

Launch Act cross-waiver (49 U.S.C. 70101 *et seq.*) is applicable.

**Michael D. Griffin,**  
*Administrator.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Chapter VII

[Docket No. 061010262-6262-01]

#### Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

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

**ACTION:** Request for comments.

**SUMMARY:** The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS will include a description of these comments in its biennial report to the Congress, as required by the Trade Sanctions Reform and Export Enhancement Act of 2000 (Pub. L. 106-387), as amended.

**DATES:** Comments must be received by November 22, 2006.

**ADDRESSES:** Written comments (three copies) should be sent to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, Washington, DC 20230 with a reference to TSRA 2006 Report, or to e-mail [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov) with a reference to TSRA 2006 Report in the subject line. Comments may also be emailed to Joan Roberts, Office of Nonproliferation and Treaty Compliance, at [JRoberts@bis.doc.gov](mailto:JRoberts@bis.doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Office of Nonproliferation and Treaty Compliance, Telephone: (202) 482-4252. Additional information on BIS procedures and our previous biennial report under the Trade Sanctions Reform and Export Enhancement Act, as amended, is available at [http://www.bis.doc.gov/licensing/TSRA\\_TOC.html](http://www.bis.doc.gov/licensing/TSRA_TOC.html). Copies of these materials may also be requested by contacting the Office of Nonproliferation and Treaty Compliance.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883,

1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482-2165. The Office of Administration displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office 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) 482-2165 for assistance.

**SUPPLEMENTARY INFORMATION:** The Bureau of Industry and Security (BIS) authorizes exports of agricultural commodities to Cuba pursuant to section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7205(a)), under the procedures set forth in § 740.18 of the Export Administration Regulations (EAR) (15 CFR 740.18). These are the only licensing procedures currently in effect pursuant to the requirements of section 906(a) of TSRA. Please include the phrase TSRA 2006 on the envelope or in the subject line of the email as appropriate.

Under the provisions of section 906(c) of TSRA (22 U.S.C. 7205(c)), BIS must submit a biennial report to the Congress on the operation of the licensing system implemented pursuant to section 906(a) for the preceding two-year period. This report is to include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties during a 30-day public comment period about the effectiveness of the licensing procedures. BIS is currently preparing a biennial report on the operation of the licensing system for the two-year period from October 1, 2004 to September 30, 2006.

By this notice, BIS requests public comments on the effectiveness of the licensing procedures for the export of agricultural commodities to Cuba set forth under § 740.18 of the EAR. Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments.

Copies of the public record concerning these regulations may be

requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482-2165. The Office of Administration displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office 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) 482-2165 for assistance.

Dated: October 17, 2006.

**Christopher A. Padilla,**  
*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Chapter VII

[Docket No. 061005255-6255-01]

#### Effects of Foreign Policy-Based Export Controls

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

**ACTION:** Request for comments on foreign policy-based export controls.

**SUMMARY:** The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

**DATES:** Comments must be received by November 22, 2006.

**ADDRESSES:** Written comments may be sent by e-mail to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include "FPBEC" in the subject line of the message. Written comments (three copies) may be submitted by mail or hand delivery to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include "FPBEC" in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry

and Security, Telephone: (202) 482-4252. Copies of the current Annual Foreign Policy Report to the Congress are available at <http://www.bis.doc.gov/News/2006/foreignPolicyReport/Default.htm> and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

**SUPPLEMENTARY INFORMATION:** Foreign policy-based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items, activities and persons, including: certain general purpose microprocessors for 'military end-uses' and 'military end-users' (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§§ 742.15 and 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability items (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, and 746.7); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members") (§ 744.18); and certain sanctioned entities (§ 744.20). Attention

is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. 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 August 3, 2006 (71 FR 44551, August 7, 2006), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2006, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in receiving comments on the economic impact of proliferation controls. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered

by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office 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) 482-0637 for assistance.

Dated: October 12, 2006.

**Christopher A. Padilla,**  
Assistant Secretary for Export  
Administration.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-110405-05]

RIN 1545-BE58

#### Limitations on Transfers of Built-in Losses

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 362(e)(2) of the Internal Revenue Code of 1986 (Code). The proposed regulations reflect changes made to the law by the American Jobs Creation Act of 2004. These proposed regulations provide guidance regarding the determination of the bases of assets and stock transferred in certain nonrecognition transactions and will affect corporations and large shareholders of corporations, including individuals, partnerships, corporations, and tax-exempt entities.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 22, 2007.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-110405-05),

Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG-110405-05), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at [www.irs.gov/reg](http://www.irs.gov/reg) or Federal e-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-110405-05).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Jay M. Singer, (202) 622-7530 (not toll-free number), or concerning submissions of comments, Richard A. Hurst, [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Prior to 1999, Congress grew concerned that taxpayers were engaging in corporate nonrecognition transactions in order to accelerate and duplicate losses. See S. Rep. No. 201, 106th Cong., 1st Sess. 46-48 (1999). Congress was primarily concerned with the acceleration and duplication of losses through the assumption of liabilities (including liabilities to which assets transferred in a corporate nonrecognition transaction were subject). As a result, in 1999, Congress enacted section 362(d) of the Code to prevent the bases of assets transferred to a corporation from being increased above such assets' aggregate fair market value as a result of a liability assumption. In addition, in 2000, Congress enacted section 358(h) to reduce the basis of stock received in certain corporate nonrecognition transactions, but not below fair market value, by the amount of any liabilities assumed in the transaction.

Following the enactment of sections 362(d) and 358(h), Congress remained concerned that taxpayers were engaging in various tax-motivated transactions to take more than one tax deduction for a single economic loss. Consequently, in the American Jobs Creation Act of 2004 (Pub. L. 108-357, 188 Stat. 1418), Congress enacted section 362(e), which limits the ability of taxpayers to duplicate net built-in loss in certain nonrecognition transactions.

Section 362(e)(1)(A) provides that if there would be an importation of a net built-in loss in a transaction described in section 362(a) or (b), the basis of certain property acquired in such a transaction shall be its fair market value immediately after the transaction. Section 362(e)(1)(B) provides that

property is described in section 362(e)(1) if gain or loss with respect to such property is not subject to tax in the hands of the transferor immediately before the transfer, and gain or loss with respect to such property is subject to tax in the hands of the transferee immediately after the transfer. Further, section 362(e)(1)(C) provides that there is an importation of net built-in loss in a transaction if the transferee's aggregate adjusted basis in such property would (but for the application of section 362(e)(1)) exceed the aggregate fair market value of such property immediately after the transaction.

Section 362(e)(2)(A) provides that if property is transferred by a transferor to a transferee in a transaction described in section 362(a) and not described in section 362(e)(1), and if the transferee's aggregate adjusted basis in the transferred property would (but for the application of section 362(e)(2)) exceed its aggregate fair market value immediately after the transfer, then the transferee's aggregate adjusted basis in the transferred property shall not exceed the fair market value of the property immediately after the transfer. Further, section 362(e)(2)(B) provides that this aggregate reduction in the basis of the transferred property shall be allocated among the property in proportion to their respective built-in losses immediately before the transaction. As an alternative to this reduction in the basis of the transferred assets, section 362(e)(2)(C) provides that if the transferor and the transferee both so elect, section 362(e)(2)(A) shall not apply, and the transferor's basis in the stock of the transferee received in exchange for the property that would otherwise be subject to basis reduction under section 362(e)(2)(A) shall not exceed its fair market value.

Since the enactment of section 362(e)(2), the IRS and Treasury Department have been exploring issues concerning the interpretation, scope, and application of the section and have proposed these regulations to address these issues. Additional guidance regarding the application of section 362(e)(2) to transfers between members of a consolidated group and the treatment of transactions that have the effect of importing losses into the U.S. tax system (to which section 362(e)(1) applies) will be addressed in separate guidance projects.

#### Explanation of Provisions

##### 1. General Provisions

In general, these proposed regulations apply to transfers of net built-in loss property within the U.S. tax system in