

designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements in paragraph (a) of this section.

(c) *License exception.*

Notwithstanding the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provision of License Exception GOV set forth in § 740.11(b)(2) of the EAR.

(d) *License application procedure.*

When submitting a license application pursuant to this section, you must state in the “additional information” block of the application that “this application is submitted because of the license requirement in § 744.24 (Restrictions on exports, reexports, and transfers (in-country) to certain intelligence end users).” In addition, either in the additional information block of the application or in an attachment to the application, you must include all known information concerning the intelligence end user(s) of the item(s). If you submit an attachment with your license application, you must reference the attachment in the “additional information” block of the application.

(e) *License review policy.*

Applications to export, reexport, or transfer (in-country) items described in paragraphs (a) and (b) of this section will be reviewed with a presumption of denial for Macau and countries in ITAR § 126.1(d)(1), with the exception of Russia and Belarus. Applications for Russia and Belarus will be reviewed with a policy of denial consistent with § 746.8(b)(1) of the EAR. All other applications will be reviewed under a case-by-case review policy, consistent with United States policies articulated in § 126.1 of the ITAR.

(f) *Definition.* For the purposes of this section, references to this section, or references to the term in this paragraph, the following definition applies:

*Intelligence end user (IEU)* means any foreign government intelligence, surveillance, or reconnaissance organizations or other entities performing functions on behalf of such organizations. IEU includes entities designated with a footnote 7 on the Entity List in supplement no. 4 of this part.

**Supplement No. 2 to Part 744 [Removed and Reserved]**

- 21. Supplement No. 2 to part 744 is removed and reserved.
- 22. Supplement No. 4 to part 744 is amended by adding Footnotes 5 through 7, to read as follows:

**Supplement No. 4 to Part 744—Entity List**

\* \* \* \* \*

<sup>5</sup> For this ‘military end user,’ (MEU) as defined in § 744.21(f) of this part, entity, see §§ 744.6, 744.11(a)(2)(iv), and 744.21 for related license requirements and license review policy.

<sup>6</sup> For this ‘military-support end user,’ (MSEU) as defined in § 744.22(f) of the EAR, entity, see §§ 744.6, 744.11(a)(2)(v), and 744.22 for related license requirements and license review policy.

<sup>7</sup> For this ‘intelligence end user,’ (IEU) as defined in § 744.24(f) of the EAR, entity, see §§ 744.6, 744.11(a)(2)(vi), and 744.24 for related license requirements and license review policy.

\* \* \* \* \*

**Thea D. Rozman Kendler,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2024–16496 Filed 7–25–24; 8:45 am]

**BILLING CODE 3510–33–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 736, 744, and 774**

[Docket No. 240712–0191]

RIN 0694–AI35

**Export Administration Regulations: Crime Controls and Expansion/Update of U.S. Persons Controls**

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

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

**SUMMARY:** The Department of Commerce, Bureau of Industry and Security (BIS), seeks public comments on proposed amendments to the Export Administration Regulations (EAR) in support of U.S. national security and foreign policy interests. To build upon existing controls, BIS proposes establishing certain Foreign-Security End User (FSEU) and “U.S. persons” activities controls and Commerce Control List-based (CCL) controls. The proposed additions of the foreign-security end user control and “U.S. persons” activity controls would implement expanded authority under the Export Control Reform Act of 2018 (ECRA), as amended, to control certain “U.S. persons” activities under the EAR. Specific to the EAR’s “U.S. persons” activities controls, BIS is proposing amendments to control “support” furnished by “U.S. persons” to identified foreign-security end users. In addition, BIS is proposing to add to the Commerce Control List two new

unilateral item controls on facial recognition technology.

**DATES:** Comments must be received by BIS no later than September 27, 2024.

**ADDRESSES:** Comments on this rule may be submitted to the Federal rulemaking portal ([www.regulations.gov](http://www.regulations.gov)). The [regulations.gov](http://regulations.gov) ID for this rule is: BIS–2023–0006. Please refer to RIN 0694–AI35 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission. For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available through <https://www.regulations.gov>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

**FOR FURTHER INFORMATION CONTACT:** For questions specific to the human rights or foreign-security end-user provisions set forth in proposed § 744.25, contact Anthony Christino, Director, Human Rights and Embargoes Division, [Anthony.Christino@bis.doc.gov](mailto:Anthony.Christino@bis.doc.gov), Phone: (202) 482–3241. For general questions, contact Hillary Hess, Director, Regulatory Policy Division, [rp2@bis.doc.gov](mailto:rp2@bis.doc.gov). Include, “Human Rights End Users” on subject line of emails. Phone: (202) 482–2440.

**SUPPLEMENTARY INFORMATION:**

**Background**

In accordance with the Export Control Reform Act of 2018 (ECRA), the Bureau

of Industry and Security (BIS) utilizes item-based controls, end-user-based controls, and specific licensing policies to address proliferation and prevent items subject to the Export Administration Regulations (EAR) from being diverted or misused contrary to U.S. national security and foreign policy interests. *See* 50 U.S.C. 4811(2); 4813(a)(16); 15 CFR 742.7, 744.11.

As set forth in 15 CFR 742.7, BIS imposes license requirements that support the protection of human rights (described in the EAR as human control (CC) reasons for control). Under the licensing policy for CC-controlled items in § 742.7(b), BIS generally considers license applications favorably on a case-by-case basis unless there is civil disorder in the country or region of destination or unless there is a risk that the items will be used to violate or abuse human rights. In October 2020, BIS expanded this licensing policy beyond CC-controlled items to include those items controlled for any other reason (85 FR 63007, Oct. 6, 2020). In April 2024, BIS further revised the CC licensing policy such that certain firearms and related items have a distinct licensing policy (89 FR 34680, April 30, 2024).

In addition to item-based controls and licensing policy, BIS imposes end-user controls to promote the national security and foreign policy interests of the United States, which includes the promotion and protection of human rights. Entity List additions may be made to address activities that present a risk of being contrary to the national security and foreign policy interests of the United States, including the protection of human rights. *See* 15 CFR 744.11(b). To date, BIS has added 103 entities for such human rights reasons. With this proposed rule, BIS would add end user, end use, and item-based controls.

On November 14, 1994, Executive Order 12938 (E.O. 12938, 59 FR 59099) directed BIS to continue to regulate the activities of “U.S. persons” to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction. This control, which is set forth in § 744.6 of the EAR, imposes licensing requirements on assistance furnished by “U.S. persons” in connection with activities of proliferation concern, even when such assistance does not involve any items subject to the EAR or any foreign entities subject to specified restrictions under the EAR (*e.g.*, persons whose export privileges have been denied under the EAR). Subsequently, with the enactment of ECRA as part of the John S. McCain NDAA for FY 2019

(Pub. L. 115–232), Congress authorized, in ECRA section 1753(a)(2)(F), the control of “U.S. persons” activities related not only to weapons of mass destruction and their means of delivery, but also to specific “foreign military intelligence services.” Accordingly, in January 2021, BIS amended § 744.6 of the EAR to add a new restriction on the activities of “U.S. persons” in support of certain military-intelligence end uses and end users. BIS also created a new § 744.22 that targeted exports, reexports, and transfers (in- country) destined for certain military-intelligence end uses or end users (86 FR 4865, Jan. 15, 2021).

Subsequently, section 5589(b) of the December 2022 National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263, NDAA for FY 2023) amended section 1753(a)(2)(F) of ECRA (50 U.S.C. 4812(a)(2)(F)) by providing BIS with the statutory authority to impose controls on “the activities of United States persons, wherever located, relating to specific foreign military, security, or intelligence services.” Consistent with this statutory amendment, in this proposed rule, BIS would add to the “U.S. persons” activities control in § 744.6 “support” of foreign-security end user activities and would expand existing part 744 restrictions to encompass activities of “U.S. persons” in connection with defined foreign-security end users. Specifically, BIS proposes to add paragraph (b)(8) as the prohibition on “U.S. persons” ‘support’ in § 744.6(b)(8) to apply to foreign-security end users. BIS is proposing amendments to the EAR on military and intelligence end user controls, and controls that would restrict U.S. persons’ support of such end users, in a separate rule published concurrently with this rule.

Consistent with section 1754(d)(1) of ECRA (50 U.S.C. 4813(d)(1)) and § 744.6 of the EAR, BIS proposes to regulate the “U.S. persons” activities described above only to the extent they are not subject to a license requirement or general prohibition administered by another Federal department or agency. Accordingly, “U.S. persons” are required to seek a license from BIS only for the activities described in section 744.6 that are not subject to a license requirement or general prohibition administered by the Department of Energy, Department of State, Department of the Treasury, or other federal department or agency. The issuance of a license by BIS, or any other federal department or agency, does not authorize “U.S. persons” to engage in any activity that is otherwise

prohibited by law, including criminal statutes. *See* 15 CFR 744.6(a).

In addition to the “U.S. persons” activities control and foreign-security end user controls, BIS is proposing new item controls for facial recognition systems. In July 2020, BIS published a *Notice of Inquiry (NOI) on Advanced Surveillance Systems and Other Items of Human Rights Concern* NOI. (85 FR 43532, July 17, 2020; “July 2020 NOI”). The proposed amendments in this proposed rule were informed by the public comments on the July 2020 NOI. In that NOI, BIS requested comments on: (1) new license requirements on crime control and detection items, including facial recognition software and other biometric systems for surveillance; (2) the proposed removal or modification of the CC controls on several items on the CCL; and (3) potential revisions to CC controls that are based on end uses and end users, such as end use and end user controls set forth in part 744 of the EAR.

Of the 22 public comments received, eleven supported the implementation of end-use-and end-user-based controls, instead of list-based controls (*i.e.*, controls that derive from items’ placement on the CCL). Overall, commenters that supported end-use and end-user-based controls over list-based controls noted several implementation challenges for list-based controls imposed to address concerns about misuse. Exporters cautioned that, in the human rights context, items are often ubiquitous and have a wide variety of end uses. Thus, depending on the item at issue, it may be difficult to tailor list-based controls to precisely guard against the potential for human rights violations or abuses. Moreover, commenters warned that, in trying to meet the challenge of preventing items subject to the EAR from being used to commit or enable human rights violations or abuses, applying list-based controls may lead to over-broad controls that could stifle innovation and harm U.S. technological leadership. Exporters noted that even where list-based controls are successfully implemented, they may quickly become obsolete given the rapid advancement of technology. Commenters suggested that, in contrast to broad list-based controls on items that are often ubiquitous and have multiple uses, in the human rights context, targeted end-use and end-user controls, preferably end user controls, would allow BIS to review each item, end use, and end user to assess whether the item may be used to commit human rights violations or abuses.

Additionally, several comments focused specifically on the expected

impact of new license requirements for facial recognition technology. Certain comments raised concerns with controls that could stifle the beneficial use of facial recognition technology. For example, commenters noted that the auto industry is developing new technologies that utilize facial-recognition-related capabilities to verify authorized users and allow for keyless entry and ignition. Commenters also noted that facial recognition technology is used in airports to enhance public safety and has several beneficial investigative and law enforcement applications when appropriate legal frameworks are in place to protect civil rights and liberties. In contrast, other commenters noted that certain state actors of concern are using facial recognition technology for more nefarious end uses—namely, to target individuals; track individuals' movements and actions; link individuals' actions to biometric profiles that include blood types, fingerprints, irises, and DNA analysis; and log spoken and written digital communications. BIS has considered these comments in proposing both the foreign-security end user control and the item controls.

Discussed below are the proposed: 'foreign-security end user' rule license requirement; expansion of the "U.S. persons" control for "support" furnished by "U.S. persons" to identified 'foreign-security end users'; conforming changes to § 744.11; and unilateral item controls on facial recognition technology.

### **I. Proposed New § 744.25, Controls on 'Foreign-Security End Users'**

#### *License Requirement for 'Foreign-Security End Users'*

State actors exploit advancements in technologies to reinforce existing repression; target civil society actors, human rights defenders, journalists, activists, and dissidents; surveil and profile women in all their diversity, ethnic, religious, and racial minorities, and other members of marginalized populations; censor speech; spread misinformation and disinformation; engage in mass surveillance; control the flow of information; infringe privacy; and suppress freedom through a variety of end users, including traditional law enforcement bodies, public security agencies, private prisons, and private contractors. These practices are not new, but advances in technology have supercharged the ability of such state actors to leverage new mechanisms to deploy their repressive agendas. With this proposed rule, BIS would require a

license for exports, reexports, and transfers (in-country) for items subject to the EAR that are specified on the CCL when they are destined for 'foreign-security end users,' as newly defined in the proposed new section, of a specified destination.

The country scope of the license requirement would apply to Country Groups D:5 and E. Country Group D:5 includes countries subject to a U.S. arms embargo under the State Department's International Traffic in Arms Regulations (ITAR). Under the ITAR, with certain enumerated exceptions, it is the policy of the United States to deny licenses or other approval for exports of defense articles or defense services destined to these countries, including their armed forces, police, intelligence, or other internal security forces. See 22 CFR 126.1. Similarly, BIS requires a license for many "600 series" items—items that are of a military nature but do not warrant control on the U.S. Munitions List—to these countries. Country Group E represents countries that are state sponsors of terrorism or against which the United States imposes a unilateral embargo. BIS would impose a license requirement on foreign-security end users of D:5 and E countries for all items on the CCL to provide visibility into the end uses and end users of these items and to contribute to efforts to prevent use of these items to violate or abuse human rights.

#### *Application of the Term 'Foreign-Security End Users'*

The license requirement under this section would apply when a person has "knowledge," as defined in part 772, that a CCL item is intended, entirely or in part, for 'foreign-security end users.' The term 'foreign-security end users' is defined in paragraph (f) of proposed new § 744.25 as "governmental and other entities with the authority to arrest, detain, monitor, search, or use force in the furtherance of their official duties." This definition would include persons or entities at all levels of the government police and security services, from the national headquarters or the ministry level to all subordinate agencies/bureaus (e.g., municipal, provincial, regional). The proposed definition of 'foreign-security end users' also includes other persons or entities performing functions of a 'foreign-security end user,' such as arrest, detention, monitoring, or search, and may include analytic and data centers (e.g., genomic data centers), forensic laboratories, jails, prisons, detention facilities, labor camps, and reeducation facilities, because government 'foreign-

security end users' often hire non-government entities to assist in their duties. Also included in the proposed definition of 'foreign-security end users' would be Entity List entities identified through new footnote "8" designation.

In this proposed rule, BIS would not apply the term 'foreign-security end users' to civilian emergency medical, firefighting, and search-and-rescue end users. In situations in which a country integrates police, emergency medical, firefighting, and search-and-rescue services into a single public safety department, BIS seeks to ensure that the export, reexport, or transfer (in-country) of items necessary to protect lives is not disrupted and therefore would apply a case-by-case review standard. BIS also seeks to ensure that the export, reexport, or transfer (in-country) of items necessary to protect lives at airport terminals, railway and rapid transit stations, and other public transport hubs is not disrupted. Where an entity that appears to satisfy the definition of 'foreign-security end user' but the end user is integrated into or organized under the military, the 'Military End User' control in section 744.21 applies.

#### *License Application Review Standard/Policy*

BIS would review license applications submitted pursuant to § 744.25 on a case-by-case basis to determine whether the proposed transaction presents an unacceptable risk of enabling human rights violations or abuses. Applications for transactions that would pose an unacceptable risk will be reviewed under a presumption of denial.

This proposed rule would also establish a case-by-case license review policy to allow for the approval of items necessary for public health or safety, or for other end uses that do not implicate human rights. This case-by-case license review policy is intended to ensure that such exports, reexports, and transfers (in-country) would not be disrupted, while also allowing for the U.S. Government to review such license applications to ensure that such exports are consistent with that purpose and are not otherwise contrary to U.S. national security or foreign policy interests.

Proposed paragraph (b) of § 744.25 states that BIS may inform the public either individually by specific notice or through a rulemaking or notice published in the **Federal Register** that a license is required for specific exports, reexports, or transfers (in-country) of any item subject to the EAR because there is an unacceptable risk of use by, or diversion to, a certain end user in the specified destination. Only License Exception GOV, set forth in existing

§ 740.11(b)(2) and (c)(2), would be available to overcome the proposed license requirement if conditions of that license exception are met.

## II. Proposed Expansion of U.S. Persons Controls

This proposed rule would expand existing restrictions to encompass certain activities of U.S. persons in connection with ‘foreign-security end users.’ Specifically, this proposed rule would revise § 744.6(b) of the EAR to add paragraph (b)(8) to reflect the expanded scope of U.S. person activities subject to the EAR, as described below, which includes activities identified in that section that support foreign-security end users defined by proposed new § 744.25(f) and that are identified on the Entity List with a new footnote “8” designation. As with all existing § 744.6(b) controls on specific activities of “U.S. persons,” such controls would only apply to the extent that the underlying activities would not be subject to a license requirement or general prohibition administered by another Federal department or agency. Thus, as proposed, the “U.S. persons” control would only apply to entities that fit the definition of proposed new § 744.25(f) if they are identified on the Entity List with a footnote 8.

## III. Proposed Conforming Amendments to § 744.11

Consistent with the proposed revisions to § 744.6 and addition of § 744.25, BIS proposes to amend § 744.11 “License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States” by adding entities that are ‘foreign-security end users’ to the Entity List in supplement no. 4 to part 744, designating them by specific footnote, and adding license requirements for these entities to § 744.11 of the EAR. Amendments to the Entity List would be made in a separate final rule.

BIS proposes to amend § 744.11 by revising the heading for paragraph (a)(2) from “Entity List foreign-direct product” (FDP) license requirements, review policy, and license exceptions” to “Entities designated with specific conditions identified by footnote,” because not all Entity List entities or footnote designated entities would have license requirements that include foreign-produced items subject to the EAR pursuant to a foreign-direct product rule in existing § 734.9 of the EAR. This proposed rule would also move the description of footnote 4 entities in existing (a)(2)(ii) to (a)(2)(iii)

and would include in (a)(2)(ii) requirements for footnote 3 entities—Russian and Belarusian ‘military end users.’ This proposed rule would reserve (a)(2)(iv), (v), (vi) for future use. Finally, this proposed rule would add paragraph (a)(2)(vii) footnote 8 entities—‘foreign-security end users.’

Additionally, this proposed rule would add introductory text to paragraph (a)(2) to clarify that the “standards-related activities” exclusion to the license requirements set forth in existing paragraph (a)(1) would apply to all the footnote designated entities described in paragraph (a)(2).

## IV. Proposed Amendments to CCL for Protection of Human Rights

As described below, this proposed rule would revise three ECCNs in Category 3 of the CCL (Electronics) to enable further protection against human rights abuses.

### *Facial Recognition Systems*

Facial recognition technology coupled with artificial intelligence technology has bolstered the ability of foreign-security end users, such as law enforcement agencies (municipal, provincial, regional, national) and other government affiliated entities to target victims at a higher rate, leading to increased capabilities for violations or abuses of human rights. Working in concert, these technologies can log countless images to help state actors of concern arbitrarily and unlawfully track, mistreat, detain, and monitor people. Facial recognition technology can be used to draw inferences about individuals, such as inferences about ethnicity or religion, that can result in discriminatory treatment or detention. Previously, this same task would have been accomplished manually with a cost of thousands of hours and was difficult or impossible to perform at scale. In this way, advances in digital technology can be weaponized to deploy repressive tactics at lower cost, with greater ease, and larger impact.

To further promote and protect human rights throughout the world, this proposed rule would create a new CC1 control for facial recognition systems specially designed for mass-surveillance and crowd scanning. CC1 controls would apply to crime control and detection instruments and equipment and related “technology” and “software” identified in the appropriate ECCNs on the CCL. A license would be required for exports of these items to countries listed in CC Column 1 in the Country Chart (Supplement No. 1 to part 738 of the EAR). As these proposed controls are narrowly tailored, they

would not apply to systems that merely restrict individual access to personal devices, automobiles, or residential or work premises by verifying that a person attempting to gain such access is authorized to do so.

One of the ways facial recognition systems identify or verify a person from a digital image or a video frame is by comparing selected facial features from an input image to the features of faces stored in a database. The major components of such systems are input camera(s), data storage, processing computers, and the software algorithms needed to model facial images.

There is no longer any effective difference between systems that require active permission by the subject and systems that can be utilized clandestinely, whether for individual or crowd identification. The capture components of these systems can be very small and easily concealable. Targets can employ limited measures to thwart identification, but these measures are expected to be less effective and less available as the technology matures.

Accordingly, this proposed rule would amend ECCN 3A981 to include a proposed new item for facial recognition systems. Facial recognition software would be controlled under ECCN 3D980. As a result of the proposed changes to ECCN 3A981, facial recognition technology would be controlled under ECCN 3E980. All of these ECCNs would be controlled for CC1 reasons. CC reasons for control support U.S. foreign policy to promote the observance of human rights throughout the world.

## V. Additional Conforming Amendments

This proposed rule would make conforming revisions to §§ 736.2 to update the descriptions and applicability of the proposed new § 744.25 ‘Foreign-Security End User’ controls and § 744.6 revisions of U.S. Persons controls.

### *Request for Comments on This Proposed Rule*

BIS seeks to provide the interested public with an opportunity to submit comments in order to mitigate any unnecessary disruption to supply chains, ensure that the controls are drafted to be as effective as possible, and that the provisions of the controls are clear and unambiguous for ease of compliance for exporters, reexporters, and transferors. BIS continues to evaluate the scope of items subject to this rule, the scope of the end users covered by this rule, and the potential

for complementary controls, and welcomes comments on these issues.

In particular, BIS is soliciting public comment on the proposed addition of § 744.25 (Restrictions on certain human rights related end uses and end users: foreign-security end users) and the proposed revision to § 744.6 (Restrictions on certain activities of U.S. persons), as well as any other proposed revisions. Comments may be submitted in accordance with the DATES and ADDRESSES sections above. BIS will review and, if appropriate, address such comments through a related rulemaking process.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). On December 23, 2022, the President signed into law the National Defense Authorization Act for Fiscal Year 2023 (NDAA, Pub. L. 117–263) section 5589(b) of which amended section 4812(a)(2)(F) of ECRA. ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this proposed rule.

Rulemaking Requirements

1. This proposed rule has been designated a “significant regulatory action” under Executive Order 12866, as amended by Executive Order 14094.

2. Notwithstanding any other provision 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 Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total license applications associated with the PRA and OMB control number 0694–0088 are expected to be fewer than 200 license applications as a result of this rule. Therefore, the increase in burden hours will not exceed that approved for OMB control number 0694–0088.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. Notwithstanding this exemption, BIS is providing the public with an opportunity to comment on this proposed rule.

5. 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. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 736

Exports.

15 CFR Parts 744 and 774

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, 15 CFR parts 736, 744, and 774 of the EAR (15 CFR parts 730–774) is proposed to be amended as follows:

PART 736—GENERAL PROHIBITIONS

■ 1. The authority citation for 15 CFR part 736 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022); Notice of May 8, 2023, 88 FR 30211 (May 10, 2023).

■ 2. Section 736.2 is amended by adding paragraph (b)(7)(i)(A)(6) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

\* \* \* \* \*

- (b) \* \* \*
(7) \* \* \*
(i) \* \* \*
(A) \* \* \*

(6) A ‘foreign-security end user’ as defined in § 744.25(f) designated with a footnote 8 on the Entity List in supplement no. 4 of part 744 of the EAR.

\* \* \* \* \*

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 3. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 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; 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. 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 September 7, 2023, 88 FR 62439 (September 11, 2023); Notice of November 1, 2023, 88 FR 75475 (November 3, 2023).

- 4. Section 744.6 is amended by:
■ a. Adding paragraph (b)(8);
■ b. Revising paragraph (c)(1);
■ c. Redesignating paragraph (e)(3) as (e)(4) and adding new paragraph (e)(3); and
■ d. Revising newly redesignated paragraphs (e)(4) introductory text, (e)(4)(i), and (e)(4)(ii)(C).

The additions and revisions read as follows:

§ 744.6 Restrictions on specific activities of “U.S. persons.”

\* \* \* \* \*

(b) \* \* \*

(8) A ‘foreign-security end user,’ as defined in § 744.25(f) designated with a footnote 8 on the Entity List in supplement no. 4 of part 744 of the EAR.

(c) \* \* \*

(1) BIS may inform “U.S. persons,” either individually by specific notice, through amendment to the EAR published in the Federal Register, or through a separate notice published in the Federal Register, that a license is required because an activity could involve the types of ‘support’ (as defined in paragraph (a)(1) of this section) to the end uses or end users described in paragraph (b) of this section. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade or their designee. However, the absence of any such notification does not excuse the “U.S. person” from compliance with the license

requirements of paragraph (b) of this section.

\* \* \* \* \*

(e) \* \* \*

(3) Applications for a "U.S. person" to 'support' a 'foreign-security end user' will be reviewed consistent with the applicable policies described in § 744.25 of the EAR.

(4) In addition to any applicable license review standards in paragraphs (e)(1) through (3), applications for licenses submitted pursuant to the notice of a license requirement set forth in paragraph (c)(2) of this section will be reviewed in accordance with the policies described in this paragraph (e)(4). License review will take into account factors including technology level, customers, compliance plans, and contract sanctity.

(i) Presumption of denial.

Applications will be reviewed with a presumption of denial for Macau and destinations specified in Country Group D:5 and E and entities headquartered or whose ultimate parent is headquartered in Macau or destinations specified in Country Group D:5 and E, unless paragraph (e)(4)(ii) of this section applies.

(ii) \* \* \*

(C) For all other applications not specified in paragraph (e)(4)(i) or (e)(4)(ii)(A) or (B) of this section.

\* \* \* \* \*

■ 5. Section 744.11 is amended by revising and republishing paragraph (a)(2) to read as follows:

**§ 744.11 License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States.**

\* \* \* \* \*

(a) \* \* \*

(2) *Entities designated with specific conditions identified by footnote.* With the exception of "standards-related activities" described in paragraph (a)(1) of this section, license requirements are set forth for footnote designated entities as described in paragraphs (a)(2)(i) through (vii) of this section.

(i) *Footnote 1 entities.* You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(1)(i) of the EAR when an entity designated with footnote 1 on the Entity List in supplement. no. 4 to this part is a party to the transaction. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in

§ 740.2 of this EAR do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the "development" or "production" of telecom systems, equipment, and devices below the 5G level (e.g., 4G, 3G) will be reviewed on a case-by-case basis.

(ii) *Footnote 3 entities.* You may not export, reexport, or transfer (in-country) any item subject to the EAR, including foreign-produced items that are subject to the EAR under § 734.9(g) of the EAR, without a license from BIS if, at the time of the export, reexport, or transfer (in-country), you have "knowledge" that the item is intended, entirely or in part, for a Russian or Belarusian 'military end user,' as defined in § 744.21(g), wherever located, that is listed on the Entity List in supplement no. 4 to this part with a footnote 3 designation. See § 744.21 and part 746 of the EAR for license review policy, and restrictions on license exceptions.

(iii) *Footnote 4 entities.* You may not, without a license, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e)(2) of the EAR when an entity designated with footnote 4 on the Entity List in supp. no. 4 to this part is a party to the transaction, or that will be used in the "development" or "production" of any "part," "component," or "equipment" produced, purchased, or ordered by any such entity. See § 744.23 for additional license requirements that may apply to these entities. The license review policy for foreign-produced items subject to this license requirement is set forth in the entry in supplement no. 4 to this part for each entity with a footnote 4 designation.

(iv) [Reserved]

(v) [Reserved]

(vi) [Reserved]

(vii) *Footnote 8 entities.* You may not export, reexport, or transfer (in-country) any item on the CCL without a license from BIS if, at the time of the export, reexport, or transfer (in-country), if the item is intended, entirely or in part, for a 'foreign-security end user,' wherever located, that is listed on the Entity List in supplement no. 4 to this part with a footnote 8 designation. See § 744.25 of the EAR. See also § 744.6(b)(8) for restrictions on specific activities of "U.S. persons" related to such entities.

\* \* \* \* \*

■ 8. Add § 744.25 to read as follows:

**§ 744.25 Restrictions on certain human rights related end users: foreign-security end users.**

(a) *General prohibition.* In addition to the license requirements for items on the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR, you may not export, reexport, or transfer (in-country) without a license items subject to the EAR that are specified on the CCL if, at the time of the export, reexport, or transfer (in-country), you have "knowledge" that the item is intended, entirely or in part for 'foreign-security end users,' as this term is defined in paragraph (f) of this section, of a country listed in Country Group D:5 or E.

(b) *Additional prohibition on those informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of any item subject to the EAR to a certain end user, because there is an unacceptable risk of use in, or diversion to, the activities specified in paragraph (a) of this section. Specific notice is to be given only by, or at the direction of, the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security or the Deputy Assistant Secretary for Strategic Trade. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Principal Deputy Assistant Secretary for Strategic Trade and Technology Security, the Deputy Assistant Secretary for Strategic Trade, or their designee. However, the absence of any such notification does not excuse persons from compliance with the license requirements in paragraph (a) of this section.

(c) *License exception.*

Notwithstanding the prohibitions described in paragraphs (a) and (b) of this section, you may export, reexport, or transfer (in-country) items subject to the EAR under the provisions of License Exception GOV set forth in § 740.11(b)(2) and (c)(2). No other license exceptions are available.

(d) *License application procedure.*

When submitting a license application pursuant to this section, you must state in the "additional information" block of the application, "this application is submitted because of the license requirement in § 744.25 of the EAR."

(e) *License review policy.*

Applications to export, reexport, or transfer (in-country) items requiring a license pursuant to paragraph (a) or (b) of this section will be reviewed on a case-by-case basis to determine whether

there is an unacceptable risk of use in human rights violations or abuses. Applications for transactions that would pose such an unacceptable risk will be reviewed with a presumption of denial. Applications will also be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR (22 CFR 126.1).

(f) *Definition.* For the purposes of this section, references to this section, or references to the terms in this paragraph, ‘foreign-security end user’ means any of the following:

(1) Governmental and other entities with the authority to arrest, detain, monitor, search, or use force in furtherance of their official duties, including persons or entities at all levels of the government police and security services from the national headquarters or the Ministry level, down to all subordinate agencies/bureaus (e.g., municipal, provincial, regional),

(2) Other persons or entities performing functions of a ‘foreign-security end user,’ such as arrest, detention, monitoring, or search, and may include analytic and data centers (e.g., genomic data centers) forensic laboratories, jails, prisons, other detention facilities, labor camps, and reeducation facilities, or

(3) Entities designated with a footnote 8 on the Entity List in supplement no. 4 to this part.

**Note 1 to paragraph (f):** This definition does not include civilian emergency medical, firefighting, and search-and-rescue end users. In situations in which a country integrates police, emergency medical, firefighting, and search-and-rescue services into a single public safety department, BIS seeks to ensure that the export, reexport, or transfer (in-country) of items necessary to protect lives is not disrupted and will apply a case-by-case review.

**Note 2 to paragraph (f):** If the end user also satisfies the definition of ‘Military end user’ in § 744.21, then the control in § 744.21 applies (e.g., if the national police is integrated into or organized under the

military of a country listed in country group D:5 or E, the control in § 744.21 applies.)

**PART 774—THE COMMERCE CONTROL LIST**

■ 9. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 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.

■ 10. Supplement No. 1 to Part 774 is amended under Category 3 by revising ECCNs 3A981 and 3D980 to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

\* \* \* \* \*

**3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; facial recognition systems; and “specially designed” “components” and “accessories” therefor, n.e.s.**

**License Requirements**

*Reason for Control:* CC

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
CC applies to entire entry.	CC Column 1

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*LVS:* N/A  
*GBS:* N/A

**List of Items Controlled**

*Related Controls:* See ECCN 0A982 for other types of restraint devices  
*Related Definitions:* N/A

*Items:* The list of items controlled is contained in the ECCN heading.

**Note 1 to ECCN 3A981.** In this ECCN, electronic monitoring restraint devices are devices used to record or report the location of confined persons for law enforcement or penal reasons. The term does not include devices that confine memory impaired patents to appropriate medical facilities.

**Note 2 to ECCN 3A981.** Item 3A981 does not control detection or authentication items versus identification items, nor items that facilitate individual access to personal devices or facilities.

\* \* \* \* \*

**3D980 “Software” “specially designed” for any of the following (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* CC, AT

<i>Control(s)</i>	<i>Country chart (see Supp. No. 1 to part 738)</i>
CC applies to entire entry.	CC Column 1
AT applies to entire entry.	AT Column 1

**List Based License Exceptions (See Part 740 for a Description of All License Exceptions)**

*TSR:* N/A

**List of Items Controlled**

*Related Controls:* N/A  
*Related Definitions:* N/A  
*Items:*

a. Software “specially designed” for the “development,” “production” or “use” of commodities controlled by 3A980 and 3A981,

b. Software “specially designed” for the analysis and matching of voice, fingerprints, or facial features for facial recognition. This entry does not control software solely for person or object detection or for individual authentication to facilitate individual access to personal devices or facilities.

\* \* \* \* \*

**Thea D. Rozman Kendler,**

*Assistant Secretary for Export Administration.*

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