 2. Moreover, as a consequence of this rule, which revises licensing policy for certain aircraft-related items and railroad-related items, the latter category potentially including cryptographic and cryptologic equipment, paragraphs (c)(6)(iii) and (c)(10)(iii)'s statements of a general policy of denial for all end-users in Sudan is no longer accurate. Additionally, the recitation of contract sanctity dates in Supplement No. 2 does not serve a practical purpose. The term "contract sanctity date" draws on section 6(p) of the EAA. That section constrains BIS's ability to limit exports and reexports in performance of contracts entered into prior to the date of imposition of export controls. The references to the contract sanctity dates in the supplement do not limit or otherwise affect the right of any license applicant to assert that the provisions of section 6(p) of the EAA apply to the license application that it is

submitting. The identified dates are also long outdated, with March 21, 2003, the most recent contract sanctity date that this rule removes from Supplement No. 2 to part 742.

Export Administration Act of 1979

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

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 determined not to be significant for purposes of Executive Order 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 approved under OMB control number 0694-0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, BIS believes that the benefits of this rule justify any additional burden it creates. This rule does not impose any new license requirements; in fact, it creates more favorable license application review policies for exports and reexports to Sudan. These more favorable policies might increase the number of license applications submitted to BIS because applicants might be more optimistic about obtaining approval. However, the benefit to license applicants in the form of greater likelihood of approval justifies any additional burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at jseehra@omb.eop.gov or by fax to (202) 395-7285 and to Sheila Quarterman at sheila.quarterman@bis.doc.gov

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 and 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)). BIS is making these licensing policy changes in connection with ongoing U.S.-Sudan bilateral engagement, and with the aim of enhancing the

safety of Sudan's civil aviation and improving its railroads. This decision takes into account our goals to improve regional peace and security. A delay in effective date would undermine progress in that bilateral engagement adversely impacting the U.S. Government's foreign policy goals of improving regional peace and security.

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 under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 742

Exports, Terrorism.

For the reasons set forth in the preamble, part 742 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

PART 742 – [AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 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

August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016).

2. Section 742.10 is amended by:

a. Adding a paragraph heading to paragraph (b)(1) introductory text;

b. Revising the first sentence of paragraph (b)(1)(iv);

c. Adding a paragraph heading to paragraph (b)(2); and

d. Revising paragraph (b)(3).

The additions and revisions read as follows:

§ 742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) *General policy of denial.* * * *

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(iv) Except as provided in paragraph (b)(3)(ii) of this section, all aircraft (powered and unpowered), helicopters, engines and related spare parts and components. * * *

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(2) *Military end-user and end-use policy.* * * *

(3) *Other licensing policies.* The licensing policies set forth in this paragraph apply notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section.

(i) *Case-by-case review policy.* Applications to export or reexport to Sudan will be considered on a case-by-case basis in the four situations described in paragraphs (b)(3)(i)(A) through (D) of this section.

(A) The transaction involves the reexport to Sudan of items where Sudan was not the intended ultimate destination at the time of original export from the United States, provided that the export from the United States occurred prior to the applicable contract sanctity date.

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

(C) The commodities are medical items.

(D) The items are telecommunications equipment and associated computers, software and technology for civil end use, including items useful for the development of civil telecommunications network infrastructure.

Note to paragraph (b)(3)(i). Applicants seeking approval of their license applications pursuant to this paragraph must include with their applications documentation demonstrating how their proposed transaction is consistent with one or more of the four situations described in this paragraph.

(ii) *General policy of approval.* Applications to export or reexport to Sudan the following for civil uses by non-sensitive end-users within Sudan will be reviewed with a general policy of approval.

(A) Parts, components, materials, equipment, and technology that are controlled on the Commerce Control List (Supp. No. 1 to part 774 of the EAR) only for anti-terrorism reasons that are intended to ensure the safety of civil aviation or the safe operation of fixed-wing commercial passenger aircraft.

(B) Items controlled on the Commerce Control List (Supp. No. 1 to part 774 of the EAR) only for anti-terrorism reasons that will be used to inspect, design, construct, operate, improve, maintain, repair, overhaul or refurbish railroads in Sudan.

Note to paragraph (b)(3)(ii). Applications will generally be denied for exports or reexports that would substantially benefit a sensitive end user. Sensitive end users include Sudan's military, police, and intelligence services and persons that are owned by or are part of or operated or controlled by those services.

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Supplement No. 2 to Part 742 [Amended]

3. In Supplement No. 2 to part 742, remove and reserve paragraphs (c)(6)(iii) and (c)(10)(iii).

Dated: January 4, 2017.

Kevin J. Wolf

Assistant Secretary for Export Administration

[FR Doc. 2017-00836 Filed: 1/13/2017 8:45 am; Publication Date: 1/17/2017]