

determining which entities are QALICBs with respect to Targeted Populations. Under what circumstances should an entity be determined to be a QALICB with respect to a Targeted Population? For example, should the determination be based on whether the owners, employees or customers of the entity (or some combination thereof) are members of a Targeted Population?

(b) How should the following requirements apply in determining whether an entity is a QALICB with respect to a Targeted Population: (1) The requirement of IRC section 45D(d)(2)(A)(i) under which at least 50 percent of the total gross income of a QALICB must be derived from the active conduct of a qualified business within a Low-Income Community; (2) the requirement of IRC section 45D(d)(2)(A)(ii) under which a substantial portion of the use of the tangible property of a QALICB (whether owned or leased) must be within a Low-Income Community; (3) the requirement of IRC section 45D(d)(2)(A)(iii) under which a substantial portion of the services performed for a QALICB by its employees must be performed in a Low-Income Community; and (4) the requirement of IRC section 45D(d)(3) under which the rental to others of real property is a qualified business only if the real property is located in a Low-Income Community?

**Authority:** American Jobs Creation Act of 2004, Pub. L. 108-357, Consolidated Appropriations Act of 2001, Pub. L. 106-554.

Dated: May 17, 2005.

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 738 and 742

[Docket No. 011019257-5107-02]

RIN 0694-AC48

#### **Proposed Rule: Imposition of License Requirement for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Bureau of Industry and Security (BIS) is proposing to amend the

Export Administration Regulations (EAR) by imposing a license requirement for exports and reexports of items controlled for missile technology (MT) reasons to Canada. To date, the EAR have required a license for MT-controlled items to all destinations except Canada, and generally no license exceptions are available for MT-controlled items.

This rule is consistent with a recommendation made by the General Accounting Office (GAO (renamed the Government Accountability Office)) in a 2001 report that BIS either impose a license requirement for exports and reexports of MT-controlled items to Canada, based on section 6(l) of the Export Administration Act of 1979, as amended, or seek a statutory change. The effect of this rule is that all exports and reexports of MT-controlled items to any destination require a license, and generally no license exceptions are available, so that all exports and reexports of MT-controlled items subject to the EAR are subject to prior review.

**DATES:** Comments must be received on or before June 23, 2005.

**ADDRESSES:** You may submit comments, identified by RIN 0694-AC48, to BIS by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. (Follow the instructions for submitting comments.)
- E-mail: [mblaskov@bis.doc.gov](mailto:mblaskov@bis.doc.gov).
- Include "RIN 0694-AC48" in the subject line of the message.
- Fax: (202) 482-3355.
- Mail or Hand Delivery/Courier: U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694-AC48.

Send comments regarding the collection of information 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.

Comments received on this rulemaking will be available at: <http://www.bis.doc.gov/foia>.

**FOR FURTHER INFORMATION CONTACT:** Steven Goldman, Director, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482-3825.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Consistent with a recommendation contained in a report of the General Accounting Office (GAO), the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to impose a licensing

requirement on exports to Canada of dual-use items listed on the Missile Technology Control Regime (MTCR) Annex.

The Export Administration Act (EAA) of 1979 was amended in 1991 to require a license for the export of dual-use MTCR controlled goods or technology to any country. However, when the Commerce Control List was revised and renumbered in August 1991 (56 FR 42824), the Canadian exemption from license requirements for MT-controlled items was not changed. The continuation of the exemption from the licensing requirements for exports to Canada was consistent with U.S. policy that had, since 1941, permitted the export without license of nearly all dual-use goods and technologies intended for consumption or use in Canada.

On May 31, 2001, the United States General Accounting Office (GAO (since renamed the Government Accountability Office)) issued a report entitled: "Export Controls: Regulatory Change Needed to Comply with Missile Technology Licensing Requirements" (GAO-01-530). That report recommended that BIS either amend the EAR to require a license for exports of dual-use MTCR items to Canada or seek a statutory change from Congress.

In the course of commenting on GAO's report, the Department of Commerce informed GAO that legislation that would replace the Export Administration Act of 1979 (EAA) was pending in the Congress and that the legislation did not contain a provision that would mandate licensing requirements for the export of MT-controlled items to Canada. At various times in the years 2000 to 2002, S. 149 and H.R. 2581, proposed legislation that would have reauthorized the EAA, were under consideration by the Congress. While S. 149 was approved by the Senate, the legislation to replace the Export Administration Act was not enacted. The Department of Commerce also noted in its comments that it had notified Congress of the Canadian exemption for MT-controlled items every year since 1991.

In light of GAO's recommendation, BIS published an "Advance notice of proposed rulemaking" on December 20, 2001 (66 FR 65666), soliciting public comments on the removal of the licensing exemption for export of MT items to Canada. BIS received seventeen comments in response, from Canadian and U.S.-based trade associations, Canadian and U.S.-based companies, a foreign airline, and the Government of Canada. All of the substantive

comments voiced opposition to the licensing requirement.

### Summary of Comments

Trade association commenters stated that the license requirement is expected to force Canadian companies to seek business relationships and equipment sources outside of the United States, cause interruptions and delays in binational defense supply lines, negatively impact the intent and spirit of many of the bilateral agreement on defense issues, and negatively impact the integration and interoperability of Canadian and U.S. security forces. One trade association commenter noted that six of the ten largest aerospace companies operating in Canada are subsidiaries of U.S. firms, and stated that imposing a license requirement on MT-controlled items to Canada could lead to loss of significant market share by the aerospace industries of both countries. This Canadian commenter also recommended that the license requirement not be imposed until the Missile Technology Control List Regime (MTCR) control list is completely reviewed. A U.S. industry association commented that the requirement that all MT-controlled items be licensed to Canada would cause considerable dislocation without yielding any corresponding benefit in terms of control or security, and urged that, absent an enactment by Congress that expressly extends the MT license requirement to Canada, the existing rules not be altered.

Canadian and U.S.-based companies commented that trade between the United States and Canada in MT-controlled items will be adversely affected, and that companies will incur added expenses and delays in obtaining licenses for software and technology exports as well as for equipment exports. One company commented that the added expenses incurred by companies to comply with a licensing requirement will trickle down to the flying public.

Finally, the Government of Canada's comments agreed with those of the trade associations and companies on the adverse effect a license requirement will have on U.S.-Canada trade in MT-controlled items and, because of the close relationship between the Canadian and U.S. industries, on the provision of key equipment to U.S. industry and government, including the military. The Government of Canada also commented that several U.S. trade partners maintain provisions to exempt from individual licensing the export of MT-controlled items to other MTCR member countries, and cited the European Union, Japan,

Switzerland, and a Canadian exemption for exports to the United States.

Comments may be viewed at: <http://efoia.bis.doc.gov/pubcomm/MTCR-Canada/MTCR-Canada.pdf>.

### Response to Comments and Request for Further Comments

Although the comments received in response to the Advance Notice of Proposed Rulemaking generally were opposed to the license requirement for several reasons, in this proposed rule, BIS requests more specific comments as to the effect that the rule will have in terms of numbers of license applications that the industry and/or individual companies would expect to submit under such a requirement, and, if possible, estimated additional costs of complying with a license requirement. Comments addressing these specific issues will enable BIS to evaluate better the impact that a license requirement will have in measurable terms on industry sectors and individual companies.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 3 CFR, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

### Rulemaking Requirements

1. This proposed 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 (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 proposed rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694-0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS-748. This proposed rule is expected to result in an increase in the number of license applications submitted to BIS. 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 proposed 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 a notice of proposed rulemaking and the opportunity for public comment are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). 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 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.

However, in view of the importance of this proposed rule, BIS is seeking public comments before these revisions take effect. The period for submission of comments will close June 23, 2005. BIS will consider all comments received before the close of the comment period in developing a final rule. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying. The Bureau of Industry and Security displays these public comments on its Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482-0500 for assistance.

**List of Subjects***15 CFR Part 738*

Administrative practice and procedure, Exports, Foreign trade.

*15 CFR Part 742*

Exports, Foreign trade.

Accordingly, parts 738 and 742 of the Export Administration Regulations (15 CFR parts 730–799) 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); 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).

2. Supplement No. 1 to part 738 is amended by adding an “X” under “MT 1” in the “Missile Tech” column for “Canada.”

**PART 742—[AMENDED]**

3. The authority citation for part 742 continues 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 October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

**§ 742.5 [Amended]**

4. Section 742.5 is amended by revising the phrase “to all destinations, except Canada, as indicated by MT Column 1 of the Country Chart” to read “to all destinations, as indicated by MT Column 1 of the Country Chart” in the third sentence of paragraph (a)(1).

Dated: May 19, 2005.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG–134030–04 and REG–133791–02]

RIN 1545–BD60 and RIN 1545–BA88

**Credit for Increasing Research Activities**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and withdrawal of previously proposed regulations.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on July 29, 2003 (68 FR 44499).

**DATES:** Written or electronic comments must be received by September 28, 2005. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for October 19, 2005, at 10 a.m. must be received by September 28, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–134030–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–134030–04), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at <http://www.irs.gov/reg> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS and REG–134030–04). The public hearing will be held in the Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Nicole R. Cimino at (202) 622–3120; concerning submissions of comments,

the hearing, and/or to be placed on the building access list to attend the hearing, Robin R. Jones at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background and Explanation of Provisions**

This document withdraws the notice of proposed rulemaking (REG–133791–02) published on July 29, 2003 and amends the Income Tax Regulations (26 CFR 1) relating to section 41. The temporary regulations set forth the rules relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations, including consolidated groups, or a group of trades or businesses under common control under section 41(f) for taxable years ending on or after December 31, 2004. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 19, 2005, beginning at 10 a.m. in the Auditorium, 7th Floor, of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In