

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990422104-9104-01]

RIN 0694-AB91

Exports to Serbia

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule

SUMMARY: In his address to the nation on March 24, 1999, President Clinton announced that the Armed Forces of the United States had joined those of our NATO allies in air strikes against Serbian forces responsible for brutal attacks on ethnic Albanians in the province of Kosovo. This rule imposes a license requirement for exports and reexports to Serbia of all items subject to the Export Administration Regulations (EAR).

EFFECTIVE DATE: This rule is effective May 4, 1999.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482-4196.

SUPPLEMENTARY INFORMATION:

Background

In response to the Serbian government's continued ethnic cleansing in its Kosovo province and its rejection of the proposed peace agreement accepted by the Kosovars, NATO (including the United States) has taken military action. This action is intended to deter the mass killing and dislocation of ethnic Albanians in Kosovo and to prevent a widening of the conflict.

In Resolution 1203 (adopted on October 24, 1998), the United Nations Security Council (UNSC) expressed alarm at what it described as the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe. Previously, in Resolution 1160 of March 3, 1998, the UNSC had imposed an embargo on the sale of arms and related materials to the Federal Republic of Yugoslavia.

On July 14, 1998, BXA implemented an embargo on arms and arms-related items in the Export Administration Regulations (EAR) that applied to Serbia and Montenegro. The arms embargo continues in effect. This rule imposes an additional license requirement on exports and reexports to Serbia of all items subject to the EAR. Applications

will be reviewed on a case-by-case basis, with a presumption of denial for applications for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use. No License Exceptions are available for Serbia, except that items consigned to and for use by personnel and agencies of the U.S. Government may be shipped under License Exception GOV, and temporary exports or reexports by the accredited news media may be made under License Exception TMP. This rule does not affect Montenegro.

This action is taken consistent with the provisions of the Export Administration Act (EAA) and after consultation with the Secretary of State. BXA submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on April 30, 1999.

Although the EAA expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121, August 17, 1998).

Saving Clause

Shipments of items removed from License Exception or NLR authorizations as a result of this regulatory action that were en route aboard a carrier to a port of export, on dock for loading aboard an exporting carrier, on lighter, or laden aboard an exporting carrier on May 4, 1999, pursuant to actual orders for export to that destination in Serbia, may proceed to that destination under the previous License Exception or NLR authorization provisions so long as they have been exported from the United States before May 11, 1999. Any such items not actually exported before midnight May 11, 1999, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501

et seq.). These collections have been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA-748P. Notwithstanding any other provision of law, no person is required to respond 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, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final 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 analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 746 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 746—[AMENDED]

1. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p.

917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. Section 746.9 is revised to read as follows:

§ 746.9 The Federal Republic of Yugoslavia (Serbia and Montenegro).

The Department of Commerce maintains a comprehensive embargo on exports and reexports to Serbia. Additionally, a United Nations mandated arms embargo applies to certain items destined to the Federal Republic of Yugoslavia (Serbia and Montenegro).

(a) *License requirements.* (1) *Serbia.* You will need a license to export or reexport all items subject to the EAR to Serbia, except as specified in paragraph (c) of this section. This requirement does not apply to Montenegro.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Under Executive Order 12918 of May 26, 1994 (3 CFR, 1994 comp., p. 899) (which authorizes the Secretary of State and the Secretary of Commerce, under section 5 of the United Nations Participation Act and other authorities available to the respective Secretaries, to take all actions necessary to implement any arms embargo mandated by resolution of the United Nations Security Council), and in conformity with United Nations Security Council (UNSC) Resolution 1160 of March 31, 1998, an embargo applies to the sale or supply to the Federal Republic of Yugoslavia of arms and related materiel of all types and regardless of origin, such as weapons and ammunition, military vehicles and equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to the Federal Republic of Yugoslavia (Serbia and Montenegro) from the United States of embargoed items, as listed in paragraphs (a)(2)(i) and (ii) of this

section. You will also need a license for the sale, supply, export or reexport to the Federal Republic of Yugoslavia (Serbia and Montenegro) of such items by any United States person in any foreign country or other location. (Reexport controls imposed under this paragraph (a)(2) apply only to reexports by U.S. persons. Reexport controls on U.S.-origin items to the Federal Republic of Yugoslavia (Serbia and Montenegro) set forth in other parts of the EAR remain in effect.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to the Federal Republic of Yugoslavia (Serbia and Montenegro) any such items. These requirements apply to embargoed items specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, regardless of origin.

(i) *Crime Control and Detection Equipment* as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the "License Requirements" section of the applicable ECCN.

(ii) *Items described by ECCNs* ending in "018"; and 0A982, 0A984, 0A985, 0A986, 0A988, 0A989, 0B986, 0E984, 1A005, 1C998, 2A993, 6A002.a.1, a.2, a.3, b and c, 6A003.b.3 and b.4, 6E001, 6E002, and 9A991.a.

(3) *Date of embargo.* The licensing requirements in paragraph (a)(2) of this section were effective on July 14, 1998.

(b) *Licensing policy.* (1) *Serbia.* Applications for export or reexport of all items subject to the EAR to Serbia will be reviewed on a case-by-case basis, with a presumption of denial for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Applications for export or reexport of all items listed in paragraphs (a)(2)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 1160, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to July 14, 1998, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(c) *License Exceptions.* Items consigned to and for use by personnel and agencies of the U.S. Government may be exported or reexported to Serbia under License Exception GOV (see § 740.11(b)(2) of the EAR), and temporary exports or reexports by the news media may be made to Serbia under License Exception TMP (see § 740.9(a)(2)(viii) of the EAR). No other License Exceptions are available for Serbia.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains related controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120-130). You should also contact the Department of the Treasury's Office of Foreign Assets Control concerning any restrictions which might apply to U.S. persons involving financial transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro).

Dated: April 30, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99-11304 Filed 4-30-99; 4:17 pm]

BILLING CODE 3510-DT-7P